# THE EXTRATERRITORIAL AND SECONDARY SANCTIONS OF THE UNITED STATES AGAINST IRAN, THEIR EFFECTS AND IRAN'S REACTIONS

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## ABSTRACT

THE EXTRATERRITORIAL AND SECONDARY SANCTIONS OF THE UNITED STATES AGAINST IRAN, THEIR EFFECTS AND IRAN'S REACTIONS

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Unilateral economic sanctions by states, which are on the rise in 21st century, have been intensely discussed in the context of both international political disputes and international law. The United States is the country that has imposed the biggest number of unilateral economic sanctions in the world. Iran is one of the countries that the US has imposed the greatest number of sanctions against. While the legality of the unilateral sanctions imposed by the US on Iran is also controversial, the extraterritorial and secondary sanctions imposed by the US in the context of Iran are more controversial both politically and legally as they draw other countries into the equation of US sanctions against Iran.

Since unilateral economic sanctions are generally used by states as a tool to achieve political objectives, the assessment of their legality under international law may be affected by the nationality of the author. Therefore, this thesis analyzes the compatibility of the unilateral economic sanctions imposed by the US on Iran, especially extraterritorial and secondary sanctions, with international law in the context of the jurisdictional rules and principles of international law.

For this purpose, firstly, the types, rules and principles of economic sanctions, as well as the international law sources by which they are governed, were studied. The terms and conditions under which unilateral sanction decisions of states are in compliance with international law are analyzed. Most importantly whether the extraterritorial and secondary sanctions imposed by the US on Iran are in compliance with international law is discussed, especially in the context of prescriptive jurisdiction. In addition, the effects of the US sanctions on Iran and the methods used by Iran to circumvent these effects are also covered.

The main arguments of the thesis are that not only the United Nations but also individual states such as the United States can impose economic sanctions in accordance with international law by respecting certain rules and principles; therefore, it is not possible to argue that the unilateral sanctions imposed by the United States on Iran categorically violate international law; and some of the extraterritorial and secondary sanctions imposed by the United States against Iran comply with international law, while others violate international law.

**Keywords**: International Economic Law, Unilateral Sanctions, Financial Sanctions, Extraterritorial Jurisdiction, Secondary Sanctions, Iran

# ÖZ

AMERİKA BİRLEŞİK DEVLETLERİNİN İRAN'A YÖNELİK ÜLKE DIŞI VE İKİNCİL YAPTIRIMLARI, BUNLARIN ETKİLERİ VE İRAN'IN TEPKİLERİ

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Devletlerin 21. yüzyılda artış gösteren tek taraflı ekonomik yaptırımları hem uluslararası siyasi çekişmeler hem de uluslararası hukuk bağlamında yoğun bir şekilde tartışılmaktadır. ABD, dünyada en çok tek taraflı ekonomik yaptırım kararı alan ülkedir. ABD'nin en çok yaptırım uyguladığı ülkelerin başında ise İran gelmektedir. Öte yandan İran'a uyguladığı tek taraflı yaptırımların uluslararası hukuka uygunluğu da tartışmalı olmakla birlikte ABD'nin İran bağlamında uyguladığı ülke dışı ve ikincil yaptırımlar, diğer ülkeleri de ABD'nin İran yaptırımları denkleminin içine çektiği için hem siyaseten hem de hukuken daha tartışmalıdır.

Tek taraflı ekonomik yaptırımlar devletler tarafından genelde siyasi amaçların gerçekleştirilmesinde bir araç olarak kullanıldıklarından uluslararası hukuk bağlamında meşru olup olmadıklarına ilişkin yapılan değerlendirmeler de yazarın tabiyetine bağlı olarak bundan etkilenebilmektedir. Bu nedenle bu tezde uluslararası hukukun yetkiye ilişkin kural ve ilkeleri bağlamında ABD'nin İran'a uyguladığı tek taraflı ekonomik yaptırımların ve özellikle ülke dışı ve ikincil yaptırımların uluslararası hukuka uygunlukları analiz edilmiştir.

Bu amaçla ekonomik yaptırımların önce çeşitleri, kural ve ilkeleri ile birlikte uluslararası hukukun hangi kaynaklarında düzenlendiği incelenmiş ve devletlerin tek taraflı yaptırım kararlarının hangi durum ve şartlarda uluslararası hukuka uygun olduğu araştırılmıştır. En önemlisi ABD'nin İran'a uyguladığı ülke dışı ve ikincil yaptırımların uluslararası hukuka uygun olup olmadıkları özellikle düzenleme yapma yetkisi bağlamında tartışılmıştır. Ayrıca, ABD yaptırımlarının İran üzerindeki etkileri ve İran'ın bu etkileri boşa çıkarmak için başvurduğu yöntemlere de yer verilmiştir.
Tezin temel argümanları sadece Birleşmiş Milletlerin değil ABD gibi tekil devletlerin de bazı kural ve ilkelere riayet ederek uluslararası hukuka uygun olarak ekonomik yaptırım kararları alabilecekleri, bu nedenle ABD'nin İran'a uyguladığı tek taraflı yaptırımların kategorik olarak uluslararası hukuku ihlal ettiğini ileri sürmenin mümkün olmadığı, ABD'nin İran bağlamında uyguladığı ülke dışı ve ikincil yaptırımlarının bazılarının uluslararası hukuka uygun, bazılarının ise uluslararası hukuku ihlal ettikleridir.

**Anahtar Kelimeler**: Uluslararası Ekonomi Hukuku, Tek Taraflı Yaptırımlar, Finansal Yaptırımlar, Ülke Dışı Yetki, İkincil Yaptırımlar, İran

*To the cherished memory of my father, who endured many hardships for the education of his children*

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## LIST OF ABBREVIATIONS

| | |
|---|---|
| AALCO | : Asian African Legal Consultative Organization |
| CAATSA | : Countering America's Adversaries Through Sanctions Act |
| CISADA | : Comprehensive Iran Sanctions, Accountability, and Divestment Act |
| COCOM | : Consultative Group-Coordinating Committee |
| EAA | : Export Administration Act |
| EAA | : Export Administration Act |
| EC | : European Community |
| EU | : European Union |
| FATF | : Financial Action Task Force |
| FINCEN | : Financial Crimes Enforcement Network |
| GATS | : The General Agreement on Service Trade |
| GATT | : The General Agreement on Tariffs and Trade |
| IACR | : Iranian Asset Control Regulations |
| IAEA | : The International Atomic Energy Agency |
| IEEPA | : International Emergency Economic Powers Act |
| IFCA | : Iran freedom and Counter-Proliferation Act |
| ILC | : International Law Commission |
| ILSA | : Iran Libya Sanctions Act |
| INSTEX | : Instrument in Support of Trade Exchanges |
| IRGC | : Islamic Revolutionary Guard Corps |
| ISA | : Iran Sanctions Act |
| ITRSHRA | : Iran Threat Reduction and Syria Human Rights Act |

| | |
|---|---|
| JCPOA | : Joint Comprehensive Plan of Action |
| NDDA | : National Defense Authorization Act |
| NEA | : National Emergencies Act |
| NSC | : National Security Council |
| OFAC | : Office of Foreign Assets Control |
| OFFC | : Office of Foreign Funds Control |
| SDN | : Specially Designated Nationals |
| SWIFT | : Society for Worldwide Interbank Financial Telecommunications |
| TWEA | : Trading with Enemy Act |
| UN | : United Nations |
| UNSC | : United Nations Security Council |
| US | : United States of America |
| ICJ | : International Court of Justice |
| WTO | : World Trade Organization |

# CHAPTER 1

# INTRODUCTION

## 1.1. Introductory Remarks

International economic sanctions can be broadly defined as commercial and financial penalties imposed by a state or group of states on another state, entity or person. Sanctions can be divided into unilateral and multilateral sanctions according to the number of countries imposing sanctions. In this sense, sanctions imposed by the United Nations can be called multilateral sanctions, while those imposed by individual states such as the United States of America can be called unilateral sanctions.

Sanctions decisions are taken by states or international organizations. These are called sanctioning or sending states or organizations. The target of sanctions can be a state, organization, institution or individual, and they are defined as target countries or persons, or simply as targets. The targets of sanctions are always countries and persons other than the sanctioning state. As a rule, states do not select their own nationals as targets of sanctions. Those outside the sanctioning state and the target are referred to as third parties (Bechky, 2018; Doxey, 1996; Hufbauer et al., 2007; Jentleson, 2022; Alexander, 2009; Lowenfeld, 2008; Ruys, 2017).

Economic sanctions have maintained their importance in international diplomacy and law since the US President Woodrow Wilson's famous speech in Indianapolis in 1919 (Hufbauer et al., 2007, p. 141). Whether sanctions are a substitute for war, an accompaniment to war, or a pre-war tool continues to be debated without consensus. Despite all the controversy, unilateral sanctions continue to be imposed by the major powers, and there are strong objections to sanctions from countries that have been subjected to comprehensive sanctions. Some objections sometimes go as far as calling economic sanctions as worse than war (IRNA, 2019) or a form of war more detrimental

than actual war (Sly anf Haidamous, 2019). Even the Foreign Minister of Iran described the US unilateral sanctions against Iran as “economic terrorism” in 2019 (Subedi, 2021, p. 20-21).

The view that "sanctions are a substitute for war" turned out to be not entirely correct. In some cases, they can even lead to war, as in the case of the US maximum pressure policy with regard to Iran after 2018 and Iran's retaliation and subsequent developments that brought two countries to the brink of an actual war (Bajoghli et al, 2024, p. 136-137). However, some developments have led to a much more intensive use of economic sanctions than before, and sanctions have become to some extent an instrument for states to achieve objectives that could have been achieved through war. These developments are the establishment of the United Nations after Second World War and the prohibition of war in Article 2, paragraph 4 of the UN Charter, the globalization of the world and the improvement of trade between countries, the developments in the financial world and the tremendous exchange of funds between countries.

However, the nature and objectives of economic sanctions have also undergone a dramatic transformation. States are no longer the only targets of sanctions, as in the past. Perhaps even more so, global terrorists, money launderers and drug traffickers are becoming targets of sanctions. This means that comprehensive sanctions have given way to smart sanctions, which have increased the rate at which individuals are placed on sanctions lists.

Economic sanctions are a consistent topic on the agenda of the international community, especially in recent times. International reactions to sanctions-related developments are sometimes positive and sometimes negative. The Joint Comprehensive Plan of Action (JCPOA) agreement, which is known as Iran nuclear deal and reached in Vienna on 14 July 2015, made many sanctions that were adopted against Iran to be lifted and was generally welcomed by the middle east countries and international community (Evans, 2015). However, when Donald Trump announced that the United States of America was withdrawing from the JCPOA and would re-impose many sanctions that were previously lifted or waived under the JCPOA caused many unwelcoming remarks from many countries around the world (Anadolu Agency,

2018). On the other hand, the invasion of the Crimea Region of Ukraine by Russia in 2014 caused the imposition of sanctions by the US and the European Union and these sanctions were diversified and intensified after Russia tried to invade whole Ukraine in 2022.[1] The western countries' engagement in Russia-Ukraine conflict together with their sanction tools and subsequent reactions of Russia to these developments has raised the possibility of the employment of nuclear weapons (Faulconbridge, 2023).

The US is among the countries with the highest number of unilateral sanctions. US economic sanctions differ from those of other states and organizations in terms of their scope, diversity and impact on other countries. For this reason, most of the academic studies on economic sanctions today focus on the economic sanctions imposed by the US. The economic sanctions of the US, which leads the global economy and especially the global financial world, affect other countries and their citizens as much as its own citizens.

The US sanctions are not only directed to target states, entities, and persons but also to the countries and person that have business relations with the target. Consequently, the actors other than the target are obliged to limit or terminate the business relationships with the target. The US, in order to deter third parties from establishing business relations with the target country or person uses two methods: enforcing its laws and rules extraterritorially and resorting to secondary sanctions. These are relatively new methods that the US has adopted to contend with its adversaries and are referred to by some authors as economic or financial warfare, with severe consequences for the target countries and individuals (Zarate, 2013, p. IX).

Iran, on the other hand, is one of the most important countries in the Middle East and has had political conflicts with the US since the regime change in 1979, starting with

[1] The sanctions by the US against Russia intensified when Russia recognized the independence of Donetsk People's Republic and Luhansk People's Republic regions of Ukraine. On February 21, 2022 the Executive Order 14065 was issued and the trade between the US and these regions was banned. In the following days, OFAC adopted many sanctions against Russian Government, entities and persons. Vladimir Putin, President of the Russian Federation and Sergei Lavrov, Minister of Foreign Affairs of the Russian Federation were added to the SDN list on 25th February, 2022:
https://ofac.treasury.gov/recent-actions/20220221_33
https://ofac.treasury.gov/recent-actions/20220222
https://ofac.treasury.gov/recent-actions/20220224
https://ofac.treasury.gov/recent-actions/20220225_33

the infamous hostage crisis. The bilateral hostility is sometimes projected to the military sphere such as the war of attrition over presence in Syria (Altunışık and Göçer, 2023). The US has resorted to many measures to counter Iran, which it regards as an adversary. Among these, sanctions in general and economic sanctions in particular have a significant role. In its quest to contain Iran, the US has imposed both primary and secondary sanctions. The number of secondary and extraterritorial sanctions imposed by the US as part of its Iran sanctions regime began to increase after 2010 (Thomas, 2023a, p. 21). The US sanctions on Iran are arguably the most comprehensive and extensive set of sanctions that the US maintains on any country. These sanctions block Iranian assets in the US, ban nearly all US trade with Iran (except food and agricultural commodities, medicine, medical supplies, and humanitarian-related goods), and prohibit foreign assistance and arms sales. The US sanctions target Iran's energy sector, including foreign corporations that invest in it and entities that buy, sell, or transport Iranian oil; Iran's financial sector, including its Central Bank; additional sectors of Iran's economy, including shipping, construction, mining, textiles, automotive, and manufacturing, as well as entities that conduct transactions with, or otherwise provide support for, those sectors; arms trade with Iran; and many components of Iran's government (including the Supreme Leader and the Islamic Revolutionary Guard Corps), including entities that conduct transactions with or otherwise support them (Thomas, 2023b). Studies indicates that the US economic sanctions have had a significant impact on Iran's economy, have limited its development of nuclear program, but they have failed to reduce Iran's ability to support militant groups or its regional influence (Abdelbary and ALshawa, 2023).

### 1.2. The Purpose and Limits of the Study

One of the main debates about sanctions is their legality. While all sanctions, including sanctions adopted by the United Nations, are controversial in international law, at least in some respects, unilateral sanctions imposed by the US against other countries are more controversial due to their unilateral characteristics (Happold, 2016; Subedi, 2021). UN sanctions, as multilateral sanctions, have legal justification in the UN Charter. However, the rules and principles for the application of unilateral sanctions are not set out in any treaty (Subedi, 2021). As a result, there is no consensus on

whether unilateral sanctions are legal and, if they are to be considered in accordance with international law, on their limits and justifications.

The US is a country that aggressively uses unilateral economic sanctions. The legality of its sanctions is therefore more questionable. Iran has been the target of US sanctions for more than four decades. The US imposes an economic embargo on Iran and prohibits almost all transactions between its citizens and the Iranian government and persons. Not satisfied with this, the US seeks to disrupt economic relations between Iran and third countries and persons through sanctions tools such as extraterritorial and secondary sanctions. These kind of US sanctions are particularly controversial in terms of their compliance with international law (Ruys and Ryngaert, 2020; Bogdanova, 2022, Meyer, 2009; Sossai, 2020; Kerbrat, 2021). Besides, these sanctions have various effects on the Iranian economy, on Iran's foreign policy and on the Iranian people.

The purpose of this thesis is to discuss the US international economic sanctions against Iran, not other sanctions such as diplomatic or cultural sanctions. Moreover, the main focus of this thesis will not be the primary sanctions imposed by the US on Iran, but the extraterritorial and secondary sanctions imposed under the Iranian sanctions regime. In addition, special attention will be paid to the US financial sanctions. This is because the US has been using financial sanctions more than other types of economic sanctions, especially in the recent period, thanks to its global dominance in the financial sector.

### 1.3. Disposition

The main question of the thesis will be whether extraterritorial and secondary sanctions of the US against Iran are compliant with public international law. To address this issue, the theoretical framework of economic sanctions in international law is analyzed and views on the scope of extraterritorial and secondary economic sanctions are discussed in the second Chapter. In this context, the main legal sources of international economic sanctions are discussed and it is presented which sanctions are based on which sources of international law. Jurisdiction, which is also covered in this Chapter, is particularly important for assessing the legality of extraterritorial and secondary sanctions imposed by the US against Iran. To support the arguments and in

order to better understand some arguments of thesis some sanctions types and the sanctions regime of the UN are also discussed.

In Chapter 3, the US sanctions regime against Iran is discussed. The US sanctions mechanism, the institutions that take part in adoptions of sanction rules, different sanctions lists such as Specially Designated Nationals and Blocked Persons List (SDN), the evolutions of the US sanctions against Iran are presented. Thanks to this chapter, it is understood that the US sanctions against Iran evolved in the course of time and the secondary and extraterritorial ones have become an important element of this sanctions regime.

The Chapter 4 first analyzes the objectives and success of the US sanctions against Iran. It then discusses the impact of these sanctions on Iran and Iranian people. Since US sanctions have serious humanitarian impacts, their legitimacy is weak even if they are legal under international law. The last part of this chapter is devoted to the ways in which Iran has responded to extraterritorial and secondary sanctions.

In the Chapter 5, the US extraterritorial and secondary economic sanctions against Iran is discussed. The legality of these sanctions is evaluated in a case-by-case method.

Chapter 6 is on conclusive remarks. In addition, a general summary of the findings is made.

### 1.4. Methodology of the Study

For the writing of the theoretical part of this thesis, mainly doctrinal resources are used and the related books, theses and articles were analyzed. As the issue of international sanctions is rather political and my personal observations have indicated that nationality and position of the author may influence their views on the legality of the international sanctions, a wide range of views are included in the thesis in order to present an unbiased study.

For the US sanctions, the related acts adopted by the US Congress, the executive orders by the presidents, and regulations and general licenses by the Ministry of Treasury, the Office of Asset Control (OFAC) are analyzed. It was determined that a minor change of wording in these papers can generate very important effects. Besides, international

laws and rules, national and international court decisions, the statements of the related parties, news and articles are used as auxiliary sources in writing of this thesis. Sometimes what is stated and what is written do not match and such inconsistencies are discussed.

### 1.5. Arguments of the Study

The first objective of the thesis is to provide general information about international economic sanctions and to address the question of legality in this field, and as a result, to argue that multilateral economic sanctions are regulated in the UN Charter and that the UN can impose sanctions on countries and individuals within this scope and in compliance with certain restrictions, while unilateral sanctions are not regulated in any document, their legitimacy is controversial, but it is difficult to argue that they are completely prohibited in the context of international law, as some researchers claim, and that the imposition of unilateral sanctions by individual countries under certain conditions and rules is not contrary to international law.

One of the main arguments of this thesis is related to extraterritorial and secondary sanctions. First of all, since these two types of sanctions are often confused with each other, a clear line is drawn between them. Consequently, it is claimed that extraterritorial and secondary sanctions are not completely same or parellel sanctions, and it is further claimed that it is not possible to assert that unilateral sanctions and therefore US unilateral sanctions are against international law just because they are extraterritorial or secondary sanctions.

Another argument of the thesis is that US sanctions, especially extraterritorial and secondary sanctions, have had a significant impact on the Iranian economy, including a negative impact on people. It is also argued that despite all the negative aspects of these sanctions, the Iranian government has found many ways to circumvent the sanctions.

The final arguments of the thesis are about the extraterritorial and secondary sanctions and financial sanctions imposed by the US on Iran. The thesis argues that some extraterritorial and secondary sanctions of the US against Iran violate international law and some of them don’t and it is not possible to claim that the US sanctions against Iran illegal or legal collectively. As for the thesis' arguments regarding the US financial

sanctions against Iran, some of them do not violate international law, while others are argued to violate certain rules and principles of international law. It should be emphasized that the discussion of the legality of the sanctions and the conclusions drawn focus on the prescriptive legal aspect of the sanctions.

I should point out here that claiming some sanctions to be in accordance with international law does not convey the message and intention that they are legitimate. While I personally believe that sanctions are preferable to war, I do not consider them to be a peaceful, just and effective political means to solve international problems. Besides, legality is not the only criteria for determining acceptable or legitimate state behavior, such as sanctioning other states and entities. Other criteria such as humanitarian, ethical and political also play a significant role in modern international relations (Popovski and Turner, 2008, p. 1). As will be seen in the effects of the sanctions on Iran, there is a huge negative humanitarian impact of the US extraterritorial and secondary sanctions. In terms of international law, the legality of the economic sanctions is basically decided in accordance with two sources, which are treaties and customary international law. Therefore, these measures can be considered lawful within the framework of certain measures, such as retorsions and countermeasures. However, when the effects of these sanctions on innocent people are considered, it is not possible to see them as legitimate.

# CHAPTER 2

# ECONOMIC SANCTIONS AND THEIR ANALYSIS ACCORDING TO THE RULES AND THE PRINCIPLES OF INTERNATIONAL LAW

This chapter examines the basic terms of international economic sanctions. In this context, it explains what should be understood both by the term of sanctions in general and by the term of economic sanctions in particular. It also examines a brief historical development of economic sanctions as well as several types of economic sanctions that are crucial for this thesis. The issue of sanctions is related to both to sources and jurisdiction of international law. As a matter of fact, first, the sources of the international law and the ones that are used in adoptions of sanctions are explained. It is stated that the sanctions of UN are based on UN charter as international treaty, while unilateral sanctions such as of the US are based international custom law. The rules and principles of the custom law that are or should be applied in sanctions decisions are analyzed. Another issue, which is very important in this context and will be referred to extensively when analyzing the legality of the US sanctions against Iran, is jurisdiction in international law. Therefore, jurisdictions rules such as territoriality, nationality, universality and protection and their application in sanctions are discussed. Two important terms related to jurisdiction, extraterritorial and secondary sanctions, are analyzed as these sanctions and their legality are controversial. Finally, the principles affecting the legality of unilateral economic sanctions and the arguments against their legality are also presented.

## 2.1. Definition of the Sanctions and Economic Sanctions

Many aspects of sanctions are internationally and academically controversial. This controversy starts with the very definition of "sanction". Although this term is used extensively both in everyday life and in international relations doctrine and law there is no definition agreed upon (Ruys, 2017, s. 19). First of all, it should be expressed

that “sanction” term partly has negative connotations in international law doctrine and the sanctions adopted by a single state are generally not viewed legally as “sanctions” by some lawyers who study international law (Thouvenin, 2021, p. 151). Besides, sanctions have changed dramatically, especially after 90’s. The modern sanctions “no longer refer solely to measures taken by a state in response to the prior unlawful conduct of another state” (Gordon et al., 2019, p. 2). Although states are still become the subject of sanctions, after the appearance of targeted sanctions, persons, companies and terrorist organizations are being sanctioned more than any other entity.

As mentioned, there is no consensus among international law scholars about naming the “measures”, which implemented by individual states unilaterally as “sanctions”. Even some scholars claim that only the restriction adopted by UN Security Council in accordance with the Chapter VII of UN Charter must be named as sanctions (Bogdanova, 2022, s. 66-67). On the other hand, the UN Charter uses the term "measure" instead of "sanction" (UN Charter, Articles 36-42).

Bogdanova (2022, p. 67) notes that states use different terms to describe the measures they take. For example, the US uses the term "sanctions", the EU "restrictive measures", Canada "special economic measures" and Australia "autonomous measures". However, although these countries and international organizations prefer these terms in their legal documents, the term "sanctions" is commonly used on their websites and other documents. In addition, in the statements of these countries and organizations regarding sanctions, the measures they take against other countries are constantly announced under the name of sanctions.

On the other hand, in Draft Articles on Responsibility of States for Internationally Wrongful Acts, (2001), adopted by the UN International Law Commission (ILC), the term “sanctions” used to describe joint measures taken within an international organization such as the UN, and the term “countermeasures” is preferred for unilateral restrictions that can be imposed by another state that suffers from a wrongful act by a state contrary to international law. Based on this, some academics argue that the term "countermeasure" should be used for measures implemented unilaterally by states, and the term sanctions should be used solely for measures taken

by an international organization such as the UN (Şimşek, 2021, p. 2053; Akkutay, 2014, p. 414-415).[2]

However, despite the negative aspects of the term and its unintended connotations when used in the context of international law, it is considered that all academic debate on this issue is in vain and does not serve to resolve other important issues related to international sanctions.[3] Besides, there is an international common practice to use "sanction" as a valid term by individual states, regional international organizations such as the EU or international organization like the UN. Besides, it is claimed that it is legally wrong to use different terms according to different actors (Ruys, 2017, s. 21). For this reason, this thesis will also use the term sanctions and unless otherwise stated, sanctions will refer to international economic sanctions.

Oxford English Dictionary (online) defines "sanction" as a legal term as follows: "The specific penalty enacted in order to enforce obedience to a law… 2(d). Politics. Esp in plural, economic or military action taken by a state or alliance of states against another as a coercive measure, usually to enforce a violated law or treaty" (Gordon et al., 2019, p. 1). From a legal perspective, the term sanction can be defined as all the measures that can be applied by a *legal authority*, even by resorting to force, in order to ensure that individuals with whom there are legal relations comply with the rules regulating these relations, and to eliminate the disorder that may arise as a result of non-compliance with them, or to punish the person who causes it (Özman, 1974, p.11-12). One of the reasons why the term sanction is controversial in international law is this expression of "legal authority" in the definition itself. This is because states are not recognized as legal authorities in international law, especially in terms of unilateral sanctions against each other. However, if, as some contemporary international law scholars argue, the measures adopted by individual states against

[2] After the draft articles adopted by the ILC, the concept of "countermeasure" took precedence over the concept of "reprisals". However, "most authors consider reprisals either to fall within the concept of countermeasures or to equal that concept." (Bogdanova, 2022, p. 62).

[3] As is well known, sovereign states are equal in international law and there is no hierarchy between them, but "sanction" implies a hierarchy between the sanctioning and target states. This is because the general definition of a sanction is "the specific penalty enacted in order to enforce obedience to a law"(Oxford English Dictionary).

each other are called "sanctions", this will lead to the perception that the sanctioning state is a superior legal authority to the sanctioned state (Thouvenin., 2021, p. 151).

Economic sanctions are no exception to the controversial aspect of the term “sanctions”. Just like the concept of sanctions, there is no agreed-upon definition of economic sanctions in the academic literature (Ruys, 2017, p. 19). However, the definition of Hufbauer et al. (2007, p. 3), who conducted a comprehensive research on sanctions, is generally accepted. Accordingly, economic sanctions are defined as "the deliberate, government inspired withdrawal, or threat of withdrawal, of customary trade or financial relations.” However, Bechky (2018, p. 3) criticizes this definition for being over-broad and omitting the key purposive element.

Apart from this much acclaimed definition, there are many other definitions regarding economic sanctions. However, beyond serving to better understand the concept, the definitions carry the risk of excluding some sanction practices as they become more specific. For example, most definitions based on the objectives of sanctions risk being incomplete or inaccurate. This is because the objectives of sanctions may be too broad to be described in a few sentences and, as Gordon (2019, p. 2) points out, their ultimate objectives may be unclear. Malloy's definition can be cited here as an example (Malloy, 1990, p. 13):

> Any country-specific economic or financial prohibition imposed upon a target country or its nationals with the intended effect of creating dysfunction in commercial and financial transactions with respect to the specified target, in the service of specified foreign policy purposes.

First, this definition associates economic sanctions only with “foreign policy purposes”. However, economic sanctions can have objectives other than foreign policy. Sometimes economic sanctions are adopted just for appeasing domestic uneasiness about a particular state, person or situation. Second, as noted above, the target of sanctions is no longer only specific countries or their citizens. And third, this definition does not cover the secondary sanctions (Bechky, 2018, p. 3).

Moreover, as briefly mentioned above, viewing sanctions as measures imposed by one state on another remains an outdated view given modern sanctions practices. The past decade has witnessed a proliferation of measures targeting non-state entities and individuals" (Gordon et al., 2019, p. 2). With the emergence and development of

smart (targeted) sanctions and increased measures against crimes such as terrorism, money laundering and drug trafficking, sanctions are also being imposed against an increasing number of individuals and organizations, regardless of their nationality. Therefore, Koutrakos' (2001, p. 50) definition of "the exercise of pressure by one state or coalition of states to produce a change in the political behaviour of another state or group of states" is far from comprehensive given recent developments. Similarly, Lowenfeld's (2008, p. 850) definition of "induce that state to change some policy or practice or even its governmental structure " is problematic. This is because sometimes sanctions decisions are taken by governments to avoid pressure from their own public opinion, to send a message to other countries, or for human rights violations (Bechky, 2018, p. 4).

The most comprehensive definition of economic sanctions can be given by referring to Acar (2015, p. 29):

> Economic sanctions are positive and/or negative economic (commercial and/or financial) measures imposed by one or more states or international organizations (the sender) against the target and/or third parties and with the political goals such as changing behavior, and/or weakening, and/or punishing one or more states, groups, organizations and/or associated persons (the target), and/or giving a message (to the target and/or others).

Accordingly, the basis of economic sanctions is the refusal of states or organizations to provide economic benefits such as state aid to the target, trade measures regarding imports and exports, and financial restrictions. In addition, freezing or confiscating assets of the target state and its citizens, withholding aid, including military aid, voting against granting loans or credits to the target, placing persons having business relations with the target on sanctions lists, etc. are also considered economic sanctions.

Following this general definition, it will be useful for next discussions to distinguish economic sanctions from other types of sanctions under the heading of "international sanctions". Conventionally, sanctions usually mean non-violent measures. So, normally, military measures should not be considered under sanctions. However, some scholars such as Lowenfeld mention military sanctions in addition to economic and other sanctions (Lowenfeld, 2008, p. 850). According to this judgement, military sanctions can be defined in the context of violent measures and according Chapter

VII of the UN Charter. Furthermore, members of UN can use force in self-defence according to Article 51 (Doxey, 1996, p. 11). In addition to economic sanctions, the non-violent international sanctions are diplomatic and political sanctions, and cultural and transportation sanctions.

The diplomatic and political sanctions are severance or removal of diplomatic and political ties. The cultural and transportation sanctions aim at severing or cutting the cultural bounds or transportation links between sender and target. On the other hand, economic sanctions disrupt commercial and financial bounds between the parties. Financial sanctions focus on the flow of funds and other forms of value to and from a target country, entity or person (Carter and Farha, 2013, p. 904). Commercial and financial sanctions, in contrast to diplomatic and cultural sanctions, are expected to have coercive as well as demonstrative and punitive effects (Doxey, 1996, p. 12).

The scope of these three types of international sanctions is given in Table 1 below in line with Doxey's classification (1996, p.14-15).

**Table 1: Types of sanctions**

| 1. Diplomatic and Political Sanctions | 2. Cultural and Communication Sanctions |
|---|---|
| a) Public protest or condemnation | a) Visa restrictions for target nationals |
| b) Postponement or cancellation of official visits | b) Cancellation of cultural exchanges, scientific cooperation, educational ties, sports contacts, tourism |
| c) Limitation of scale of diplomatic representation | c) Restriction of telephone, cable or postal links |
| d) Terminating diplomatic relations | d) Restriction, suspension, cancellation of landing and overflight, privileges, water transit, docking and port privileges, land transit privileges. |
| e) Refrain from recognition of new governments or new states | |
| f) Vote against or veto admission to international organization; | |
| g) Removal of headquarters or regional offices of international organizations from target. | |

**Table 1 (continued)**

**3. Economic Sanctions**

| **a. Financial** | **b. Commercial and Technical** |
|---|---|
| 1) Severance of development and military assistance | a) Import and export quotas |
| 2) Reduction, suspension or cancellation of credit facilities | b) Restrictive licensing of imports and exports |
| 3) Freeze or confiscation of bank assets | c) Limited or total embargo on imports and exports (including technology) |
| 4) Freeze interest or other transfer payments | d) Discriminatory tariff policy, including denial of most favored nation status |
| 5) Refusal to refinance or reschedule debt repayments | e) Restriction or cancellation of fishing rights |
| 6) Vote against loans, grants, subsidies, funding for technical or other assistance from international organizations. | f) Suspension or cancellation of joint projects or trade agreements |
| | h) Ban on insurance and other financial services |
| | i) Blacklisting' those doing business with the target |
| | j) Cancellation of technical assistance, training programmes |
| | k) Tax on target's exports to compensate its victims |

Here, it is important to distinguish the definition of sanction from other related terms. The first of these related terms is embargo. Embargo is a complete or partial ban on the provision of goods, services and/or technology to the target. Total embargo is the strictest form of economic sanction and it completely cuts off exports, imports, financial transactions, and travel (Lowenfeld, 2008, p. 892). These decisions are taken by state officials (Acar, 2015, p. 30; Koutrakos, 2001, p. 50).

The idea behind embargoes is to create as much disorder as possible in the target country by preventing the supply of critical goods and services (Watson, 2021, p. 187). In order for an embargo to be effective against a state, the goods that cannot be

obtained due to the embargo must not be obtained from another state or the shortage must not be met by the sanctioned country's own means (Özman, 1974, p. 94).

A boycott is a complete or partial ban on the purchase of goods and/or services from the target (Acar, 2015, p. 30). A boycott is expected to cut off a source of income or assets of the target country (Watson, 2021, p. 187). Boycott can be implemented by states or by individuals in a country (Özman, 1974, p. 96). However, boycott is usually initiated and carried out by a certain group of private individuals acting on their own.

Finally, blockade is a naval warfare action and aims to cut off access to the target state's coasts through warships (Koutrakos, 2001, 50). Despite these differences, these terms are often used interchangeably and fall under the definition of economic sanctions as a whole.

Contrary to popular belief, states can impose sanctions not only on their adversaries but also on their allies. In that case, the existence of a well-developed commercial relationship between the allies gives the sanctioning country an advantage, while the fact that the sanctioned ally does not want to disrupt this relationship affects its reaction. For example, in the mid-1970s, South Korea and Taiwan bowed to US pressure and abandoned the construction of nuclear facilities for such reasons (Hufbauer et al., 2007, p. 60).

### 2.2. A Short History of Economic Sanctions

Though their number increased after the First World War, the use of economic sanctions in diplomacy dates back to ancient times. Studies on this subject trace the beginnings of this measure back to the Ancient Greek states. The most well-known event recorded in this regard is the Megara Decree issued by Pericles in 432 BC after the kidnapping of three Aspasian women (Hufbauer et al., 2007, p. 9-10). This decree prohibited Megara from trading with Athens and the entire Delian Alliance. The scope of these sanctions was very broad and no exceptions were granted for any goods (Jentleson, 2022, p. 46).

Thucydides notes that this decree had little impact on the Peloponnesian Wars. However, Aristophanes, in his comedy "The Acharnians", mentions the Decree of

Megara as the event that triggered the war between Athens, led by Pericles, and Sparta, Megara and their allies (Jentleson, 2022, p. 46). Although Athens successfully imposed a blockade and other additional sanctions during the war, they lost the war. The Peloponnesian War (431-404 BC) resulted in Athens losing the leadership of the Greek world to Sparta (Acar, 2015, p. 4-5).

Since ancient times, sanctions have been an integral part of the foreign policy of many states. States have resorted to economic sanctions not only to achieve foreign policy and national security objectives, but also as a response to domestic policy needs and economic challenges. In ancient and modern Europe, economic sanctions were used for many purposes, especially as an instrument of military policy in times of war (Alexander, 2009, p. 8).

In 1806, the French emperor Napoleon Bonaparte imposed sweeping economic sanctions on his main rival, Great Britain, as another tool in his wars of European conquest. In the continental European countries conquered by Napoleon (which included, in whole or in part, Belgium, the Netherlands, Italy, Austria, Germany, Poland and Spain), British exports were widely boycotted. Neutral country ships coming directly from Britain or its colonies were first banned from entering European ports and then threatened with seizure. While these sanctions imposed significant costs on the Great Britain, their negative consequences also played an important role in Napoleon's ultimate defeat (Jentleson, 2022, p. 47-48).

Until the 1920s, economic sanctions were rarely used except in wars (Alexander, 2009, p. 9). However, the 1920 Covenant of the League of Nations authorized the imposition of sanctions against countries that committed military aggression against other states. Although the League resolved many border disputes in the 1920s using the threat of economic sanctions, it failed to deter aggressive actions by larger and more powerful states through economic sanctions. League's first and only major sanctioning effort was against Italy for its invasion of Ethiopia in 1935. The sanctions imposed on Italy were limited in scope. The sanctions included an arms embargo, the restriction of financial transactions with Italy, a ban on Italian imports and on the export to Italy of some commercial items, but excluded oil, coal and steel, which were important for Italy (Doxey, 1996, p. 16). Naturally, these sanctions did not prevent Italy from

invading Ethiopia. Similarly, following Japan's invasion of Manchuria in 1931, the League of Nations did not impose any sanctions on Japan, but only threatened it with sanctions. This greatly undermined the credibility of the League of Nations (Alexander, 2009, p. 8).

From a legal point of view, the League of Nations' sanctions regime failed because neither a judicial framework nor a mechanism to implement the decisions taken was foreseen. Despite all this, the Covenant of the League of Nations is recognized as a revolution in international law. This is because, for the first time, it prohibited certain actions of states and many countries agreed to impose a general sanction or penalty in the event of a violation within the framework of a multilateral agreement (Alexander, 2009, p. 23).

On the other hand, during both World War I and II, the US, together with the UK, imposed strict export controls and asset freezes against the Axis powers and their companies and nationals. Many of these economic controls continued after the end of the Second World War. In the case of the US, these controls evolved into a vast system of economic and financial restrictions against other countries deemed communist and problematic, and against international terrorists. After the attack on the United States on September 11, 2001, a broad regime of economic and financial sanctions was adopted against international terrorists and their supporters (Alexander, 2009, p. 9). With regard to US sanctions, the proliferation of secondary sanctions, particularly against listed individuals, also took place after this date. Overall, economic sanctions have played a central role in the conduct of US foreign policy since the First World War (Hufbauer et al., 2007, p. 17).

In the period after World War II, the authors of the UN Charter envisaged a separate and advanced system for sanctions, based on the experience of the League of Nations, and equipped the UN with various tools to make these sanctions functional. The UNSC has been given the authority to ensure international peace and security, and economic sanctions have been included among the measures it will take in this context (Bogdanova, 2022, p. 23). Until 1990, the UNSC adopted mandatory economic sanctions in only two cases. The first of these is the broad embargo on trade and investment applied to Southern Rhodesia between 1966 and 1977, and the other is the

limited arms embargo applied to South Africa between 1977 and 1990. However, since 1990, the UNSC has significantly increased its mandatory economic sanctions and adopted at least 17 different economic sanctions programs against the state, terrorists and terrorist organizations. (Alexander, 2009, p. XI).

The period between 1945 and 1990 was marked by embargoes and export controls mutually imposed by the Western states and the Soviet bloc (Bogdanova, 2022, p. 24). After 1990, there was a dramatic increase not only in UN sanctions but also in unilateral sanctions. Although there were 610 sanctions cases during the Cold War period (1945-1990), this number increased to 802 between 1990-2005 (Jentleson, 2022, p. 3). Due to this great increase in sanctions following the Cold War, this period is called "the sanctions decade" (Bogdanova, 2022, p. 30). The comprehensive sanctions imposed by the UN Security Council on Iraq, Yugoslavia and Haiti, some of which were widely criticized for the damage they caused to the civilian population, took place during this period. Besides, due to criticism of the comprehensive sanctions, humanitarian exceptions were introduced for this kind of sanctions and smart sanctions became widespread during this period. Additionally, after the 2000s, there has been an increase in the use of economic sanctions in the context of terrorist acts and human rights.

Both unilateral and multilateral sanctions continued to increase until the 2020s. After the annexation of the Crimea region of Ukraine by Russia in 2014, the US and the EU started sanctioning Russia. And as result of Russia's invasion of some parts of Ukraine in 2022, the heavy sanctions and new sanction practices especially the EU and the US together with many other countries such as Japan, Canada and Australia, started to implement on Russia, has shown us that the use and discussion of economic sanctions in international relations will continue for a quite long time.

### 2.3. The Types of Economic Sanctions

In this section, the main types of economic sanctions and their differences from each other will be discussed. The differences between the types of sanctions to be discussed will facilitate the understanding and evaluation of unilateral sanctions of the US. Moreover, some of these types of sanctions are also important in assessing the legality of unilateral sanctions, such as the US unilateral sanctions against Iran and

extraterritorial and secondary sanctions imposed by the US on third countries, entities and individuals in the context of the Iran sanctions regime. Table 2 below presents the types of international economic sanctions.

**Table 2: Types of economic sanctions**

| 1. According to their Scope | 2. According to Number of Senders | 3. According to Measure |
|---|---|---|
| a. Comprehensive | a. Unilateral | a. Positive |
| b. Targeted/Smart | b. Multilateral | b. Negative |
| **4. According to Compliants** | **5. According to Jurisdiction** | |
| a. Primary | a. Territorial | |
| b. Secondary | b. Extraterritorial | |

### 2.3.1. Comprehensive Sanctions vs. Smart Sanctions

Comprehensive sanctions mean a complete interruption of the flow of goods, services and technology to the target (Acar, 2015, p.59). Although these sanctions are blunt sanctions and are put in force to change the policies of the leaders of the target state, the real damage is suffered by large segments of the population (Hufbauer et al., 2007, p. 60). This is because while the state elites can somehow obtain trade-restricted goods that are indispensable for people, large segments of the population are deprived of them. An example of comprehensive sanctions is the sanctions imposed on Iraq by the UN after the invasion of Kuwait in the 1990s. These UN sanctions were highly criticized for the starvation and deaths they caused in Iraq. As a result of these criticisms, the UN sanctions imposed on Iraq were later lifted, paving the way for countries to turn to smart sanctions, as it was not possible to ensure that ordinary people were not affected by comprehensive sanctions.

On the other hand, smart or targeted sanctions are relatively new sanctions that have emerged after the negative consequences of comprehensive sanctions. These sanctions

are defined as the opposite of comprehensive sanctions and are divided into two types: sectoral and individual (Beaucillon, 2021, 4). Sectoral sanctions target important economic sectors of the sanctioned country. These are usually the sectors such as arms, oil, precious metals, finance, or banking.[4] Smart sanctions also heavily target individuals. Not only government officials but also businessmen, banks and companies are listed under smart sanctions. Depending on the sanctions adopted, the assets of these people are frozen and they are subjected to various other sanctions such as travel restrictions or transaction bans.

Smart sanctions differ from comprehensive sanctions in two ways: punishing political or economic elites and protecting vulnerable social classes. They therefore enjoy great support from both state leaders and academics (Bogdanova, 2022, p. 32).

The comprehensive sanctions imposed on Iraq, Serbia and Haiti caused humanitarian disasters and paved the way for the transition to smart sanctions (Jentleson, 2022, p. 37). However, the targeted sanctions imposed by the US in the early 1990s on individuals it defined as terrorists formed the basis of smart sanctions (Alexander, 2009, p. 27). These sanctions include political leaders or specific goods, services and technological products (Acar, 2015, p. 61). Arms embargoes, travel bans, asset freezes and some banking sanctions are fell under these sanctions (Hufbauer et al., 2007, p. 138). Individuals, companies and other persons added to the US SDN list as for representing target countries and other persons added to this list due to their involvement in terrorist activities or drug trafficking, independent of any country, are examples of smart sanctions. Likewise, the EU's Consolidated Financial Sanctions List and the UNSC's Consolidated List were created for the purpose of smart sanctions (Jentleson, 2022, p.11).

Although smart sanctions were introduced with good intentions, it is a matter of debate whether they achieve their intended purpose. “There is much debate over whether an economic sanction can ever be smart, or if they are even useful in destabilizing political opponents” (Watson, 2021, p. 186). It has been argued that these sanctions have evolved over time into comprehensive sanctions, as persons and institutions

[4] The increase in financial sanctions also explains why compliance-related areas such as anti-money laundering, terrorist financing and anti-bribery are intertwined with sanctions (Beaucillon,2021, p. 5).

refrain from engaging in business relations with countries subject to smart sanctions to avoid the sanction risk, even leading non-profit organizations to cut humanitarian aid. As for US smart sanctions such as financial sanctions it is argued that they have substantial collateral costs that are undermining the preeminence of the US financial system (Rosenberg et al, 2016, p. 12). However, despite the negativities mentioned, these sanctions are seen as less harmful for ordinary people than comprehensive sanctions (Jentleson, 2022, p.28).

### 2.3.2. Unilateral Sanctions vs Multilateral Sanctions

Sanctions are divided into unilateral and multilateral sanctions in terms of the number of enforcers. Unilateral sanctions are measures directed against a target state or entity, which are taken by an individual state or a group of states, and which are not authorized by the UN (Subedi, 2021, p. 22). However, the fact that other countries support the sanctioning country by taking the same measures does not change the unilateral nature of sanctions (Thouvenin, 2021, p. 149). The US is the leading country among those imposing unilateral sanctions. According to one study, the US imposes 68 percent of unilateral sanctions, and according to another study, 52 percent. (Jentleson, 2022, p.12). On the other hand, the legal validity of unilateral sanctions is controversial. Some academics claim that unilateral sanctions are not legal in the context of international law because the UN charter does not allow it (Khosravi et al., 2022, p.2165; Mohamad, 2015, p.71). Likewise, at the meeting of the Asia-Africa Legal Consultative Organization (AALCO) in 2013, it was stated that the primary responsibility for international peace and security belongs to the UNSC and therefore legitimacy can only be attributed to UN sanctions adopted in accordance with Chapter 7 of the UN Charter (AALCO, 2013).[5]

Multilateral sanctions are sanctions imposed by more than one state, an alliance of states or an international organization against a common target. Examples of alliance sanctions include the sanctions on military exports imposed by the Consultative Group-Coordination Committee (COCOM) against the Soviet Union and its allies during the Cold War.[6] Recent sanctions imposed by the US and the EU against Russia

[5] The legitimacy of unilateral sanctions is discussed in next chapter.

[6] COCOM was consisted of NATO countries plus Japan and Australia.

over Ukraine are examples of this type of sanctions. These sanctions can also be imposed by regional organizations. For example, sanctions imposed by organizations such as the EU or the African Union fall under the category of multilateral sanctions. The most comprehensive multilateral sanctions are the UN sanctions. To date, the UN has adopted more than forty sanctions programs (Jentleson, 2022, p.12).

A number of researches have shown that multilateral sanctions have higher success rates than unilateral sanctions in achieving policy goals. There are several reasons for this. First, when multilateral sanctions are imposed, it is difficult for the target country to find alternative trading partners, second the normative legitimacy of these sanctions is high, and finally, for geopolitical reasons, it is difficult for the target country to find a safe haven among the enemies of the sanctioning country or countries (Jentleson, 2022, p. 36). However, Hufbauer et al. (2008, p. 172-174) note that the collective imposition of sanctions by a large coalition of countries does not guarantee the success of sanctions. In this case, whether the policy goal is "modest policy changes" or "disruption of military adventures" or "military impairment" has an impact on success. This was the case during the 2011 and 2014 multilateral sanctions against Iran. The objectives of the sanctions were modest and aimed at preventing Iran from advancing its nuclear program and curtailing its military ambitions. These sanctions are generally recognized to have achieved their desired goals (Abdelbary and ELshawa, 2023, p. 24).

The main differences between multilateral sanctions such as the UN sanctions and unilateral sanctions are their scope and legitimacy (Beaucillon, 2021, p. 4). First of all, the sanction decisions taken by the UNSC must be implemented by all member states. However, as a rule, unilateral sanctions are only valid for persons and entities in the sanctioning country. Moreover, UN sanctions are much more legally valid than sanctions decisions taken by a single country, as they are taken by the UNSC, which represents all members of the UN in accordance with the UN Charter.

Another difference between multilateral sanctions adopted by the UNSC and unilateral sanctions is the political motives and purposes behind the sanctions. According to Article 39 of the UN Charter, the UNSC can only react and impose sanctions if it determines "the existence of any threat to the peace, breach of the peace, or act of

aggression ". Moreover, it is not possible for this sanction decision to have a purpose other than "to maintain or restore international peace and security". However, unilateral sanctions have much broader goals and objectives, and these can be freely determined by the sanctioning state (Beaucillon, 2021, p. 3).

### 2.3.3. Positive vs Negative Sanctions

When we talk about economic sanctions, we largely refer to negative sanctions. However, it should be underlined that sanctions can be both positive and negative.

Positive sanctions are defined as the assignment (or promise of assignment) of economic benefits by sanctioning state(s) with the purpose of changing the behavior and strategy of a target state. On the other hand, negative sanctions are punitive measures that a sanctioning state imposes in order to cause or threaten economic damage to a target state (Caruso, 2021, p. 297).

An example of positive sanctions is the promise of one million tons of fuel, grants and technical assistance to North Korea during the 2007 nuclear disarmament talks. Positive sanctions also played an important role in the negotiations between the UNSC and Iran regarding Iran's uranium enrichment program (Alexander, 2009, p. 11-12).

### 2.3.4. Primary vs. Secondary Sanctions and Extraterritorial Sanctions

Another of the most controversial issues of international economic sanctions is the issue of extraterritorial sanctions and secondary sanctions. There is an unending confusion and debate over the definition of these sanctions, which sanctions should be considered secondary and which should be considered extraterritorial sanctions, and over compliance of these sanctions with public international law.

To start with primary sanctions, these are the first sanctions that come to mind when we think of international sanctions. In these sanctions, the sanctioning state prohibits its own citizens, companies or foreign nationals in its country from doing business with the target, be it a country, entity or individual (Meyer, 2008, p. 905).

In general, the grounds for the primary sanctions may be the target's human rights violations, support for terrorism, threats or invasions of neighboring countries, activities related to nuclear weapons, or any activity that the sanctioning country does

not approve of or deems contrary to its interests. Examples of primary sanctions include the US sanctions against Russia in 2014 following its annexation of Crimea and the UN sanctions against Iraq in the 1990s.

Secondary sanctions on the other hand are economic restrictions imposed by a sanctioning state to deter a third country or its citizens and companies from transacting with the target of primary sanctions (Meyer, 2008, p. 926). These sanctions emerged because the target could establish business relationships with other state or non-state actors in order to circumvent the imposed sanctions, consequently rendering the primary sanctions useless or ineffective. They are a consequence of the "make your choice, trade with them or with us" perspective (Jentleson, 2022, p.78-79).

States that consider their unilateral sanctions are not working first resort to extraterritorial sanctions by interpreting territorial and personal ties broadly, and then to secondary sanctions (Beaucillon, 2021, 5-6). In other words, states turn to secondary sanctions because primary sanctions ultimately fail to bring about the desired behavioral change (Ruys and Ryngeart, 2020, p. 8). Historical examples of secondary sanctions include the Arab League's Boycott of Israel, the US sanctions against the Soviet Union in 1982 in connection with the construction of the oil pipeline, and the Helms-Burton Act in 1996 (Bogdanova, 2022, p. 89).

One type of secondary sanctions occurs in the form of secondary trade boycotts. In these secondary sanctions, the sanctioning country prohibits a third country or its nationals, which conduct transactions with the target of the primary sanctions from trading with or investing in its own country. Another type of secondary sanction is the blocking of investment by state authority. Here, the sanctioning state prohibits its nationals from investing in third countries or nationals of third countries that trade with the target country (Meyer, 2008, 926). Although secondary sanctions are controversial in international law, it is not possible to claim that all secondary sanctions are violate international law (Ruys and Ryngeart, 2020; Meyer, 2008). It can be argued that the legitimacy of these sanctions is subject to the same rules and principles that govern the legitimacy of primary sanctions.

The main country that actively uses secondary sanctions is the US (Jentleson, 2022, p.78). The US uses its hegemony in the global economy, particularly in the financial

sector, to impose many secondary sanctions. Basically, the US sanctions in this area are formulated in the form of a ban on correspondent accounts or payable-through accounts for financial institutions, such as banks, that provide financial services to the targets of primary sanctions.

Besides secondary sanctions, another controversial term is extraterritorial sanctions. Normally, the laws and regulations impose obligations to and must be obeyed by citizens of and in the territory of the state that adopts them. Sanction laws and regulations are no exception and they cannot impose obligations on third party country and nationals. This relates to the jurisdiction of states and, in line with this rule, jurisdiction is primarily territorial. However, the international law of jurisdiction, although primarily territorial, does not totally prohibit extraterritoriality, as seen in jurisdictional principles such as nationality or universality (Shaw, 2003, p. 572).

Therefore, in some cases, it is possible to exercise jurisdiction extraterritorially and this encompass all three dimensions of jurisdiction (prescriptive, adjudicative and executive). In prescriptive extraterritorial jurisdiction, states, through their laws and other rules, exercise authority over certain persons, things and conduct outside their territory. In the case of extraterritorial adjudicative jurisdiction states may subject foreign persons to their judicial processes. Finally, in the case of extraterritorial executive jurisdiction states may enforce rules and court decisions outside their national borders (Emmenegger, 2016, p. 638-639).

Third-country nationals or sanctioning country's nationals resident in a third country can freely establish business relations with persons and entities under the sanctions. However, extraterritorial sanctions are an exception to this. This is because they "govern conduct by persons located outside the sending state" (Bechky, 2018, p. 9). These persons may be nationals of the sanctioning state or other persons. Extraterritorial sanctions dictate with whom they can and cannot conduct transactions. Some of these sanctions are controversial as they are in principle contrary to the principle of territoriality. However, contrary to some claims (Kozhabekova, 2021, p.15), not all extraterritorial sanctions violate international law. States use various arguments to demonstrate that their extraterritorial sanctions are legal. In some cases, classical territoriality or personality principles are interpreted broadly. In some cases,

the principle of protection or the doctrine of effect is relied upon (Bogdanova, 2022, p. 91).

However, some extraterritorial sanctions are less controversial as they relate to the conducts of individuals and entities of the sanctioning country located in a foreign country. For example, foreign branches of the US banks may not conduct transactions with Iran, or the US citizens employed by a company located in a foreign country may not participate in a program whose beneficiary is Iran. Controversial extraterritorial sanctions, however, are those that violate jurisdictional rules and principles in international law. Controversial examples include the Office of Foreign Assets Control's (OFAC) ban on the sale to Iran of goods manufactured in a foreign country but containing 10% or more US products, the regulation of subsidiaries of US companies established in a foreign country as legally responsible for sanctions regulations, the Helms-Burton Act on Cuba, and the Iran Sanctions Act (Bechky, 2018, p. 9-10).

Secondary sanctions and extraterritorial sanctions are two terms that are often confused with each other. To some extent, this is normal, as some sanctions can be considered both extraterritorial and secondary sanctions. However, it is important to distinguish between them as it also relates to the legality of sanctions.

First of all, it should be noted that it is difficult to claim that extraterritorial sanctions are, in general, a type of "sanction" in the sense of international law, contrary to the general usage and widespread belief on this issue. This is because extraterritorial sanctions are not a separate type of sanction directed at either the target or the persons or entities dealing with the target, as is the case with primary or secondary sanctions.

Extraterritorial sanctions relate to jurisdiction, and jurisdiction is generally about making laws and ensuring compliance with those laws (Shaw, 2003, p. 572). Thus, when US authorities hold US companies' foreign subsidiaries liable and impose civil penalties, they are not imposing a sanction in the sense of international law, but ensuring compliance with domestic law which is being enforced extraterritorially.

As will be seen in more detail in the jurisdiction section of the thesis, pursuant to the principle of territoriality laws and other secondary regulations issued by a state are

generally valid within the territory of that state. For example, Germany cannot regulate the family law proceedings of Turkish citizens in Turkey through a law it has adopted. Such a thing would be contrary to the principle of territoriality, which is the fundamental principle of jurisdiction. As a rule, compliance with the sanctions rules is mandatory for the citizens of the state that has issued the regulation and for foreigners residing in the territory of that state. For example, if the US decides to freeze the assets of a member of the Venezuelan government as part of the Venezuela sanctions, every US bank must freeze the assets of that person, if any. However, this does not normally apply to a Turkish bank operating in Turkey. In the case of extraterritorial sanctions, the regulations of the state that imposed the sanctions are then extended to persons in other jurisdictions. While some of these are legal under international law, others are considered incompatible with international law.

Since sanctions regulations and prohibitions, unlike classical rules of law, always have two addressees, i.e. the persons who must comply with them (i.e. citizens) and the sanctioned country, organization or individual, and since legal concepts and rules are always considered and evaluated in the context of domestic law, this creates confusion in the assessment of sanctions. As a consequence, some sanctions that are considered to be secondary sanctions may in fact result from a broad or different application of a jurisdictional principle such as territoriality or nationality.

Bechky (2018, p. 11) argues that all secondary sanctions are extraterritorial, but extraterritorial sanctions are not necessarily secondary sanctions. Larsson (2011, p. 53) argues both unilateral and secondary sanctions regulate extraterritorial conduct. However, as Meyer (2008) notes, some secondary sanctions may not be extraterritorial. Indeed, some secondary sanctions relate to the domestic conduct of the sanctioning country's own nationals and do not have an extraterritorial character. Even if a foreign third party is ultimately affected by these acts and transactions, it is not possible to consider these secondary sanctions extraterritorial for this reason alone.

Ruys and Ryngeart (2020, p. 7-8) adopt a broader notion of secondary sanctions that includes all measures which, in essence, aim to regulate economic transactions between a third state and a target state and consider the term “secondary sanctions” to be largely interchangeable with “extraterritorial sanctions”. Accordingly, monetary

penalties imposed on European financial institutions or ban on the export of the goods containing de minimis amount of US goods or technology, accepted as secondary sanctions. Ruys and Ryngeart state that US literature considers “such sanctions” as primary sanctions. However, it is a better approach to consider these measures and penalties separately. Because while some of them can be considered as secondary sanctions, others can be considered in context of territorial (or effect) jurisdiction or extraterritorial sanctions because of the existence of the US nexus. This issue will be addressed in the following sections.

As a final point, it should be noted that US laws and regulations contain sanctions that are explicitly labeled as secondary, as well as sanctions that are not explicitly labeled as secondary, even though they are in fact secondary sanctions. This aspect of US and OFAC regulations can sometimes lead to misinterpretations. It should be noted that all new US executive orders contain a clause that may give rise to secondary sanctions. This issue will be discussed in detail in the sections on US sanctions.

### 2.4. The Sanctions of UN Security Council

Every legal order needs a sanctions system to to guarantee the respect of the law and to maintain itself (Achilleas, 2020, p. 24). With the development of international law in the twentieth century and the establishment of the League of Nations and later the UN, various sanctions regulations were envisaged to ensure compliance of states with international rules and obligations. As seen above, sanctions, according to number of sanctioning actors, are divided into two categories: unilateral sanctions and multilateral sanctions. The sanctions adopted by the UN fall within the scope of multilateral sanctions in the broadest sense. However, UN sanctions are subject to various restrictions in terms of both motives and objects by the UN Charter.

The UN Security Council is set out in the UN Charter as the central body responsible for imposing sanctions. This is a result of Article 24 of the UN Charter entrusting the duty and responsibility of maintenance of international peace and security to the UNSC. The UNSC's authority to impose sanctions is also based on the decision-making authority granted to it in Article 25 (Achilleas, 2020, p. 26). Contrary to the general belief, the UNSC cannot actually impose economic sanctions; however, it can call on UN member states to implement the sanctions set forth in its resolution, and it

can ask for compliance pursuant to Article 25 (Lowenfeld, 2008, p. 855). Because mandatory sanctions adopted by the UNSC are binding on all UN member states. In accordance with the UN Charter, member states are obliged to implement these sanctions within the framework of their own domestic legislation. Although these practices vary widely from country to country, the sanctions adopted by the UNSC have played an important role in shaping the economic sanction policies and regulations of member countries.

The sanctions of the UN are mainly regulated in Chapter 7 of the UN Charter, and it is primarily these sanctions that will be assessed here. However, the UNSC has another ground for imposing sanctions in the UN Charter. And it is found in Chapter XIV, Article 94, paragraph 2 of the Charter. Accordingly, if any party to a case does not perform its obligations ordered by ICJ, UNSC may decide upon sanctions after the recourse of the other party. In addition, the UN may also decide to impose administrative sanctions on its members that fail to comply with their obligations under the UN Charter. In this context, a member may be expelled from the UN under Article 6 of the Charter or its membership rights may be restricted under Article 5. However, sanctions under Article 94(2) have been very marginal in international practice and no member has ever been expelled from the UN under Article 6 (Achilleas, 2020, p. 25).

The efforts for the establishment of the UN began even while Second World War was still in progress. Moreover, the bad experience of the League of Nations was used as a guide in the establishment of the UN. This was because there was no institutional sanction system within the framework of the League of Nations (Achilleas, 2020, p. 26). According to Article 16 of the Covenant of the League of Nations, members were obliged to impose economic sanctions on a country that declared war against another country in violation of the Covenant. The Council of the League of Nations, on the other hand, had certain advisory duties. Moreover, since it was not specified whose responsibility it was to determine the violation of the Covenant, each state decided on its own.

Under its own legislation, the UN has two main organs: the General Assembly and the Security Council. The General Assembly is composed of all members and the UNSC

is composed of fifteen states, five of which are permanent. The General Assembly can adopt legally non-binding resolutions for UN members to adopt economic sanctions. In contrast, the UNSC can adopt both legally non-binding recommendations and legally binding decisions to impose economic sanctions (Alexander, 2009, p. 23-24). Since the decisions taken by the General Assembly are advisory, the UNSC's sanctioning power is an exclusive power. In other words, the General Assembly do not have the authority to impose sanctions (Achilleas, 2020, p. 26).

The UNSC's non-binding recommendations on economic sanctions are based on Chapter VI of the UN Charter and its legally binding resolutions are based on Chapter VII of the Charter. Chapter VI deals with the peaceful settlement of disputes. Within the scope of its mandate, the UNSC may call upon the parties to settle any dispute by peaceful means, investigate disputes or situations that may give rise to disputes, and recommend appropriate procedures or methods of redress or solutions it deems appropriate to remedy the situation (Art. 33-37 of the UN Charter). In this sense, the UNSC is free to decide whether a situation or action is likely to lead to a sanction and, if so, what measures to apply (Achilleas, 2020, p. 26).

Chapter VII of the UN Charter (the Articles between 39 and 51) is entitled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression". According to Article 39, if the UNSC determines "the existence of any threat to the peace, breach of the peace, or act of aggression", it may make recommendations or take the measures set out in Articles 41 and 42. Article 41 under this section is the basis for the UN's economic sanctions:

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

From these articles, we can draw the following conclusions about UN economic sanctions. For UN sanctions to be adopted, certain conditions must be met. First of all, the peace must be threatened, breached or an act of aggression must occur, and this must be determined by the UNSC. The determination of threat or breach of the peace is a legal prerequisite to adopt mandatory sanctions, however the content of that

determination is a political issue. And a threat to the peace under Article 39 is whatever the UNSC determines to be a threat to the peace (Lowenfeld, 2002, p. 858).

When these conditions are met, the UNSC has two options: to make recommendations and to take unarmed measures under Article 41 or armed measures under Article 42. When it decides to impose measures under Article 41 of the UN Charter, it may decide to impose economic sanctions, which are defined as "complete or partial interruption of economic relations". If it decides to do so, the UNSC can determine the economic sanctions measure to be taken in accordance with Article 41 and request its members to implement it. It is accepted that the decision on sanctions was to be taken only in the event of both the determination of the existence of a threat to the peace, breach of the peace, or act of aggression and the determination of what measures should be taken in response were committed to the Security Council (Lowenfeld, 2008, p. 854).

UNSC sanctions decisions are neither subject to political review by the General Assembly nor judicial review by the ICJ. However, in 2009, the UNSC established an Office of the Ombudsperson as a result of criticism about the concerns of sanctioned individuals on the course of the fight against terrorism. (Achilleas, 2020, p. 27). In this way, listed persons can learn the reasons for their listing and apply to be removed from the list.

According to Article 25 of the UN Charter, sanctions decisions taken pursuant to Article 41 of the Charter must be implemented by member states. Each state fulfills this obligation according to its domestic legal system. Therefore, while UN sanctions are multilateral in theory, in practice they require action by member states (Alexander, 2009, p. 134). Therefore, large states such as the US, EU countries and the United Kingdom need to seriously fight for the effective implementation of UN sanctions and to prevent sanctions fraud. Furthermore, under Article 103 of the UN Charter, member states' obligations under Article 25 take precedence over their obligations under other agreements and should be enforced as a matter of priority. Therefore, member states cannot avoid implementing UNSC sanctions decisions by citing GATT or bilateral agreements (Ruys, 2017, p. 37).

Before 1990, the UNSC had only twice decided to impose mandatory economic sanctions. These were the sanctions against the white minority government in

Rhodesia and the arms embargo against South Africa (Lowenfeld, 2002, p. 854). However, with the collapse of the Soviet Union and the end of the Cold War environment that prevented the UN from taking action, the UN started to act more "boldly" on international problems, including the imposition of economic sanctions. With this and the expansion and evolution of the definition of collective peace and security, the UN imposed more sanctions in the 1990s than in the previous 45 years (Hufbauer et al. 2007, p. 131-132).

However, the comprehensive sanctions imposed by the UN on Iraq and Haiti, the massive damage they caused to the civilian population, and the ensuing debates significantly changed the structure of UN sanctions. As a matter of fact, since the second half of the 1990s, the UN has started to turn towards smart sanctions such as arms embargo, travel restrictions and asset freezes (Hufbauer et al., 2007, p. 131-132).

One of the problems with UNSC sanctions is the hyper-centralized model of the sanctions system (Achilleas, 2020, p. 27). First of all, for a sanction to be imposed, all five permanent members of the UNSC must approve the sanction resolution. Even if one of the permanent members vetoes the resolution, it will not be possible to impose sanctions. This is one of the main reasons for the low number of sanctions resolutions during the Cold War period described above. The rivalry between the Western and Eastern blocs prevented a consensus to impose sanctions. This status quo still persists and is sometimes cited as a justification for the US resorting to unilateral sanctions (Achilleas, 2020, p. 27; Meyer, 2008).

Unlike unilateral sanctions such as the US sanctions, UN sanctions generally do not have legality problems. Because all UN member states have accepted the UN Charter, so they are deemed to have accepted the UNSC's authority to impose sanctions. However, this does not mean that all UNSC sanctions will be valid in terms of international law. These sanctions decisions must be taken and implemented within the framework described above and in accordance with Article 39 of the UN Charter. Furthermore, Article 39 of the UN Charter stipulates that in order to decide on UN sanctions, the UNSC must find that peace has been threatened or breached, or that there has been an act of aggression. This constitutes the causal element of UNSC sanctions. After this determination, the UNSC's sanctions decisions must be aimed at

maintaining or restoring international peace and security. As can be seen, the UN sanctions are limited in terms of cause and purpose and will not be legal if these limits are violated.

Another aspect that distinguishes UN sanctions from US sanctions is that they are, as a rule, more effective. In other words, these sanctions have a higher success rate. There are three reasons for this: economic, legal and geopolitical (Jentleson, 2022, p. 36). The first reason is that it is not possible for the target to find an alternative trade partner, which increases the economic impact of sanctions. The second reason is that these sanctions have enhanced normative legitimacy. The third is that the target is unlikely to find support from a country that is an adversary of a sanctioning country. However, studies have shown that the difference in success rates is not that great (Jentleson, 2022, p. 175). In other words, the fact that they are multilateral sanctions alone does not ensure the success of the UN sanctions (Hufbauer et al., 2008, p. 174).

In addition, another feature that distinguishes the UN sanctions from the US sanctions is that the UN sanctions do not contain extraterritorial or secondary sanctions provisions. In fact, the UN sanctions do not need secondary sanctions measures. Since UN sanctions must be implemented by all states, there is no need for secondary sanctions to prevent third parties from establishing business relations with the target country or person. The practice of the UN sanctions has been based on the view that each member state has an obligation to enforce the sanctions in its territory, and this practice has prevented the controversy attendant on extraterritorial enforcement (Lowenfeld, 2008, p. 863).

Another issue to be mentioned in the context of the UN sanctions is the General Assembly resolutions condemning unilateral sanctions. Idriss Jazairy, who served as the UN Special Rapporteur on unilateral economic sanctions between 2015 and 2020, argued in his report on unilateral sanctions that an international legal norm on the prohibition of unilateral sanctions has been established on the basis of General Assembly resolutions. However, scholars have challenged this claim, arguing that there is no general prohibition on unilateral sanctions. Therefore, there is no obstacle to unilateral economic measures, even if they are imposed unilaterally (Bogdanova, 2022, p. 70-71).

## 2.5. Sources of Sanctions in International Law

First of all, it should be noted that there is no authoritative central body in international law that prescribe laws and rules, ensures compliance with these rules, and initiate a judicial process in case of non-compliance. “Nevertheless, international law does exist” and have sources to apply international relations (Shaw, 2003, p. 66). And since states are interdependent o each other in many respects, it is in their interests to have a set of rules governing inter-state relations and to abide by these rules in their relations with each other. Therefore, states generally abide by these rules in their relations with each other. Furthermore, it is not possible to apply to states a rule to which they have not consented or recognized as a valid rule of international law. However, some rules of international law, called jus cogens or peremptory rules are binding on all states regardless of their consent. Examples of jus cogens norms include laws prohibiting slavery, genocide, piracy, and acts of aggression, or rules prohibiting unprovoked war. Some human rights provisions, such as those prohibiting racism, are also recognized as falling under the category of jus cogens.

The interaction between members of the international community, i.e. states and international organizations, usually takes place within the legal framework provided by treaties and customary international law. Therefore, whether states and international organizations can decide to impose economic sanctions and their legality of them must generally be assessed through the interpretation of these two sources (Henderson, 1986, p. 167-168).

International law or public international law has two types of sources: material sources and formal sources. The material sources of international law provide the answer to how, why and on what grounds the rules of international law emerged and are the subject of the sociology of law (Bozkurt et al., 2021, p. 43). What is meant by the sources of international law here is the formal sources of international law. In national law, the formal sources of law are the regulations to be applied by the judge in a case and these can be constitution, statute, by-laws and other secondary regulations. In terms of formal sources, four sources of international law are recognized. These are treaties; international custom; general principles of law recognized by civilized nations; judicial decisions and scholarly writings.

These sources are based on Article 38 of the Statute of the International Court of Justice (ICJ). As stated by Shaw (2003, p. 66-67), although Article 38 sets out the rules that the ICJ should apply when adjudicating disputes submitted to it, there is a general consensus that the sources listed in this article are the sources of international law as well. This is because the ICJ's mandate is to resolve disputes submitted to it in accordance with international law and all members of the UN are ipso facto parties to the Statute pursuant to Article 93 of the UN Charter. Henderson (1986, p. 171) expresses similar opinions, stating that most courts and commentators consider Article 38 to be an adequate statement of the sources of international law. According to Article 38 of the ICJ Statute:

> the Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognised by the contesting states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognised by civilised nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

The following describes these sources and how they serve to enforce international economic sanctions

### 2.5.1. Treaties

Treaties are international agreements signed between actors of international law. They have a variety of other names, such as Conventions, International Agreements, Pacts, General Acts, Charters, Statutes, Declarations and Covenants (Shaw, 2003, p. 88). A treaty is concluded between two or more states or international organizations, thus creates a relationship between states and organizations in the context of international law (Henderson, 1986, p. 172). Treaties can be for a certain period of time or indefinitely. Within the legal framework created by the treaty, states conduct transactions with each other in certain areas. The general rule is that a treaty is binding only on its signatories. The source of UN sanctions is the UN Charter, and states that sign the UN Charter agree to the application of UN sanctions to themselves. Sometimes states can commit by treaty not to impose sanctions on each other. The 1955 Treaty of Amity between Iran and the US can be given as an example. Iran's reliance on this agreement to bring a case before the ICJ against the US for sanctions imposed on Iran will be discussed in the forthcoming chapter.

### 2.5.2. International Custom

According to Article 38 of the ICJ Statute, the second source of international law is the rules of international custom. Although customary rules have lost their former importance in domestic law, they continue to be one of the main sources of international law (Shaw, 2003, p. 69).

Repeated practice of certain activities of states lead to the emergence of customary rules. Customary rules have two elements: material and psychological (Pazarcı, 2007, p. 104). In the first condition, which is state practice, a particular practice must be repeated continuously and consistently. This element is necessary for the customary rule to be binding. The second condition, called opinio juris, is psychological and means that states feel themselves bound by the rule.

A state that does not wish to be bound by a rule of customary international law must declare this intention at the beginning of the rule's formation and must not make any statements or take any actions contrary to it afterwards. Otherwise it will be bound by this rule. It will be explained below how terms such as retorsions and reprisals, which have long been used in customary international law, can be used for the adoption of unilateral economic sanctions.

### 2.5.3. General Principles of Law

The third source of international law is "the general principles of law recognized by civilized nations". The study of the developed legal systems of independent countries helps both the ICJ and other international courts formulate homogeneous international legal principles (Henderson, 1986, 174). The principles set out in paragraph 38(1)(c) of the Statute are interpreted to come into play in the absence of a treaty or customary law applicable to the dispute. General principles of law are more likely to be used as a source in international law, given the relative underdevelopment of this law (Shaw, 2003, p. 93).

### 2.5.4. Judicial Decisions and Scholarly Writings

The fourth source of international law is judicial decisions and scholarly writings. What is meant by judicial decisions are decisions of international tribunals and national courts, as mentioned in Article 38. Although they are listed as a subsidiary

means for determining the rules of international law, judicial decisions are extremely important in the determination and development of international law (Henderson, 1986, 175). Another subsidiary means, scholarly writings, are defined in the Article as "the teachings of the most highly qualified publicists of the various nations". Even though the influence of academic writers on law was significant in the past, today these sources are used as a tool to determine what the law actually is and are no longer used as the source of actual rules (Shaw, 2003, p. 106). On the other hand, they may influence the international law by stating the current content of the law and expressing what the law should be (Henderson, 1986, p. 175).

Although the ICJ Statute lists four sources of international law, treaties and customary international law are the main sources of international law and are the main tools for determining whether the conducts of states, hence their economic sanctions, are in accordance with international law (Henderson, 1986, p. 175). Therefore, the most commonly used international law sources of sanctions are treaties and customary international law (Alexander, 2009, p. 56). It is now necessary to discuss how economic sanctions decisions can be taken within the scope of these sources.

The UN sanctions, in terms of their legal base, are considered within the scope of treaties. This is because the UNSC sanctions are based on the UN Charter, which is itself a treaty. All states that are members of the UN adopt the UN Charter and are deemed to have accepted the authority of the UNSC to impose sanctions. According to the articles 39-42 under Chapter VII of the UN Charter, the UNSC may take the necessary measures "to maintain or restore international peace and security" and these measures "may include complete or partial interruption of economic relations".

However, it should be noted that this provision is not exclusionary. In other words, there is no regulation or prohibition that only the UNSC can impose sanctions and states cannot impose sanctions unilaterally (Alexander, 2009, p. 57). One of the arguments of researchers who claim that international law does not allow unilateral sanctions is Articles 39 and subsequent articles of the UN Charter, as these articles do not explicitly authorize states to impose unilateral sanction. In fact, since there is no article or expression in the Charter that prohibits states from imposing unilateral sanctions, it does not seem possible to consider this argument valid.

In fact, individual states can impose sanctions on other states, entities and persons in observance of certain rules and principles of international law. Unilateral sanctions of states are based on customary law, one of the sources of international law described above. However, under which principles and rules of customary law can states impose unilateral sanctions? The answer to this is given under the next heading.

### 2.6. Unilateral Sanctions Under Customary International Law

States may take various measures under certain principles and rules of customary law against other states that violate international law or act against their rights and interests. Alexander (2009) evaluates the measures that can be used to impose unilateral sanctions into three categories. These are retorsion, countermeasures and punitive sanctions. Whether these measures are legal under international law is determined according to different principles and rules to be applied to each category.

#### 2.6.1. Retorsions

Retorsion is defined as a state's response to another state's actions that are not unlawful but harm the interests of the responding state in ways not prohibited by international law (Bozkurt et al., 2021, p. 270). However, it is recognized that retorsions can also be a response to a state's act contrary to international law (Pazarcı, 1997c, p. 201). Therefore, unlike countermeasures, retorsion does not require the prior existence of an internationally wrongful act (Ruys, 2017, p. 24). The distinguishing feature of retorsions is that although they are "unfriendly" but not unlawful (Thouvenin, 2021, p. 152).

Alexander (2009, p. 58-59) argues that the sanctioning state's retorsions are usually responses to measures of the target country. The measures of the targeted state may violate a right or a legal obligation to the sanctioning state. Therefore, the essence of retorsion is that even if the target state's act is in contrary to international law, the response does not violate any right of the other party and therefore does not constitute an illegality. Moreover, since the UN charter prohibits the use of force and the threat of force, these methods should not be resorted to in retaliatory action.

Unlike the countermeasures, proportionality is not required in retorsions. In other words, there is no need to resort to means that are comparable in scale and similar to

the actions of the target state (Pazarcı, 1997c, p. 202). However, Alexander (2009, p. 59) notes that the principle of reciprocity can be applied to restore the initial equivalence of conditions between the parties, and if it is not possible the principle of proportionality should be applied to decide on the permissible scope and degree of the measures.

Measures that can be taken within the scope of retorsions include closing the ports to ships of the state concerned, severing trade relations with the state (provided that they do not contravene an existing agreement), cutting off economic and technical assistance to the target country in a way that does not violate a treaty commitment, declaring diplomats persona non grata, pressuring foreign companies in third countries not to do business with the target country, not allowing the import of goods (boycott) (Pazarcı, 1997c, p. 203, Alexander, 2009, p. 58-59). In the absence of effective instruments and international institutions to settle disputes between states, states are generally free to find their own solutions to restore the previous condition in accordance with customary international law (Alexander, 2009, p. 59).

### 2.6.2. Countermeasures (Non-Forcible Reprisals)

Reprisals are defined as measures taken by a state, which has been harmed by an internationally illegal act of another state, to ensure that that state acts in accordance with international law (Pazarcı, 1997c, p. 204). Reprisals are actions that are illegal in themselves and are therefore different from retorsions, which are legal actions in themselves (Shaw, 2003, p. 1023) Reprisal as a term has changed a lot in the course of time and has been replaced by two concepts: self-defense and nonforcible countermeasures (Bogdanova, 2022, p. 62). Today, reprisals, refers to measures taken in times of war. Indeed, after the ILC adopted the Draft Articles, the concept of countermeasures overshadowed that of reprisals. Suffice it to say that “most authors consider reprisals either to fall within the concept of countermeasures or to equal that concept” (Bogdanova, 2022, p. 62). Alexander argues that countermeasures are known as non-forcible reprisals (2009, p.60).

Alexander defines countermeasures as “any response or remedy to a prior unlawful act of a foreign state, the effect of which is non-compliance with one or several international obligations” (2009, p. 60). If a state breaches a treaty or a rule of

customary international law, the other state has right to resort to countermeasures, which may include economic sanctions. Countermeasures should be based on the principle of proportionality. This means that the sanctioning state's breach of obligation must be equivalent to the target state's breach of obligation.

International law scholars define countermeasures as “unilateral measures adopted by a State in response to the breach of its rights by the wrongful act of another State that affect the rights of the target State and are aimed at inducing it to provide cessation or reparations to the injured State” (Bogdanova, 2022, p. 62).

The extent to which countermeasures can be adopted has been defined in detail by the International Law Commission (ILC) in its 2001 Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA). Although the rules in ARSIWA were not adopted with any treaty, international courts and tribunals cite them as a reflection of customary international law (Bogdanova, 2022, p. 80). However, even though rules in ARSIWA depict what customary law is, for example with regard to sanctions or countermeasures, they cannot be applied to a state that does not accept them as a valid customary law due to the lack of opinio juris.

Ruys (2017, p. 33) states that against “building on past State practice and case law, the ILC has clarified the procedural and substantive restrictions on the recourse to countermeasures in the ARSIWA”. This is one of the main reasons why States such as the US are not willing to ratify ARSIWA. Because the ILC has severely restricted the scope of countermeasures in ARSIWA, leaving little room for the imposition of unilateral sanctions.

The conditions for the use of countermeasures are set out in Articles 49 and 51 of the ARSIWA. An injured State may only take countermeasures against a state which is responsible for an internationally wrongful act (Article 49(1) ARSIWA). Countermeasures shall be terminated as soon as the targeted state has complied with its obligations (Article 53 ARSIWA). In order “to avoid escalation and abuse, an essential requirement is that countermeasures be proportional to the initial wrongful act” (Ruys, 2017, p. 34; Article 51 ARSIWA). As the use of force is prohibited under UN Charter, countermeasures shall not affect the obligation to refrain from the threat or use of force (Article 50(1)(a) ARSIWA). In addition, countermeasures shall not

affect obligations for the protection of fundamental human rights norms, obligations of a humanitarian character prohibiting reprisals, or other jus cogens norms (Article 50(1)(b)–(d) ARSIWA). Countermeasures shall respect the inviolability of diplomatic or consular agents, premises, archives and document (Article 50(2)(b) ARSIWA).

Countermeasures shall also be in line with some procedural conditions. According to these rules, a state should first call upon the responsible state to fulfil its obligations and should moreover notify the target State of its intentions and offer to negotiate (Article 52 ARSIWA). Finally, countermeasures are not allowed if the dispute is pending before a court or tribunal (Article 52(3)(b) ARSIWA).

### 2.6.3. Punitive Sanctions

Alexander (2009, p. 62-65) argues that unilateral sanctions can be legally enforced through punitive sanctions, in addition to retorsions and countermeasures that have long been applied in international law. These sanctions can be both coercive and punitive. Coercive ones aim to prevent the repetition of a particular action in the future, while punitive ones aim to cover the damage caused by a past wrong through compensation or penalty. Sometimes these two can exist at the same time. The Helms-Burton Act of 1996 adopted by the US can be given as an example. States can also impose punitive sanctions for violations of jus cogens norms. If jus cogens rules are violated, any country can resort to economic sanctions against the offender. The economic sanctions imposed by the UK on Burma in the 1990s can be seen in this context. The UK adopted these sanctions because the Burmese military government violated international humanitarian law by delaying elections and imprisoning political opponents.

However, it should be added that to impose sanctions on the ground of human rights violations and third-party countermeasures are controversial in international law and they are required to meet certain conditions (Bogdanova, 2002).

## 2.7. Sanctions and Jurisdiction in International Law

As noted above, sanctions rules have two aspects. The first, as discussed earlier, is whether states have the authority under international law to impose sanctions on other states or foreign nationals. Having established that international law permits this under

certain conditions, the next question that arises is who is obliged to comply with the sanction norms that states unilaterally adopt within their own legal systems and mechanisms, and in which jurisdictions these rules apply. For example, does the US ban on dealing with a person on the SDN list apply only to its own citizens, or does it also apply to other individuals and states? Does Section 1705 of the US International Emergency Economic Powers Act (IEEPA), which provides for fines and imprisonment, apply only to US citizens, or can foreign nationals also be fined and imprisoned for violating these provisions? Customary international law rules on jurisdiction provide answers to such questions. However, it should be noted that there is no consensus on this issue, neither among states nor among scholars. Indeed, the law of jurisdiction is one of the most essential as well as controversial fields of international law (Ruys, 2015, p. 6). While the US may consider a person, property or conduct within its jurisdiction and regulate it without hesitation, other countries or international organizations such as the EU may consider it extraterritorial jurisdiction and a violation of international law.

First of all, it should be noted that all persons sanctioned by states are foreigners, not their citizens, and in this sense, all sanctions are extraterritorial (Meyer, 2008, p. 935-936; Kerbrat, 2021, p. 166). In other words, in economic sanctions, there is a party that is primarily punished. These can be individuals and states that violate the rights or interests of the sanctioning country, as well as international terrorists or state officials who violate human rights. We have discussed above whether states have authority in this sense. So, these are the states and individuals who are the main target of sanctions. Apart from this, states that impose sanctions through their own laws, orders, regulations, etc. also establish rules that are directed against individuals and entities within their jurisdiction and require them to comply with them. These are usually citizens of the sanctioning state and other persons residing in that state's territory. However, sometimes states may also require other states and entities to comply with their sanction rules.

When a sanctioning state wants its unilaterally imposed sanctions to be supported by another state or person, it resorts to various methods. The first, and perhaps the most appropriate, is to convince that state of the legitimacy and necessity of the sanctions and to get it to adopt the same sanctions against the target. The second method is to

deter third parties from entering into business relations with the target by including the aforementioned secondary sanctions in its legislation. The third way is to expand the territorial boundaries of sanctions rules (extraterritorial sanctions) and charge or hold responsible individuals and entities in third countries as if they were their own nationals. The third method relates to jurisdiction in international law and will be discussed below.

Jurisdiction is defined as the authority of a state to make its law applicable to the activities, relations, or status of persons or the interests of persons in things. This application can be done by legislation, executive act, regulation, or determination of a court (Lowenfeld, 2008, p. 900). Jurisdiction is legal competence of a state and it can be exercised by means of legislative action or by executive action or by judicial action (Shaw, 2003, p. 572).

In the absence of a treaty or international custom rule, the only jurisdictional sovereign in the territory of a particular country is the state of that country (Pazarcı, 1997b, p. 84). Under its jurisdictional power, a state can prescribe laws (prescriptive jurisdiction), take administrative measures to enforce them (executive jurisdiction), and use its exclusive authority to adjudicate in cases of violation (adjucative jurisdiction).

Today, it is generally agreed that the principal basis of jurisdiction is territoriality (Lowenfeld, 2008, p. 901; Ryngaert, 2015, p. 50). Exceptionally, however, national laws may be given extraterritorial application, provided that these laws could be justified by one of the recognized principles of extraterritorial jurisdiction under public international law: the personality principle, the protective principle, or the universality principle (Ryngaert, 2015, p. 101).

Therefore, international economic sanctions, or sanctions in general, must be based on one of these principles of jurisdiction under customary international law: the territorial principle, the personality principle, the protective principle and the universality principle. These principles are limits on the powers of the state to make rules, to enforce those rules and to prosecute those who do not comply with the rules. In principle, regulations and conducts of states that are not based on one of these principles will be contrary to international law.

Finally, it should be noted that much of the debate over US sanctions, and in particular extraterritorial and secondary sanctions, is about jurisdiction. Because jurisdiction becomes a problem of international law when a state adopts laws that govern matters that do not concern entirely its internal affairs (Ryngaert, 2015, p. 5). This is why the US controls on the goods it sells to other countries, and the penalties it imposes on European and other banks that use its financial system as if they were under its jurisdiction, always lead to jurisdictional disputes. Therefore, the compatibility of extraterritorial and secondary sanctions of the US against Iran with international law will largely be decided on the basis of jurisdictional principles.

### 2.7.1. Territorial Jurisdiction and Effects Doctrine

The territoriality principle is the most basic principle of jurisdiction in international law (Ryngaert, 2015, p. 49). It is held that a state has an interest and authority to regulate conduct within its own territory and conduct occurring outside its territory but has or will have a significant impact on its own territory (Meyer, 2008, p. 937). While the first jurisdiction is called territorial jurisdiction, the second is called the effects doctrine (effects-based jurisdiction). Depending on how territorial ties are defined, the effects doctrine can be considered as a separate principle of jurisdiction independent of territoriality principle.

However, there is a debate about the effects doctrine. While some authors argue that the adoption of this jurisdiction could lead to unlimited state power, others argue that it could pave the way for universal jurisdiction. However, despite the jurisdictional debate, the effects doctrine is widely practiced by the US and is increasingly applied by the EU (Emmenegger, 2016, p. 648; Alexander, 2009, p. 74).

As for the debate on effects doctrine in the US, while most US courts and commentators regard effects-based jurisdiction as extraterritorial, there are commentators and courts think otherwise (Scott, 2014, p. 92). In the Restatement (Third) of The Foreign Relations Law Of The United States,[7] three situations were identified regarding the state's authority to prescribe in accordance with the principle

[7] In American law, the Restatements of Law are legal documents intended to inform judges and lawyers about the general principles of Common Law and are published by the American Law Institute. Although they are not legally binding, it is used by the courts as a source of the law.

of territoriality in international law: a) conduct that, wholly or in substantial part, takes place within its territory, b) the status of persons, or interests in things, present within its territory, c) conduct outside its territory that has or is intended to have substantial effect within its territory. This regulation, which reflects the US approach to the principle of territoriality, shows that the US adopts the effects doctrine as well. Therefore, the US law considers a foreign conduct as territorial if it has or it is intended to have substantial effects within the territory of the US (Scott, 2014, p. 92). How the USA expanded its territorial authority within the scope of this principle will be discussed in later chapters.

The jurisdiction of the state arising from the principle of territoriality is the main source of jurisdiction in international law (Emmenegger, 2016, p. 645). Under this principle, jurisdiction obtains over acts that have been committed within a particular territory (Ryngaert, 2015, p. 49). Other sources of jurisdictions may apply in exceptional circumstances. Apart from this, countries may not exercise executive and judicial jurisdiction over persons and things under the jurisdiction of another country without the consent of that country. Otherwise, it would be a violation of international law (Alexander, 2009, p. 67). Moreover, the decision of the then Permanent Court of International Justice in the case of the collision between the Turkish Ship Bozkurt and the French Ship Lotus in 1927, which ruled that states may exercise extraterritorial prescriptive jurisdiction in the absence of a prohibitive rule to the contrary, is no longer upheld today. Instead, the mainstream view is that states are required to base their jurisdictional claim on a legal basis within generally accepted principles of international law (Emmenegger, 2016, p. 644).

The territorial jurisdiction can be extended in two cases. These are the subjective territorial principle and the objective territorial principle. The countries that adopt the subjective territorial principle consider themselves authorized to prosecute and punish crimes that begin in their territory but are completed in the territory of another country (Alexander, 2009, p. 70). In this case state jurisdiction is valid if the part of the conduct that takes place in the state's territory is significant (Emmenegger, 2016, p. 646). Since this jurisdictional principle has not become a rule of international customary law, generally it is not valid for the states. However, since it is included in some international treaties, it is binding for those signatory countries (Alexander, 2009, p.

70). Geneva Convention for the Suppression of counterfeiting Currency (1929) and Geneva Convention for the Suppression of Illicate Drug Traffic (1936) can be given as examples.

In the principle of objective territoriality, even though the crime occurs outside the territory of the state concerned, it produces its effects within the territory of that state (Alexander, 2009, p. 71). The classic example is when a gun fired in country A kills a person in country B. The effects doctrine is recognized as the modern version of the principle of objective territoriality. In this principle, it is accepted that classical principles of jurisdiction apply because the effect of the action is so great. For example, as in the above-mentioned case, it is accepted that country B has the authority to investigate the crime. However, this principle has brought a new dimension to the principle of territoriality and caused controversy as to whether jurisdiction based on effect is territorial or extraterritorial (Emmenegger, 2016, p. 646).

The US use of territorial jurisdiction and effect doctrine in the area of economic sanctions is highly controversial. In particular, the financial sanctions imposed by the US on foreign banks for using the US financial system to provide services to persons under US sanctions have been widely criticized. This issue is discussed in the chapter on the US sanctions against Iran.

### 2.7.2. Personality Principle

One of the situations in which states recognize extraterritorial jurisdiction is the principle of personality, which is also called the principle of nationality. In public international law, the principle of personality states that states are authorized to regulate the activities or conduct of their citizens, regardless of where they are located (Alexander, 2009, p. 75). Therefore, under this principle a state is entitled to exercise jurisdiction over its nationals, even when they are found outside the territory (Ryngaert, 2015, p. 104). While the nationality of individuals is determined by citizenship, the nationality of corporations, such as companies, is determined by the country in which they are incorporated or have their principal place of business. Therefore, subsidiaries and affiliates of a corporation are not bound by the governing law of the parent company.

States' exercise of extraterritorial jurisdiction on the basis of nationality usually stems from criminal law, as well as family law and tax law. For example, under tax law rules, individuals and companies with US citizenship are taxed on their worldwide earnings (Emmenegger, 2016, p. 649-650).

There are two types of personality principle: the active personality principle and the passive personality principle (Alexander, 2009, p. 76). In the active personality principle, the state requires its national to comply with its laws and regulations wherever they are located. International law allows states to exercise the active personality principle in some circumstances. This type of jurisdiction is usually applied in family law and criminal law. Accordingly, no matter which country the citizen is in, the rules of family law such as marriage, custody, etc. of the state to which the citizen is subject can be applied to him/her. In criminal law, this principle is also applied to prevent the citizen from committing crimes abroad and benefiting from irresponsibility in their home country (Allen et al, 2019, p. 6). On the other hand, the passive personality principle gives international authority to the state whose nationals are injured or harmed due to an act committed abroad. Although this principle is quite controversial, it is recognized as a legal basis for jurisdiction in some cases, such as international terrorism (Emmenegger, 2016, p. 650).

In the Restatement (Third) the US jurisdiction based on personality principle is defined as "the activities, interests, status, or relations of its nationals outside as well as within its territory". This definition indicates that the US law recognizes both the active personality principle and the passive personality principle

In general, all states recognize the personality principle. However, the US is the country that applies this principle most widely. In the context of the application of economic sanctions, the US differs from other countries in terms of the principle of personality. For example, with regard to the nationality of companies, US sanctions rules, especially in some sanctions regimes like Iran, require that the subsidiaries and affiliates of the parent company of a US company must also comply with US sanctions. "The US practice of exercising jurisdiction over companies that are incorporated outside the United States but are owned by a US parent corporation is not legal under

international law" (Emmenegger, 2016, p. 650). This issue will be addressed when discussing the US sanctions against Iran

### 2.7.3. Protective Principle

States can exercise jurisdiction to manage actions that pose a threat to their security or essential governmental functions, even if they do not originate from their territory (Meyer, 2008, p. 938). Attempting to overthrow the government of the country can be considered a threat to security. Examples of threats to essential government functions include espionage, counterfeiting of state currency or seals, forgery of official documents, perjury before consular officials, and fraudulent activities related to violations of immigration or customs laws.

In general, it is stated that this principle can be applied when the vital interests of the state are threatened, and it is added that the expansion potential of this principle is limited (Kerbrat, 2021, p. 184). On the other hand, Alexander (2009, p. 77) argues that international law allows states to exercise jurisdiction over foreign entities to protect their vital economic interests under the protective principle. However, Emmenegger (2016, p. 651) opposes this view and claim that the application of this principle of jurisdiction for the imposition of economic sanctions is controversial.

What is more controversial is the application of the protective principle within the scope of secondary embargoes or boycotts (secondary sanctions). In this case, the sanctioning country extends its jurisdiction to individuals and entities that have commercial relations with the boycotted country. While some authors are of the opinion that international law does not allow unilateral secondary boycotts, others state that secondary boycotts are permissible in times of war or when there is sufficient evidence of a direct threat to national or international security (Emmenegger, 2016, p. 651-652). The US bases some of its primary and secondary sanctions on this principle, and these, along with their legality, will be discussed in the relevant chapter.

### 2.7.4. Universality Principle

Apart from the traditional approaches to jurisdiction explained above, which have some nexus or connection with the relevant state, states may also prescribe and punish certain crimes that are deemed to be committed against all humanity under the

universality principle. This principle is based on the right of states to enforce peremptory norms of international law called jus cogens (Alexander, 2009, p. 78). The crimes that violate jus cogens norms include piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes and certain acts of terrorism (Meyer, 2008, p. 938). In the case of these crimes, any state can exercise jurisdiction even if there is no link between the crime and the relevant state. The theory behind the recognition of such jurisdictional authority for these crimes is the belief that these crimes pose a threat to all people in the world as they violate jus cogens norms, and therefore everyone has an interest in their punishment and prevention (Emmenegger, 2016, p. 653). The universality principle was applied in the Nuremberg trials held after the Second World War. It was also the basis for the trial in Spain for the prosecution of human rights violations committed by the Pinochet regime in Chile.

Under customary international law, for states to exercise state jurisdiction over persons, things and conducts, they must rely on one of the principles set out above. While there is no consensus on the limits of these, it is recognized that they provide a wide range of justifications for states to exercise their jurisdiction extraterritorially. This is also the case for unilateral sanctions of states and therefore some unilateral economic sanctions do not violate international law (Emmenegger, 2016, p. 654).

More than one state may claim jurisdiction for the same conduct. In this case, several principles should be applied. The approach of the US law is expressed in the Restatement (Third) of Foreign Relations Law of the United States. The article on limitations on prescriptive jurisdiction reads as follows: "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" (Restatement (Third) of Foreign Relations Law, 403 (1) (1987)).

The Restatement (Third) indicates a number of factors that make the exercise of jurisdiction reasonable: the nature of the activity, the extent to which it takes place in the territory of the regulating state. More than one state may claim to exercise jurisdiction despite the application of these factors, but the Restatement (Third) does not provide further explanation on how to resolve this issue (Meyer, 2008, p. 939).

## 2.8. Secondary Sanctions and the Legality Theory of Secondary Sanctions: Terrinational Sanctions

So far, we have discussed whether states can take unilateral sanctions under international law, and if so, the sources of these sanctions and the limits of legality of the sanction decisions taken. In conclusion, states can impose sanctions on other countries and entities through retorsions and countermeasures and based on one of the principles of jurisdiction such as territoriality, personality, protection or universality, prohibit persons under their authority and jurisdiction from entering into business relations with sanctioned persons and force these persons to comply with the sanction norms. It has been stated that these measures are primary sanctions, but there is also a term called secondary sanctions and the legality of such sanctions is more controversial.

First, it is not a correct perspective to claim that secondary sanctions are unlawful because they are "extraterritorial". This is because all sanctions, whether primary or secondary, already have extraterritorial effect, or at least aim to have extraterritorial reach. Moreover, primary sanctions, like secondary sanctions, are also directed against states, entities and individuals outside the sanctioning state. States do not impose sanctions on their own nationals under international law.

Therefore, the view that the state regulates the conducts of its own citizens through primary sanctions and the conducts of foreign nationals through secondary sanctions misses the point and not correct (Meyer, 2008, p. 936). For example, when the US prohibits its own citizens from engaging in business with Iran (primary sanctions) or from engaging in business with persons doing business with Iran (secondary sanctions), only the conduct of US citizens is regulated. Such sanctions include those contained in the US Iran Sanctions Act (ISA). Under Iran sanctions rules of the US, all commercial activities between the US and Iran are prohibited.[8] The ISA, on the other hand, regulates certain investment activities in Iran as a secondary sanction ground against foreign persons. However, these secondary sanctions are formulated in

[8] For example, Iranian Transactions and Sanctions Regulations prohibits the importation into the US of any goods or services of Iranian origin or owned or controlled by the Government of Iran (31 CFR 560.201) as well as the exportation, reexportation, sale, or supply, directly or indirectly, from the US, or by a US person, wherever located, of any goods, technology, or services to Iran or the Government of Iran (31 CFR 560.204).

the form of access restrictions. For example, US banks may not provide loans and credits, US government bonds may not be sold, the US government may not purchase from the person who has a business relationship with Iran, etc. (ISA, Section 6). Ruys and Ryngeart (2020, p. 12) also stress that this kind of access restrictions create obligations for US entities and individuals and regulate activities that occur in the US territory and involve US persons as counterparties. Subedi (2021, p. 30) argues that measures such as stopping trade with or investment in the target state, which are terrinational in nature, are permitted under international law.

Therefore, there are two types of secondary sanctions: First type of secondary sanctions relates to the conduct of the sanctioning country's own territory and nationals. The sanctioning country prohibits its nationals from engaging in business relations with individuals or entities that establish business relations with the person or country that is the target of the primary sanction. In the second type of secondary sanctions, the state penalizes or sanctions individuals or entities that establish business relations with the state or persons that are the target of primary sanctions.

Meyer (2008) argues that the second type of secondary sanctions have a weak international law legitimacy and undefendable and offers the first type secondary sanctions, which he calls "terrinational sanctions", based on territorial and nationality principles of jurisdiction. The secondary sanctions based on the principles of territoriality and nationality would be more legally valid than secondary sanctions based on the principles of protection and universality.

Indeed, two of the undisputed jurisdictional principles of international law are the principles of territoriality and nationality (Lowenfeld, 2008, p. 901). Ruys and Ryngeart (2020, p. 12) also argue that this kind of sanctions could be justified under a combined application of the territoriality and nationality principles,

Accordingly, a state may, as a rule, freely regulate the acts and transactions of its citizens under its jurisdiction. In this case, the person affected by secondary sanctions can only rely on the effects doctrine, which comes legally second to the principles of territoriality and nationality (two of which will coexist). Moreover, it is a requirement of sovereignty for a state to regulate the conduct of its nationals within its territory.

However, while states are free to impose such sanctions, such conduct must not be prohibited by a previous treaty or rule of customary international law (Meyer, 2008, p. 951-952). Because rules of treaties and customary international law bind states legally to act in a particular way or set up particular relations (Shaw, 2003, p. 88)

Finally, secondary sanctions must, as a rule be reasonable. Two conditions are necessary for reasonableness. One is that terrinational sanctions should not impose any penalties on foreigners who enter into business relations with sanctioned persons in violation of secondary sanctions. The International Emergency Economic Powers Act (IEEPA) contains contrary provisions. According to this Act, a person who "commits an unlawful act" may be subject to both civil and criminal penalties. The IEEPA does not define the term ‘persons’, raising the concerns that non-US persons can face civil and criminal penalties even if there is not any link between their conduct and the US territory, as long as they cause others to violate US sanctions (Ruys and Ryngeart, 2020, p. 26). In fact, this was the case against the Turkish-Iranian Businessman Reza Zarrab. He was charged with violating the US unilateral financial sanctions against Iran including, most notably, conspiracy to violate the IEEPA by the US courts. Reza Zarrab was neither US nationals nor was residing in the US (Bogdanova, 2022, p. 112).

Second, international sanctions should not be designed in the context of a state's regulatory or enforcement conduct of government officials (Meyer, 2009, p. 961). Prohibitions should be adopted in the context of individuals' personal and business dealings and transactions. More precisely, enforcement regulations should be aimed at citizens other than state officials. Thus, while the US placing certain individuals on the SDN list and prohibiting its nationals from dealing with them because of Iran’s nuclear endeavour would satisfy this requirement, freezing their assets or arresting and prosecuting them would violate it.

### 2.9. Arguments Against the Legality of Unilateral Sanctions

Finally, we should analyze the arguments against the legality of international economic sanctions, especially unilateral sanctions. First of all, there is a big difference between the Western world and other states' views on this issue (Ruys and Ryngaert, 2020, p.4). Countries such as Russia and China, members of the Non-Aligned Movement, AALCO and even the UN General Assembly, where these countries form

the majority, categorically oppose unilateral sanctions. Yet, it is observed that countries such as China and Russia also impose unilateral sanctions from time to time (Jentleson, 2022). On the other hand, there is no uniform opinion in Western countries on this issue. While European countries do not oppose unilateral sanctions, they occasionally oppose extraterritorial and secondary sanctions by the US when these sanctions harm their interests.

One of the arguments of those who oppose unilateral sanctions is that the UN Charter only regulates UNSC sanctions and not unilateral sanctions. Based on this, it is argued that unilateral sanctions decisions taken by states are contrary to international law (Mohamad, 2015, p. 73-74; Khosravi et al., 2022, p. 2165; AALCO, 2013). However, this argument cannot be considered legally valid. First of all, the fact that unilateral sanctions are not regulated in the UN Charter does not mean that they are prohibited. If the drafters of the UN Charter had such a will, they should have explicitly included it in the Charter. For example, the Charter explicitly prohibits states from threatening or using force against the territorial integrity or political independence of any state. The creation of a new regime for the enforcement of UN sanctions in the UN Charter does not provide sufficient legal evidence to conclude that unilateral sanctions are prohibited. Thus, Chapter VII of the UN Charter does not contain an exclusive provision prohibiting unilateral sanctions by states and, as seen above, unilateral sanctions can be imposed under customary international law (Alexander, 2009, p. 57).

Second, some scholars argue that the prohibition of the threat or use of force in Article 2(4) of the UN Charter covers economic sanctions as well (Khosravi et al., 2022, p. 2165). This provision prohibits states from threatening or using force against the territorial integrity or political independence of any state contrary to the purposes of the UN. However, it is debatable whether the "force" referred to here includes economic sanctions. If it is claimed that it does, states will not be able to impose economic sanctions. Although there is no consensus on this issue, the majority of commentators believe that Article 2(4) does not cover economic sanctions (Henderson, 1986, 180). Accepting that Article 2(4) covers economic sanctions would cause this Article to conflict with and be contrary to Article 51. This is because the principle of self-defense under Article 51 applies only in the event of armed attack, and if the view that Article 2(4) covers economic sanctions is accepted, it would mean that any

sanctioned state would be deprived of its sovereignty and right to self-defense under Article 51.

Another issue regulated in the UN Charter related to economic sanctions is the peaceful settlement of disputes. This is regulated in Article 2(3) (obligation of States to settle their disputes by peaceful means) and Article 33 (means of peaceful solution). It is generally considered that economic sanctions are not one of the means of peaceful solution. Therefore, states should exhaust peaceful means of settlement before imposing economic sanctions (Henderson, 1986, 181-182; Khosravi et al., 2022, p. 2165).

Another issue concerns the interpretation of UN General Assembly resolutions condemning unilateral sanctions as interference in internal affairs, condemning unilateral embargoes and calling on states to refrain from imposing unilateral sanctions.[9] Although these resolutions are not binding on states, it is claimed that they constitute or point to a valid customary rule (Mohamad, 2015, p. 76; Khosravi et al., 2022, p. 2166). However, it is not possible to claim that these resolutions lead to the formation of a customary rule for unilateral sanctions within the scope of the validity of the above-mentioned customary international rules.

First of all, the UN General Assembly's call in these resolutions not to impose unilateral sanctions has not been unanimously accepted by states. There are many countries that have not signed these UN General Assembly resolutions and continue to impose unilateral sanctions. Secondly, a customary rule does not apply to a country that has not accepted that rule. Therefore, even if it is accepted that a customary rule has been established on this issue, this rule will not be binding for countries that decide to impose unilateral sanctions. However, even though the UN General Assembly's decisions on sanctions are not legally binding on member states, they are important in terms of showing the expectations of the international community and pointing to the emergence of a rule of customary international law (Henderson, 1986, p. 190).

[9] For some of these decisions: https://legal.un.org/avl/pdf/ha/ga_2131-xx/ga_2131-xx_e.pdf
https://treaties.un.org/doc/source/docs/A_RES_2625-Eng.pdf
https://digitallibrary.un.org/record/27066

Another issue affecting the legality of international economic sanctions is the prohibition of intervention in the internal or external affairs of sovereign states. The non-intervention principle of public international law obliges states not to interfere in the internal or external affairs of another sovereign state (Henderson, 1986, p. 193). The obligation not to interfere in internal affairs is one of the fundamental principles set out in Article 2 of the UN Charter. Some scholars categorically consider international sanctions as interference in internal affairs and contrary to international law (Mohamad, 2015, p. 79; Khosravi et al., 2022, p. 2166).

The other view, however, argues that international law gives states the authority and freedom to determine their trading partners and that they are not obliged to trade with a particular country (Ruys, 2017, p. 26). Consequently, while some economic sanctions can be classified as violating the non-interference rule, it is not possible to classify all economic sanctions as interference in internal or external affairs. In order for a sanction to be considered an interference in internal affairs, the sanctioning country must force the target country to engage in an unwanted conduct, in which case the sanction in question would violate international law. However, even in such a case, the principle of non-intervention will not be violated if it is an act of self-defense, legitimate act of retorsion or reprisal or securing redress for a prior wrong (Henderson, 1986, p. 194).

Another area of debate on the legality of unilateral economic sanctions is international agreements signed by states. In this context, the World Trade Organization (WTO) agreements are important. The WTO has established a vast international legal system to govern global trade in goods and services (Watson, 2021, p. 188). One of the most important documents of the WTO is the General Agreement on Tariffs and Trade (GATT) and the other is the General Agreement on Trade in Services (GATS).

The GATT imposes certain obligations on states. The GATT, like the UN Charter, is binding on member states and includes some rules on economic sanctions. The GATT is an international agreement opened for signature in 1947 and was created to remove restrictions on international trade and facilitate access to international trade markets. Therefore, unilateral economic sanctions, in principle, contradict the multilateral

cooperative nature of the WTO and golden rule of the GATT—non-discrimination and most-favored-nation treatment (Watson, 2021, p. 189; Lowenfeld, 2002, p. 915).

The GATT, which continued to apply even after the establishment of the WTO, was amended in 1994. Many states are currently parties to this agreement. Articles 11 and 13 of the GATT are invoked to decide on the legitimacy of economic sanctions imposed on international trade. Article 11 of the GATT prohibits the contracting parties from applying prohibition or restriction on importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party. According to Article 13, if a state imposes certain restrictions on the quantity of products to one of the member countries, it must impose similar restrictions to equivalent products of third countries. In other words, states cannot discriminate between other countries in this sense. Therefore, if a state imposes an embargo on a country, it violates the provisions of this article. However, there are exceptions in Article 20 of the GATT and in such cases, states can adopt various restrictions on bilateral trade. Examples include measures to protect public morals, measures necessary to protect human, animal or plant life or health, and measures relating to the import or export of gold or silver.

Furthermore, Article 21 of the GATT contains a national security exception. In times of war or other emergencies in international relations, member states may restrict trade. According to this Article, the GATT shall be construed “to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests". Although this article allows member states to impose unilateral economic sanctions, they must be applied in extraordinary circumstances and in good faith (Watson, 2021, p. 196). On the other hand, the misuse of this exception may be contrary to the essence of the GATT, whose mission is to promote the stability of international trade through regulation (Henderson, 1986, 185). For example, following Russia's annexation of Crimea in 2014, the US imposed unilateral sanctions on Russia, which is also a WTO member, and banned all trade with the Crimea region, which could be justified under both Articles 20 and 21 of the GATT (Watson, 2012, p. 200).

Regarding the US trade sanctions against Iran, it should be noted that the provisions of the GATT are not applicable as Iran is not a member of the WTO and contracting party to the GATT. Therefore, it is not possible to draw any conclusion on the legality of the US sanctions against Iran in the context of the GATT regime (Lowenfeld, 2008, p. 916). As Ruys (2017, p. 31) points out, many unilateral sanctions regimes are directed against non-WTO countries and therefore Article 21 of the GATT has not been addressed by a WTO panel.

Another argument of scholars who oppose unilateral sanctions is related to comprehensive sanctions. These sanctions are not considered legal as they violate many rules and principles regarding sanctions such as proportionality and discrimination (Alexander, 2009, p. 64). Partly for this reason, states have recently abandoned comprehensive sanctions in favor of smart sanctions. However, there are countries such as Iran, North Korea, Syria and Cuba, against which the imposition of comprehensive sanctions by the US is still in place.

Moreover, some of the arguments put forward by opponents of unilateral sanctions (such as the right to development of individuals living in the target country, economic rights such as the right to be free from hunger, the right to life, etc.) often stem from the consequences of comprehensive sanctions. As noted above, following the negative effects of comprehensive sanctions, countries and international organizations that adopted unilateral sanctions, such as the US and the UN, have either abandoned such sanctions targeting an entire country and its people, or have started to apply humanitarian exemptions for goods that are essential for human life, such as agricultural products, food, medicine and medical devices. For example, trade between the US and Iran is almost completely banned under sanctions, yet such goods are exempted.

In concluding this chapter, it is important to note the following. States have long used sanctions against each other as a lighter measure than war but more severe than diplomatic means. There is hardly a state that does not impose sanctions against another state. It is therefore not possible to argue that sanctions altogether violate international law because they involve coercive measures (Lowenfeld, 2008, p. 925). Therefore, unilateral sanctions may therefore be considered legally valid if they do not

violate any existing treaty provision or a rule of customary international law (Happold, 2016, p. 3). However, some sanction practices do constitute illegality and this thesis focuses on two controversial ones in the Iranian context.

# CHAPTER 3

# THE GENERAL OVERVIEW OF THE US SANCTIONS REGIME AND THE SANCTIONS AGAINST IRAN

This chapter first provides an overview of and a brief history of the US sanction. It then discusses the legal sources of the US sanctions, such as acts, executive orders and regulations, and the US agencies that adopt these legal documents. In the context of the US sanctions against Iran, the relations between the US and Iran and a summary and analysis of these sanctions are made.

## 3.1. Overview and A Short History of the US Sanctions

The United States has an unbroken record of using economic sanctions as a foreign policy tool since the Second World War (Barnes, 2016, p. 197). Today there is no country or international organization that impose more sanctions than the US (Timofeev, 2020, p. 73-74). The US already sanctions Iran, Russia and China, as well as many other countries from Cuba to North Korea, Burma to Belarus. There are also sanctions regimes that are not country-specific, but are imposed by the US on grounds such as drug trafficking, terrorism, nuclear weapons, cyber-attacks, human rights and interference in the US elections. As of today, the US has 38 sanctions programs under OFAC (U.S. Department of Treasury, 2023a). In most cases, the first US response to an international crisis is to impose sanctions (Jentleson, 2022, p. 75-76). And there is no sign that this tendency will change in the near future (Nephew, 2020, p. 93).

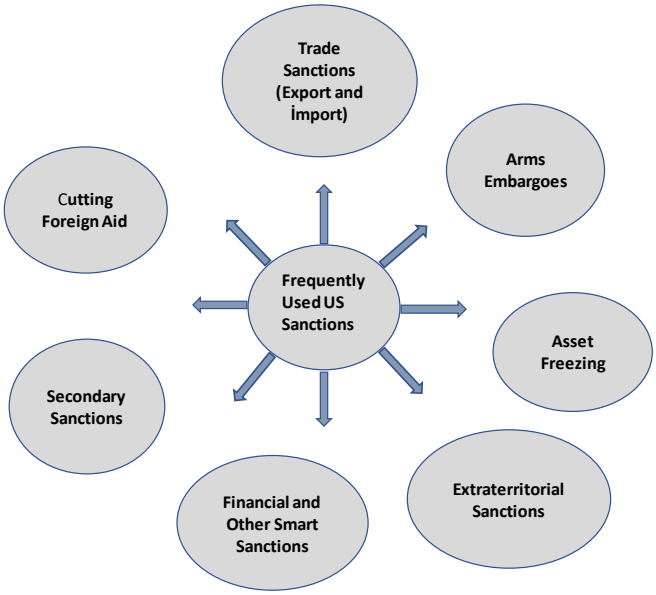
Although the goals of sanctions in general and US sanctions in particular are considered in the context of the target of sanctions, economic sanctions also have various objectives in the context of third parties and countries, as well as the sanctioning country's own citizens. All the following can be the objectives of the US sanctions: Deter norm-violation, make target to change certain aspects of its foreign

or domestic policy, punish, destabilize the target country, limit conflict, demonstrate solidarity with allies, demonstrate public evidence of disapproval of a policy of the target, or send signals to the sanctioning country's domestic audience (Doxey, 1996, p. 54-57).

Hufbauer et al. (2007, p. 5-6) argue that in many cases the US is compelled to impose sanctions to demonstrate its world leadership as well as the international community expects the US to abide by its international commitments. Therefore, the US imposes sanctions even when it does not seem possible to change the behavior of the target. While such sanctions are difficult to prove and impossible to quantify, the impact of such moral and psychological factors on the US sanctions decisions should not be underestimated.

The US can use all kinds of sanctions and is at the forefront of creating new types of sanctions. However, based on Jentleson (2022, p. 77-78), US Department of Treasury and Commerce, the most frequently used sanctions by the US are shown in Figure 1.

**Figure 1: Frequently used US sanctions**




Trade Sanctions: As the world's largest economy, the US uses this advantage in trade sanctions. The importance of the US-produced goods and technologies for many countries and their high demand, as well as the fact that its domestic market is a major

buyer of certain luxury goods, enables the US to effectively instrumentalize trade sanctions to achieve its objectives through sanctions.

Arms Embargoes: One of the most frequently used sanctions by the US is arms embargoes. It can be considered as a kind of trade sanctions. The US effectively uses arms embargoes in both unilateral and multilateral sanctions.

Foreign Aid: These sanctions are imposed by cutting off foreign aid. These sanctions are particularly effective on targets that need the US aid. Of the 103 sanctions imposed by the US between 1960 and 2010, 83 of them involved foreign aid (Jentleson, 2022, p. 78).

Financial and Other Smart Sanctions: With international financial transactions on the rise, the US financial sanctions are one of the sanctions that have recently increased in importance (Carter and Farha, 2013, p. 903). Since a significant portion of both the world's foreign currency reserves and international payments are currently denominated in dollars, the US uses the dollar as a weapon through financial sanctions against its friends and adversaries.

Another concept related to US financial sanctions is the SDN list. Persons placed on the SDN list are restricted from disposing of their assets in the US financial system. The number of individuals and organizations placed on the SDN list is increasing day by day. A total of 2,275 people were added to the SDN list in 2022 alone (Frazer and Trainer, 2023).

Secondary Sanctions: The US is also a major employer of secondary sanctions. Historically, secondary sanctions have nearly always been imposed by the US, one well known exception being the Arab League boycott of Israel (Han, 2021, p. 223). As mentioned above, these sanctions target third parties that are not the target of primary sanctions and seek to prevent them from engaging in business dealings with persons covered by primary sanctions, such as cutting off access to the US market or placing a person who does not comply with a secondary sanction on OFAC lists.

Extraterritorial Sanctions: The US is also a heavy user of extraterritorial sanctions. As will be seen, the US often bases its extraterritorial sanctions on the personality principle or effects doctrine (Alexander, 2009, p. 80).

Hufbauer et al. (2007, p. 91-92) note that when the US decides to impose trade sanctions (imports and exports), it mostly imposes export controls. There are two reasons for this: The first is that the US can inflict more damage on the other side due to its dominant market power in military hardware and high technology; the second reason is related to both American domestic law and international law. It is very easy to restrict exports under the powers granted to the President by Congress. Through the Export Administration Act (EAA) mechanisms, which are exercised through executive orders adopted under the IEEPA, the President can immediately block exports. The President also has powers to restrict imports, but import measures may be inconsistent with international trade obligations. As seen above, under Article 21 of the GATT, member states cannot restrict imports except on national security grounds.

The US began imposing sanctions soon after its founding and has gradually increased its influence over the past few centuries. After Second World War, US sanctions were generally used to bring into line friends and allies who did not act in accordance with its foreign policy, and with the end of the Cold War, they were used as a potential regime change tool (Nephew, 2020, p. 94). Over the last few decades, US sanctions have undergone structural changes. Instead of the 20th century's broad embargoes, they have evolved into a more targeted nature. Thus, they target more specific individuals, entities and sectors (Timofeev, 2020, p. 74).

The first real use of sanctions by the US was in 1806. The Non-Importation Act was enacted on that date and the Embargo Act was passed in 1807. These laws, signed by President Thomas Jefferson, were enacted in response to attacks and harassment of the US merchant ships, mainly by the British navy and partly by the French navy. European powers were carrying out these attacks as part of the Napoleonic Wars on the continent (Nephew, 2020, p. 94). In order to protect the US interests, Congress first banned some commercial exchanges with Britain and then prohibited foreign trade altogether.

In the 19th century, although the US had other sanctions, they were always used in times of war or special emergencies (Alexander, 2009, p. 13). For example, the Joint Resolution of Congress of 1898, which authorized the president to impose trade embargoes and enabled restrictions on exports of coal and war material just prior to

the Spanish-American war (Barnes, 2016, p. 199). The use of sanctions as a foreign policy tool came after First World War (Nephew, 2020, p. 95). Woodrow Wilson, the US president at the time, believed that war was not necessary to solve international problems and that sanctions were sufficient for this purpose. His famous quote on this subject is as follows (Thouvenin, 2020, p. 85):

> A nation that is boycotted is a nation that is in sight of surrender. Apply this economic, peaceful, silent, deadly remedy and there will be no need for force. It is a terrible remedy. It does not cost a life outside the nation boycotted, but it brings a pressure upon the nation which, in my judgment, no modern nation could resist.

This perspective was enshrined in Article 16 of the Covenant of the League of Nations adopted after First World War. According to this article, any Member of the League resort to war in disregard of its covenants shall be ipso facto deemed to have committed an act of war against all other Members of the League of Nations, and all commercial and financial relations with the aggressor country and its nationals shall be severed.

In this context, in 1934, the US sanctions instrument was used to promote peace in a dispute in which the US was not directly involved. In the Chaco War between Bolivia and Paraguay, an arms embargo was imposed on these countries by Joint Resolution of Congress and Presidential Proclamation in order to dissuade the parties from war and achieve a peaceful settlement. Breaching this arms embargo was a criminal offense (Barnes, 2016, p. 199).

The US actively used sanctions during Second World War. Between 1940 and 1941, during Japan's invasion of East Asia, the US imposed many sanctions against Japan, including asset freezes. The US sanctions, which covered goods including oil, which was very important for the Japanese military, may have played a role in the outbreak of the Japanese-American war (Nephew, 2020, p. 96). Moreover, in 1940, the US established the Office of Foreign Funds Control (OFFC), the predecessor of OFAC, within the Treasury Department to prevent Nazi Germany from accessing US-based funds belonging to the countries it occupied during Second World War and when the US entered the war to freeze enemy assets. OFFC developed and administered a complex, comprehensive and sophisticated regime of asset freezing including blacklists (Barnes, 2016, p. 199).

In 1950, the OFFC was transformed into OFAC when President Harry Truman declared a national emergency in response to China's entry into the Korean War. Truman used his authority to freeze Chinese and North Korean assets subject to the US jurisdiction (Nephew, 2020, p. 96). The US retained the institutional capacity it had built during the war and maintained assets freezing and financial blocking measures this time in the context of cold war and under the OFAC (Barnes, 2016, p. 200).

Throughout the Cold War, a significant portion of the US sanctions were used to steer its own friendly and allied countries. This could be considered normal in the bipolar conditions of the time. Because countries were trying to strengthen their positions in this environment. The superiority of the US economy after Second World War and the bipolar world made the sanctions imposed by the US more effective.

In 1976, the National Emergencies Act was enacted and the emergency powers the president had under the TWEA was limited to times of war. However, a year later, in 1977, the Congress passed the IEEPA, which in large part repeated the President's TWEA emergency powers, in peacetime disputes. With this law, the president could impose financial transactions controls by declaring a national emergency (Barnes, 2016, p. 201).

The collapse of the Soviet Union and the rise of the US as the sole superpower led to a massive increase in US sanctions in 90s. This was part of a general trend. After 1990, the ratio of unilateral sanctions to multilateral sanctions changed significantly in favor of unilateral sanctions (Nephew, 2020, p. 97). In addition, the types of sanctions have also changed. The number of extraterritorial and secondary sanctions increased. In this period, counterterrorism, human rights and democratization emerged as important issues in foreign policy of the US, which also influenced the choice of targets and instruments of sanctions.

During this period, the US tried to make other international actors a supporter of the sanctions it imposed. However, when the US failed to get the desired sanctions in the UNSC or to convince other allied countries to implement its own sanctions, the US developed a new strategy as a remedy (Nephew, 2020, p. 97). This was to turn to secondary sanctions in addition to primary sanctions. Within the scope of this policy,

the 1996 ILSA and the 1996 Helms-Burton Act against Cuba were adopted, which brought with them great controversy. The use of secondary sanctions by the US in this way led European countries to take various measures. One of the measures taken in this context was to prohibit European companies from complying with the US sanctions with the regulation adopted in 1996.

Starting in the mid-1990s, US sanctions began to evolve from comprehensive sanctions to smart (targeted) sanctions in parallel with UN sanctions. As a result, the US began to target specific individuals and organizations that it perceived to have done wrong, rather than an entire country (Goldman and Lindblom, 2021, p. 133). For example, the adoption of a new sanctions regime against drug traffickers coincides with this period.

After the September 11, 2001 terrorist attacks, the US global sanctions regime underwent a new evolution, expanding to cover an increasing number of sectors and transactions of the global economy (Goldman and Lindblom, 2021, p. 134). Moreover, after the attacks, the Bush administration sought to enhance sanctions as a means of combating terrorism (Hufbauer et al., 2007, p. 142).

On September 23, 2001, US President Bush used his powers under IEEPA to apply existing prohibitions globally to groups "associated" with individuals listed as terrorists and to deny access to the US market to foreign banks that did not cooperate in freezing the assets of terrorists through Executive Order 13224.[10] New legislation, notably the USA PATRIOT Act, has expanded the ability of US law enforcement and intelligence to track and arrest suspected terrorists. Various banking regulations were also adopted to combat money laundering and terrorist financing (Hufbauer et al., 2007, p. 142-143).

Bush and Obama continued the sanctions trend that began before them. The number of individuals placed on the SDN list increased under Bush compared to the previous period, and this proportional increase continued under Obama. However, this upward trend peaked under Trump. It is said that Trump Administration imposed sanctions at

[10] In this context, a provision was added to Executive Order 13324 that could lead to secondary sanctions. This provision can also be applied to foreign financial institutions. According to this article, the sanctions may also be imposed on those who provide assistance or financial or other support to those who are or will be included in the list annexed to the order.

a record-shattering rate and more than any other US president (Kirilakha et al, 2021, p. 62).

In first two years he took office, the US placed approximately 1.000 persons on the SDN list and this was 30% more than the total number during Obama's last year (Halcoussis et al, 2021, p. 152). And the number of individuals placed on the SDN list under Trump was 300% higher on an annualized basis than under Obama. During this period, fines imposed on sanctions violators reached a record high of $1.3 billion (Jentleson, 2022, p. 76).

The Trump administration also expanded sanctions on several countries, including North Korea, Iran, Syria, Venezuela, Belarus, China, Cuba and Libya. In 2016, the JCPOA agreement with Iran was abandoned and the sanctions previously imposed on this country, including secondary sanctions, were expanded and reimposed. The aggressive use economic sanctions during Trump administration threatened the central role of the US financial system globally and prompted other countries such as Russia, China and Iran to seek to break free of American financial hegemony by using local currencies and swaps, and new interbank payment mechanisms and digital currencies (The Economist, 2020).

The Biden administration has also shown that sanctions would not be abandoned as an international policy tool. In the first hundred days of this administration, sanctions were imposed on Myanmar, Russia, Saudi Arabia, China, etc. (Jentleson, 2022, p. 76). After Russia's invasion of Ukraine's Donetsk and Luhansk Regions in February 2022, one of the first reactions of the US under Biden administration was to impose sanctions and place many Russian individuals, institutions and companies on the SDN list through OFAC. Moreover, the expectation that Iran sanctions, which were tightened during the Trump era, would be withdrawn has also remained unfulfilled over time and the talks have not yielded any results.

### 3.2. The Legal Sources of the US Sanctions

The main sources of the US sanctions law are acts, executive orders, and regulations. Of these, laws are enacted by Congress, executive orders by the President and regulations by OFAC of the Treasury Department. The acts are the main source of all other legislation and contain provisions on the adoption and general principles of

sanctions regimes. The adoption of a new sanctions regime is usually introduced by a executive order. An executive order declares a "national emergency" and imposes the sanctions envisaged. Regulations contain the rules and interpretations of sanctions set out in acts and executive orders, and also specify other details.

The most important acts of the US economic sanctions law are three. The first is the Trading with the Enemy Act of 1917 (TWEA), the second and perhaps most important is the International Emergency Economic Powers Act of 1977 (IEEPA), and the third is the Export Administration Act of 1979 (EAA).

### 3.2.1. Trading with Enemy Act (TWEA)

Throughout the 20th century, the US Congress granted an increasing number of emergency powers to presidents through legislation. TWEA is an example of such legislation. The TWEA was adopted after the US entered First World War and provided the legal basis for the president to impose financial and economic sanctions, including embargoes, on target countries and individuals in times of war or other national emergencies (Alexander, 2009, p. 92-93). The Act's powers were expanded by Congress in the 1930s, so that the president could now declare a national emergency in peacetime as well, and had extensive powers for both domestic and international transactions. Between 1945 and 1970, the TWEA became a critical instrument of sanctions as part of the US Cold War strategy (Fergusson et al., 2019, p. 4). However, after Congress passed the NEA in 1976 and the IEEPA in 1977, the President's powers under the TWEA were severely restricted and its implementation limited to wartime. The NEA prohibited the president from adopting new sanctions against other states or persons under this Act, except in wartime (Lowenfeld, 2008, p. 893) The NEA and IEEPA required the president to report routinely to ensure transparency and calculate costs. The NEA also obliged the president to assess the national emergency annually and extend it if necessary. However, a provision in the NEA allowed for the extension of sanctions programs previously adopted under TWEA. Therefore, the sanctions regimes against North Korea, Cuba, Cambodia and Vietnam that were adopted before 1976 remained in force.

### 3.2.2. International emergency Economic Powers Act (IEEPA)

After the NEA was enacted, Congress concluded that the executive branch no longer had an effective peacetime policy instrument to restrict private international financial transactions as part of its overall economic sanctions policy and consequently passed the IEEPA (Alexander, 2009, p. 95). The IEEPA authorized the president to inspect goods and financial transactions associated with the sanctioned country and its nationals. The targets of sanctions, the frequency of its use, and the duration of the emergencies have expanded considerably in the period since IEEPA was adopted (Meagher, 2020, p. 1008).

The IEEPA provides for controls on presidential actions through Congressional oversight. Unlike TWEA, in order to exercise the powers under IEEPA, the president must declare a peacetime national emergency, make findings to support his decision, and submit these findings to Congress. Whenever the President exercises any power delegated to him under IEEPA, he is required to report to Congress to explain and justify his actions and submit a report every six months thereafter (Barnes, 2016, p. 201).

Nevertheless, some scholars have argued that IEEPA is an unchecked and broad source of discretionary power for the president. (Meagher, 2020, p. 1008). However, US courts have been unreceptive to arguments that the oversight function of the Congress for delegated powers under IEEPA is not sufficient and that the Act constitutes a constitutional delegation of legislative power to the Executive (Barnes, 2016, p. 201).

IEEPA, along with its predecessor NEA, is at the heart of the modern US sanctions regime. The IEEPA aims to manage and respond to a new national emergency or a threat to national security, foreign policy, or the economy of the US whose origin lies wholly or partly outside the America. When the US president determines that such a threat exists, he can declare a national emergency under the NEA and impose a wide range of economic and financial sanctions.

IEEPA has been used by US presidents to impose many restrictions. For example, restricting various international transactions, seizing US assets of foreign nationals, restricting exports, limiting foreign direct investment in American companies, and imposing tariffs on all imports into the US (Meagher, 2020, p. 1008). Within the scope

of IEEPA, the Clinton administration ordered the Treasury Department to maintain a list of "Specially Designated Terrorists" under Executive Order 12947, and the Bush administration ordered the Treasury Department to maintain a list of "Specially Designated Global Terrorists" and freeze the assets of these individuals under Executive Order 13224 (Alexander, 2009, p. 96). In 1995, Hamas and similar groups were designated as Specially Designated Terrorists and in 2001 they were designated as Specially Designated Global Terrorists. In these regulations, provisions that would cause problems and controversies in terms of extraterritorial jurisdiction and secondary sanctions were also adopted.

The 2007 amendment to IEEPA changed the penal provisions of this Act. This amendment introduced a new category of offenses and penalties. Although there is normally no provision in the US penal code on whether the relevant provisions apply to foreigners, US courts can apply some provisions to foreigners. However, with the amendment to the IEEPA, this practice has become the rule. This amendment strengthened IEEPA's criminal provisions and created a new offense for persons who violate, attempt to violate, or conspire to violate any license, order, regulation, or prohibition issued under IEEPA (Alexander, 2009, p. 179). It strengthens existing regulations of OFAC and the Bureau of Industry and Security (BIS) imposing extraterritorial third-party liability. Accordingly, if a foreign person engages in fraudulent transactions to circumvent, for example, the US sanctions on Iran, they may be held criminally liable under US law, regardless of where they are located or what country they are citizen of.

### 3.2.3. Export Administration Act (EAA)

The EAA was enacted by Congress to replace the Export Control Act of 1949, which had been in effect previously and served a similar function but had expired in 1969. The EAA was extensively amended in 1979 to its current form, which is still valid today. Under the Export Control Act and subsequent statutes, all commercial exports from the US, whether technology or goods exports, require a license as a condition of export to another territory (Lowenfeld, 2008, p. 896). The license requirement for US products vary in accordance with the type of the product and country groups. Some products are restricted to all countries and most products may be exported under a general license.

There are many reasons for the export controls that the US applies to different countries. These include controls against terrorism, proliferation of chemical and biological weapons, nuclear proliferation, crime control, missile technology, national security, regional stability, and restrictions on instruments of torture (Lowenfeld, 2008, p. 898).

Under EAA, US export controls are divided into two groups: national security controls and foreign policy controls, and they are subject to different provisions. For example, when export controls are imposed as a matter of foreign policy, the president must determine that reasonable efforts have been made through negotiations and alternative means to achieve the objectives of the controls. The president is also required to consult with Congress at every possible opportunity, and the Secretary of Commerce is required to consult with the industries affected by the controls. The law prohibits the issuance of licenses to exporters who apply for a license to export any goods or services to a country that the US designates as supporting international terrorism" (Alexander, 2009, p. 101-102).

The Bureau of Industry and Security (BIS) is the US agency responsible for administering the powers under the EAA. BIS regulates the Export Administration Regulations (EAR) and has prescribed additional control arrangements for export licenses for many dual-use goods, component parts, services and technologies. Under the EAA, the US export controls cover extraterritorial arrangements. Goods and technologies purchased from the US require a license from the BIS to be sold to sanctioned third countries. Goods with ten percent or less US origin do not require a license from the US.

The violation of the US export controls may lead to criminal penalties, both fines and imprisonment. However, the enforcement of export controls is applied through administrative sanctions, and they are suspension or denial of 'export privileges'. If a person engaged in an export transaction from the US violates the controls that person will be subject to denial of export privileges (Lowenfeld, 2008, p. 899). The denial may be for all exports or for some kind of goods. Even if they don't have any presence in the US territory this kind of persons are cut off from all opportunity to deal in US-origin goods or technology.

To summarize, the EAA is mainly focused on controls on initial and subsequent exports of certain goods, services and technologies, while TWEA and IEEPA focus on restricting all commercial and financial activities of the US persons and the entities with the target countries and persons. However, the mandates of the BIS and OFAC often overlap. Because export licenses often need to be approved by both BIS and OFAC (Alexander, 2009, p. 106). In general, it can be said that the EAA, IEEPA and TWEA provide the president with very broad powers to determine and implement sanctions.

### 3.2.4. Executive Orders

Under the authority granted by these acts, US presidents exercise their sanctions powers through executive orders. These regulations are, as their names imply, in effect orders directed to the president's executive branch agency, the Office of Foreign Assets Control (OFAC) of the Treasury Department. Executive orders have the force of federal law and, although they have no constitutional basis, they are generally accepted because the president is the head of the US federal government, i.e. the executive branch (Nephew, 2020, p. 100).

Through executive orders, the president identifies the events and facts to be responded to through sanctions, specifies the powers to be delegated to subordinate officials to carry out his orders, and defines key terms such as "person", "US person", "transaction", "knowingly" and "financial institution". In addition, in executive orders, the president can specify the circumstances in which his orders may not be implemented, make exceptions to sanctions, and establish criteria for smart sanctions against individuals, companies and countries. While these decisions are executed by the presidential office, the decision on whether and how to impose sanctions is usually made by presidential advisors within the Executive Office of the President. The Executive Office of the President is an umbrella organization comprised of many agencies, including members of the National Security Council (NSC), which is important for sanctions (Nephew, 2020, p. 101).

The NSC is composed of officials designated by the National Security Act of 1947. The NSC has historically consisted of the President, the Vice President, the Secretary of State, the Secretary of Defense and the Secretary of Energy. Statutory advisors

include the Chairman of the Joint Chiefs of Staff and the Director of National Intelligence. The NSC may also include the Secretary of the Treasury, the Secretary of the Homeland Security, the Director of the Central Intelligence Agency, the National Security Advisor, and the US Ambassador to the UN. During the sanctions process, the NSC determines sanctions decisions through inter-agency discussions and communication, prepares them for the consideration of the senior administration, and delivers them to other parts of the US government. In this sense, it has an important difference from other actors (Nephew, 2020, p. 101).

#### 3.2.5. Regulations

On the other hand, OFAC, which is the main government agency responsible for imposing sanctions, fulfills its duty by issuing regulations. The regulations issued by OFAC can be based on an act or one or more executive orders. Details on the application of sanctions, definitions of terms used in the documents, etc. are included in these regulations. For example, OFAC oversees four Regulations related to Iran as of 2023. These are Iranian Assets Control Regulations, Iranian Transactions and Sanctions Regulations, Iranian Financial Sanctions Regulations, and Iranian Human Rights Abuses Sanctions Regulations.

### 3.3. The US Bureaucracy and Sanctions

The most important government agencies in the US sanctions system are Congress, the presidency, the Treasury Department and its subordinate OFAC, as well as the Department of Commerce, the BIS and the State Department.

#### 3.3.1. Congress

Congress is the body that enacts the above-mentioned legal acts, which are the source of US sanctions. The power of Congress to enact laws, including on foreign trade, is enshrined in Article 1 of Section 8 of the US Constitution. This power also limits the ability of individual states to regulate trade with foreign states (Nephew, 2020, p. 99). Since 2000, the US Supreme Court has ruled that individual states do not have the authority to regulate foreign trade and that Congress has this authority, as in the case of Crosby v. National Foreign Trade Council (NFTC) regarding the Myanmar

sanctions imposed by the state of Massachusetts. The states have some limited powers in this regard.

The President of the US and the Treasury Department and its OFAC also adopt new sanctions regimes or place individuals and entities on sanctions lists based on laws passed by Congress. IEEPA is the most important Act under which Congress has authorized the president to impose sanctions. Since the 1970s, the US presidents have adopted and implemented many sanctions regimes based on this Act of Congress.

In addition, Congress can impose sanctions or obligate the US president to impose sanctions on certain countries and persons through its acts (Nephew, 2020, p. 99). There are many instances where Congress has not delegated authority to the president but has directly sanctioned individuals, entities or countries through its legislation. For example, there are many sanctions laws in which Congress has directly targeted Iran or Russia. Congress also sanctioned individuals responsible for the death of Sergei Magnitsky through the Global Magnistsky Act.[11] In addition, Congress can order the president to impose certain sanctions or prohibit the termination of certain sanctions. For example, the Countering America's Adversaries Through Sanctions Act (CAATSA), which tightened the existing US sanctions on Iran, North Korea and Russia, restricted the president's authority to end or even soften sanctions on Russia without Congressional authorization (Bechky, 2018, p. 5).

Accordingly, under the US Constitution, all authority to regulate international trade, including economic sanctions, belongs to the Congress, which has delegated its authority to impose sanctions to the president, the chief of the executive branch, through the legal regulations it has adopted. Theoretically, Congress can take this authority back from the president at any time through a new regulation or an amendment to a regulation (Alexander, 2009, p. 96-97).

### 3.3.2. President

One of the most important actors in the US economic sanctions system is the president. The US president has broad authority to impose sanctions on national security and foreign policy grounds, as authorized by several laws. The TWEA, the EAA and, most

[11] Magnistsky, a Russian dissident, died in a Russian prison in 2009.

importantly, the IEEPA allow the president to partially or completely prohibit commercial and financial transactions with foreign countries, groups or individuals (Hufbauer et al., 2007, p. 133).

When the US president wants to impose sanctions on a new target, they first declare a "national emergency" on the basis of IEEPA and then decide on sanctions. In practice, the declaration of a national emergency and the imposition of sanctions are realized simultaneously through a formal document called an executive order. The US president's authority to issue executive orders is based on Article 301 of the US Code of Laws. According to this article, the President of the US may order any department or agency within the administrative organization to perform any work or authorize any task to be performed in order to fulfill the duties and powers entrusted to them. To be valid, such authorizations and delegations must be published in the Federal Register.

### 3.3.3. OFAC

The US Office of Foreign Assets Control (OFAC) is tasked with implementing economic sanctions programs against countries and individuals and groups such as terrorists and drug traffickers. While OFAC targets specific countries with economic sanctions programs, with list-based sanctions programs identifies certain persons and corporations alleged to be linked with the proliferation of weapons of mass destruction, international terrorism, and drug trafficking (Newcomb, 2008, p. 469). OFAC performs its mandate in two ways. It issues regulations based on laws and executive orders and manages the process of identifying and adding individuals and firms to sanctions lists (such as the SDN list) (Goldman and Lindblom, 2021, p. 132). Since the Korean War, OFAC has administered the US sanctions regime under the Department of Treasury (Meagher, 2020, p. 1006).

The US Department of Treasury's responsibility for sanctions dates back to the War of 1812. The then Secretary of the Treasury administered sanctions against Great Britain for harassment of the US sailors. During the American Civil War, Congress passed a law prohibiting transactions with Confederate forces, calling for the seizure of property involved in such transactions, and providing for a licensing regime under rules and regulations administered by the Treasury (U.S. Department of Treasury, 2006).

OFAC is the successor to the Office of Foreign Funds Control (OFFC), which was established at the beginning of Second World War following the German invasion of Norway in 1940. The OFFC program was carried out by the Secretary of the Treasury throughout the war. At the beginning, the purpose of the OFFC was to forcibly repatriate funds that belong to citizens of countries occupied by Nazi Germany back to the occupied countries, thus preventing these funds from being used by the Nazis. These controls were later extended to protect the properties of other occupied countries. After the formal entry of the US into Second World War, the OFFC played a leading role in the economic sanctions against the Axis powers by blocking the assets those countries and prohibiting foreign trade and financial transactions. OFAC was formally established in December 1950, after China's entry into the Korean War, when President Truman declared a national emergency and blocked all Chinese and North Korean assets under the US jurisdiction (U.S. Department of Treasury, 2006).

OFAC operates mainly under the mandate of IEEPA. As explained, IEEPA authorizes the president to impose economic sanctions in the event of a national emergency. In practice, when the president wants to impose sanctions, he declares a national emergency through a executive order, which also initiates a sanctions program and authorizes the Treasury Department and OFAC to carry out this program (Bechky, 2018, p. 5). The Treasury Department coordinates sanctions programs with the Ministry of Foreign Affairs. In addition, the president must annually confirm the continuation of the national emergency for each sanctions program.

OFAC sanction norms are written in the form of general prohibitions, and then exceptions are incorporated into the regulation itself. OFAC has broad authority to grant exceptions to sanctions through licenses. This licensing institution gives OFAC the flexibility to tailor sanctions to best serve US policies (Bechky, 2018, p. 7).[12]

OFAC issues two types of licenses: general and special. General licenses are published on OFAC's website and allow transactions with anyone covered. For example, OFAC can issue general licenses to conduct certain transactions for a certain period of time or for certain transactions with banks on the SDN list. On the other hand, special

[12] However, it should be noted that political contention in Congress can sometimes undermine this flexibility.

licenses issued by OFAC are not published, but authorize the addressee to carry out a specific transaction by name. For example, a person whose money transfer is frozen due to a match with someone on the sanctions list would need to apply for a special license from OFAC if they want to unblock the transfer.

One of OFAC's key missions is to supervise and investigate financial institutions for compliance with the US sanctions. This includes not only US banks but also foreign banks using the US financial system. If OFAC finds that a violation has occurred it may issue a cautionary letter, impose civil penalties, or refer the matter to law enforcement agencies for criminal prosecution (Carter and Farha, 2013, p. 909). Each year, OFAC imposes millions of dollars in civil penalties on many US and foreign financial institutions for using the US financial system to provide services on behalf of sanctioned countries and SDN-listed persons.

One of OFAC's most important tasks is to manage sanctions lists. In this context, OFAC can place individuals on sanctions lists or decide to remove them from the relevant lists if it deems it appropriate. The most important list is the SDN list, but there are several others.

#### 3.3.3.1. SDN List

As part of its mandate to enforce sanctions, OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, target countries. It may also list individuals, groups and entities, such as terrorists and drug traffickers, identified under non-country-specific programs. Such individuals, groups and companies are collectively referred to as "Specially Designated Nationals" or "SDNs".[13] Iran’s Supreme Leader Ali Khamenei, Iran’s Central Bank, IRGC and many other Iranian persons and entities are on SDN list.

The US citizens are required to block the assets of SDNs and, as a rule, the US citizens are prohibited from transacting with them (U.S. Department of Treasury, 2002). Individuals and entities placed on the SDN list retain ownership of their frozen assets, but as a rule, they cannot dispose of these properties and rights. Once the US persons

[13] The SDN list is reachable via https://ofac.treasury.gov/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists

freeze any property in their possession in which an SDN has an interest they must hold such property until further notice from the OFAC (Newcomb, 2008, p. 469).

SDN listing also has consequences for third countries and their nationals. The provision of "significant" assistance or support by nationals of third countries to SDN-listed persons may lead the US to place them on the SDN list as well. The provision of financial services by foreign financial institutions to SDN-listed individuals may expose them to correspondent account or payable-through account sanctions by OFAC. Due to the international dependence on the US banks and the US dollar, the threat of sanctions, such as being added to OFAC's SDN List, leads many financial institutions and companies to over-comply with the US sanctions (Meagher, 2020, p. 1006).

The most important rationale for the SDN list is to facilitate the Treasury Department's most important task of protecting the US financial system (Nephew, 2020, p. 102). This list informs banks and other financial institutions of individuals and organizations that will not be allowed into the US financial system in accordance with economic sanctions. As a natural consequence, every international bank, as part of its compliance program, screens its customers through programs it has developed or purchased to determine whether they are on the SDN list. As noted above, foreign banks, although not legally obliged to do so, avoid such a relationship because of the risks associated with dealing with an individual on the SDN list. As indicated in some sanctions regimes, such as Iran, if foreign banks wish to maintain access to the US financial system through their correspondent banks, they must not provide services to SDN-listed individuals.

Normally, any transaction with a person on the SDN list is prohibited for US persons, so nationals of the US must obtain a special license from OFAC before dealing with a person on the SDN list. For example, even a person providing legal services to a person on the SDN list must obtain a license from OFAC before doing so. However, OFAC may issue some general licenses under each sanctions program to allow certain transactions with persons on the SDN list.

OFAC's SDN list includes persons other than US citizens or persons resident in the US. It is very rare for US citizens to be placed on the SDN list. This is because they

are obliged to comply with the US sanctions and can be directly penalized if they commit any violations (Alexander, 2009, p. 151). However, if the target is an American citizen or resident, listing would be dire consequences for them. Without the government's permission, no one can give them a job, rent them a house or even sell them groceries. Because of this consequences listing is named as “financial death sentence” (Boyle, 2021, p. 3).

Persons whose property and interests in property are blocked pursuant to inclusion to SDN list are considered by OFAC to have an interest in all property and interests in property of an entity in which such blocked persons own, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater interest. Consequently, OFAC considers any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons as a blocked person. The property and interests in property of such entities are blocked even if they are not listed as an SDN. (U.S. Department of Treasury, 2014). OFAC refers to this as the 50% rule.

Persons placed on the SDN list can apply to OFAC to be removed (Goldman and Lindblom, 2021, p. 132). Persons who have been placed on the SDN list may petition OFAC to be removed from the list if they believe that they were unfairly included on the list or if the circumstances that led to their listing have ceased to exist (U.S. Department of Treasury, 2021a). In addition to the petition, the application can also be submitted by e-mail or postal mail. The application must include a detailed explanation of the grounds for removal from the list. All applications are evaluated by OFAC and a positive or negative response is provided (31 C.F.R. § 501.807). OFAC attributes this process to the fact that the ultimate goal of sanctions is not to punish, but to bring about a positive change in a person's behavior. Indeed, OFAC removes hundreds of individuals from the list every year.

In addition, if someone believes that the reason for the listing is unfair, he can seek a judicial review of the decision to retain him on a blacklist. However, in order to do so, the listed person must exhaust the administrative reconsideration process mentioned above (Barnes, 2016, p. 204).

### 3.3.3.2. CAPTA List

Due to the power of the US in the global financial market, OFAC's most important and effective sanctions are those imposed in the financial sector. As mentioned above, the OFAC can impose correspondent account or payable-through account sanctions on foreign financial institutions that it determines to have violated the sanctions. The list of foreign financial institutions to which OFAC imposes correspondent account or payable-through account sanctions is called the List of Foreign Financial Institutions Subject to Correspondent Account and Payable-Through Account Sanctions, or CAPTA List (U.S. Department of Treasury, 2022). Currently, OFAC may add foreign financial institutions to the CAPTA list in relation to North Korea, Ukraine, Iran, Russia and Hezbollah sanctions.[14]

Foreign financial institutions that are placed on the CAPTA list by OFAC are either prohibited from opening correspondent or payable-through accounts or are subject to one or more conditions. The criteria by which foreign financial institutions are placed on the CAPTA list are determined according to the regulations of the relevant sanctions regime.

Being added to the CAPTA List has very serious consequences for a financial institution. Since global financial transactions are generally denominated in US dollars, a financial institution added to the CAPTA list will lose access to international financial markets on a large scale, making it extremely difficult for it to fulfill its mission.

### 3.3.3.3. Sectoral Sanctions List

The Sectoral Sanctions List, or SSI list as it is known, is a list that OFAC has started as part of the US sanctions against Russia. With this list, OFAC sanctions persons operating in the Russian economy, as determined by the Treasury Department pursuant to Executive Order No. 13662. Unlike those on the SDN list, there is no general prohibition on transactions with those on this list, nor is there any freezing of their assets in the US. However, individuals on the SSI list may also be on the SDN list.

[14] For CAPTA list: https://ofac.treasury.gov/consolidated-sanctions-list-non-sdn-lists/list-of-foreign-financial-institutions-subject-to-correspondent-account-or-payable-through-account-sanctions-capta-list

Only the transactions specified in their directives are prohibited with those on the SSI list. These include lending and borrowing, and the provision or export of goods, services and technologies that can be used in oil production in Russia.

### 3.3.4. Other Institutions

The Department of Treasury has an important place in the US economic sanctions organization, as it is the ministry under which OFAC operates and plays an important role in the execution of sanctions decisions. However, this active role of the Treasury Department in sanctions is less than two decades old. After the 9/11 attacks, terrorist groups were found to be actively using the financial sector to raise financing, which led the Treasury Department to develop many new sanctions tools and approaches to fight them. These include obtaining information directly from financial institutions under the authority of the Financial Crimes Enforcement Network (FINCEN), which goes beyond the usual international exchange of information, and the adoption of new policy instruments such as Executive Order 13224 (Nephew, 2020, p. 101). This executive order established a sanction for aiding terrorists, authorized the freezing of the funds of the individuals involved in the US banks, and provided for provisions to ensure that foreign banks in other parts of the world act in the same way.

One of the most important and visible tools of the Treasury Department is the SDN list. The details about SDN list are provided above. The Treasury Department also uses the threat of large financial penalties, the conservative nature of many banks, and the uncertainties surrounding international banking as tools to instill a culture of self-compliance in international banking (Nephew, 2022, p. 102). As a result, in order to avoid risk, banks refrain from providing services to certain actors they perceive as problematic, even when there are no sanctions in place.[15]

The role of the Department of Commerce in terms of sanctions stems from its export control authority. As a result, the Department of Commerce has the authority to develop, monitor and enforce export control policies for most, if not all, goods to be

[15] This behavior pattern, which is especially common in financial institutions, is called overcompliance. When there is even a small risk, financial institutions do not enter into any business relationship at all instead of taking the necessary precautions and performing the relevant transaction.

exported from the US.[16] In this role, the Commerce Department is tasked with administering the goods component of existing US sanctions. The Department of Commerce can list individuals, firms and countries as to the extent to which they may utilize certain types of US goods.

The Department of Commerce's authority with respect to non-citizens in the case of US goods may have extraterritorial jurisdiction. In this context, the Ministry has a say in the re-export of US goods. Accordingly, Department of Commerce officials in the US missions abroad are equipped with investigative authority and can follow US goods wherever they go. Since "US goods" are defined as products that contain more than ten percent US goods, many goods subject to international trade fall under the category of US goods and thus under the authority of the Department of Commerce.

Finally, it is seen that the State Department has three separate tasks related to sanctions. These are sanctions design, sanctions implementation and sanctions diplomacy (Nephew, 2020, p. 93). The State Department, together with the Treasury Department, is one of the actors in NSC-led efforts to plan sanctions against various targets. However, State Department officials are balanced by officials within the Treasury Department with their objections that the sanctions sought to be imposed could potentially damage more important relationships or issues. It is also the responsibility of the Ministry of Foreign Affairs to manage relations with international organizations, such as the UN, that issue sanctions resolutions. This includes developing sanctions resolutions and negotiating them with foreign partners. One of the exceptions to the State Department's lead role in US relations with international organizations on sanctions is the Treasury Department's oversight of the Financial Action Task Force (FATF) in its oversight role over the international financial system.

On the other hand, some sanctions programs are administered by the State Department rather than the Treasury Department. For example, the Iran Sanctions Act obliges the President to impose sanctions on third-country companies doing business with Iran in certain circumstances. Sanctions under this Act are a good example of sanctions

[16] For certain goods, ministries such as the Ministry of Energy or the Ministry of Foreign Affairs may be authorized.

programs that are primarily administered by the State Department rather than OFAC (Bechky, 2018, p. 7).

One pillar of US sanctions is restrictions on imports and exports. We have already noted that the US has been particularly active in the export dimension. We have also seen that the US export controls are authorized by the Export Administration Act of 1979 (EAA). Under this law, the BIS, organized under the Department of Commerce, was designated as the main competent government agency. The BIS regulates certain exports, re-exports and related activities through the EAR. BIS also enforces antidumping laws through the EAR. BIS maintains a List, similar to OFAC's SDN list. The EAR contains a list of foreign persons, including businesses, research institutions, government and private organizations, individuals and other types of legal entities. This list of entities is referred to as the Entity List and requires a special license to export, re-export, and transfer the US-origin goods within the country (The US Department of Commerce, 2023).

The EAR's export control regulations are based on exports from the US. But it is not limited to this. First, goods, technology and software once exported from the US must be re-licensed for export to another country. In addition, according to de minimis rule, re-licensing is also required for products manufactured abroad that contain more than the minimum percentage of US-origin goods (15 CFR § 734.4). Unless otherwise stipulated, a license from the BIS is not required for the sale to another country of foreign goods containing 10% or less of US-origin goods.

The BIS works closely with OFAC in the enforcement of sanctions. It is observed that some penalties for violations of the US sanctions regulations and export controls are imposed by these two agencies at the same time and in a coordinated manner.

### 3.4. The US Current Sanctions Against Iran

The US has imposed sanctions on Iran since 1979, the year of Islamic revolution. With adoption of ISA in 1995, these sanctions were increased and diversified. After 2010, the US sanction against Iran took a new level and secondary sanctions of the US got prominence. The broad sanction regime eased considerably after the adoption of JCPOA in 2015. However, Donald Trump administration took a harsh stance against the Iran, re-imposed all the previously lifted sanctions against Iran and even adopted

new sanctions. The harsh US sanctions against Iran remain in place even after Trump administration.

On the other hand, the US is not the only state to impose sanctions on Iran. Although the US was the first to impose sanctions after the establishment of the Islamic Republic of Iran, US allies such as the European Union and Japan have followed suit (Nakanishi, 2015, p. 24). In addition, since 2006, the UNSC, under Chapter VII of the UN Charter, also adopted some measures against Iran. The UNSC, referring to Iran's nuclear enrichment activities, imposed various sanctions against Iran including targeted ones under Resolutions 1737 (2006), 1747 (2007), 1803 (2008) and 1929 (2010) (Orakhelashvili, 2015, p. 4). However, only the sanctions imposed by the US on Iran will be focused on here.

### 3.4.1. Carter Administration

The sanctions are an important part of the Iran policy of the US for more than four decades (Clawson, 2010). The US-Iran relation was by no means great during the Shah era. However, after Islamic revolution in 1979 these relations became sour and this was reflected in the sanctions as well. The first sanctions against Iran were put into effect after the US Embassy in Iran was seized by some college students and the US diplomats and citizens were held hostages in 1979. After the embassy takeover, President Carter's first reaction with regard to sanction was to issue Proclamation 4702 and impose a ban on the importation of Iranian oil (Franssen and Morton, 2002). The Executive Order numbered 12170 by the President followed this and it ordered freezing all property of the Central Bank and Government of Iran in the US territory. Executive Orders no. 12205 and 12211 by Carter banned US exports to and imports from Iran and prohibited the US persons from traveling to and conducting financial transactions with Iran (Franssen and Morton, 2002).

The US and Iran came to an agreement in January 20, 1981 by Algiers Declaration for the release of the US hostages by Iran. One of the provisions of this declaration was related to the sanctions. According to it, "the United States will revoke all trade sanctions which were directed against Iran in the period November 4, 1979, to date". Accordingly, the US hostages were released and the US revoked the sanctions it adopted against Iran. However, there was an exception: the US blockage on the

property of the Central Bank and Government of Iran, which are under the US jurisdiction was not revoked. The US also made a commitment with this declaration and it will refrain from intervening in Iran's domestic affairs.

### 3.4.2. Reagan Administration

During Reagan Administration, after the US Embassy bombing in 1983, Iran was declared as "a sponsor of international terrorism" in January 20, 1984 (Franssen and Morton, 2002). Iran's designation as a state sponsor of terrorism by the US triggers several sanctions including restrictions on licenses for the US dual-use exports; a ban on the US foreign assistance, arms sales, and support in the international financial institutions; and the withholding of the US foreign assistance to countries that assist or sell arms to the designee (Humud and Clayton, 2022, p.14). Besides, Reagan administration imposed various sanctions, such as the US objection to the World Bank loan to Iran (Clawson, 2020).

The US sanctions against Iran continued during Iran-Iraq war. During that time, the administration also imposed increasing restrictions on exports to Iran of dual-use items, which could be used for military purposes in addition to civil applications (Clawson, 2010). By Executive Order numbered 12170, in 1987, all goods or services of Iranian origin are prohibited to be imported into the US territory. Petroleum products refined from Iranian crude oil in a third country were also included in the scope of this prohibition. In the said Executive Order, the reason for these decisions is stated as Iran's "actively supporting terrorism as an instrument of state policy" and its "aggressive and unlawful military action against U.S.-flag vessels and merchant vessels of other non-belligerent nations engaged in lawful and peaceful commerce in international waters of the Persian Gulf and territorial waters of non-belligerent nations of that region." It is stated that reason behind prohibition of all Iranian origin goods is the Congressional criticism of the purchases of Iranian oil for the US Strategic Petroleum Reserve (Clawson, 2010; Franssen and Morton, 2002)

### 3.4.3. Clinton Administration

During the Clinton administration, the US grip on Iran with regard to sanctions severed. The US Iran sanctions multiplied during that time. Increase of the US unilateral sanctions in the 1990s, especially under Clinton administration is attributed

to the collapse of the Soviet Union and the emergence of the US as the sole global superpower, and the Republicans' control on Congress (Franssen and Morton, 2002).

In March 15, 1995, by Executive Order 12957 certain transactions with respect to the development of Iranian petroleum resources were prohibited. The reason behind these prohibitions was Iran's one billion USD agreement with Conoco, a US oil company, to develop oil and gas fields in Iran (Clawson, 2010). However, in the Executive Order, it was stated that "the actions and policies of the Government of Iran constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States" and for that reason a "national emergency" was declared. The prohibitions are defined as "the entry into or performance by a United States person ... of a contract that includes … the development of petroleum resources located in Iran, … or … financing of the development of petroleum resources located in Iran." However, two months later, on May 6, 1995, with executive order 12959, these sanctions were broadened by the Clinton administration and the sanction regime against Iran evolved into a total embargo, therefore almost all trade (export and import) between Iran and the US and investments by the US persons in Iran banned. With this executive order, the reexportation to Iran, of any goods or technology exported from the US, except goods substantially transformed outside the US or incorporated into another product outside the US and constitute less than 10 percent by value of that product exported from a third country (de minimis amount), was also prohibited.

However, Iran and Libya Sanctions Act (ILSA), which was adopted by Congress in 1996, during Clinton administration, generated harsh objections, especially by European governments.[17] The objective of this Act was to reduce Iran's revenues that flows from Iran's oil and gas export and thus deny funds for the development of WMD and support of international terrorism (Franssen and Morton, 2002).

ILSA provided for the imposition of sanctions on both domestic and foreign companies investing in Iran's oil and gas industry. At that time the Iran's main source of revenue was these natural resources and the Clinton administration's intention was

[17] Libya had been added by Senator Kennedy because of the Lockerbie bombing blamed on this country (Franssen and Morton, 2002). However, Libya was removed from the Act later.

to cut them off by sanctioning firms that do business with Iran on these resources. However, these sanctions did not bring about the objectives pursued. Besides it created a lot of protest from the same countries the Clinton administration tried to gain support to pressure Iran (O'Sullivan, 2010, p. 14). On 22 November 1996, the EU adopted "blocking legislation" to ban its companies from complying with sanctions regulated in ILSA. The EU also decided to file a complaint against the US with WTO (Franssen and Morton, 2002). These great protest and European countries' attempts led Clinton and subsequent administrations to issue waivers and not sanction foreign companies that had business with the Iran's sectors under sanctions. Besides, under ILSA, no sanctions were imposed to foreign enterprises until the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 made amendments to it (O'Sullivan, 2010, p. 14). The Act also authorizes the President to waive sanctions in certain cases such as the US national security interests (Franssen and Morton, 2002). This waiver authority is used in order not to sanction European companies that have business dealings with Iran.

### 3.4.4. Bush Administration

It was believed that the Iran sanctions of the US would be eased during the Bush Administration, unilateral oil sanctions would be lifted and ILSA would not be renewed (Franssen and Morton, 2002). However, the ILSA was extended during Bush Administration and September 11 attack on the US showed that any positive change with regard to Iran sanctions is unlikely. On the contrary, Bush Administration issued a series of orders to freeze the assets of entities and individuals said to be involved in Iran's support for terrorism, in Iran's role in threatening stability in Iraq, and in Iran's nuclear and missile programs (Clawson, 2010). Besides, sanctions have imposed on many foreign entities like Chinese and Russian firms for helping Iran's nuclear and missile programs. The US administration formed a unit in the Justice Department to more powerfully investigate individuals or companies charged with selling arms and weapons parts to Iran.

### 3.4.5. Obama Administration

There have been important developments in the context of the US sanctions on Iran during the Obama administration. First of all, important sanctions statutes such as the

Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) and the National Defense Authorization Act for Fiscal Year 2012 (NDAA), The Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRSHRA) and Iran Freedom and Counter-Proliferation Act of 2012 (IFCA) were passed. Both CISADA and ITRSHRA expands the sanctions available under ILSA. These have been very controversial because of the secondary sanctions they impose on foreign third parties. However, this period also witnessed the nuclear negotiations that led to the lifting of most of the sanctions against Iran in exchange for its renunciation of the nuclear program.

The Obama administration has continued and intensified the stronger enforcement of sanctions initiated at the end of the Bush era (Clawson, 2010). Many individuals and entities were sanctioned because of the reasons such as human rights violations, drug trafficking and proliferation.

In June 2010, Congress passed and President Obama signed the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA). The CISADA provides new sanctions against foreign financial institutions that engage in transaction with Iran, increases criminal penalties for sanction violations and contain provisions on divesting the assets in foreign companies engaging in sanctionable activities with Iran (Schott, 2012, p. 190-191). In CISADA, the reason for the adoption of the law was stated as follows: the nuclear activities of Iran, its development of unconventional weapons and ballistic missiles and its support for international terrorism. The Act states that these represent a threat to the security of the US, its strong ally Israel, and other allies of the US around the world.

Article 104 of CISADA sets out secondary sanctions against third country financial institutions. In the findings of the Article, Iran's activities in money laundering and terrorist financing, as well as the proliferation financing, are stressed, and the Financial Action Task Force (FATF)'s calling to pay special attention to business dealings with Iran, including Iranian companies and financial institutions, is mentioned. It was stated that Iran's financial sector poses a risk of money laundering and terrorist financing and therefore, the risk should be considered when providing correspondent banking services to Iranian financial institutions or when they open branches or subsidiaries in

other countries. The Article states that business relations with the Central Bank of Iran and other sanctioned Iranian banks, which among others will facilitate the efforts of the Government of Iran to acquire or develop weapons of mass destruction, will be subject to sanctions, and foreign financial institutions that violate the sanctions will not be able to open or maintain in the US of a correspondent account or a payable-through account.

Section 1245 of the NDAA severed the restrictions on Iran's Central Bank by totally prohibiting foreign banks dealing with it. According this Article, the President shall prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the US of a correspondent account or a payable-through account by a foreign financial institution that the President determines has knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or any other sanctioned Iranian financial institution. By targeting the customers of Iranian oil, the NDDA differs from previous US sanctions targeting Iran's oil sector. Previous secondary sanctions targeted individuals directly invested in Iran's oil sector. The NDDA also introduced secondary sanctions for foreign financial institutions. If the country with the primary jurisdiction over those firms does not cooperate with the US and does not significantly reduce its oil purchases from Iran, they can be sanctioned for their intermediation in the purchase of Iranian oil, even if they have no US nexus (Schott, 2012, p.191).

The ITRSHRA further targeted the transportation and insurance of Iranian oil and authorized the imposition of sanctions on those practicing censorship in Iran. The waiver of these sanctions was also conditioned on the relevant country reducing its oil purchases from Iran. The Iran Freedom and Counter-Proliferation Act of January 2013 expanded the scope of sanctions to include foreign firms. Foreign firms subject to penalties include those trading in or providing transport or financial services for Iran's oil and automobile sectors, as well as those dealing in precious metals (Clawson, 2010).

Starting from 2012, Iran entered a difficult phase economically due to the escalation of US sanctions, the severe implementation of the US secondary sanctions, and the combination of these sanctions with UN and EU sanctions. During this period, both

the US and the EU imposed sanctions on Iranian oil and Iranian banks were excluded from the SWIFT. As a result, Iran was unable to export its hydrocarbon products and could not repatriate its export revenues. Oil exports of Iran fell from 2.5 million barrels per day to about 1 million barrels per day between 2011 and 2014. Real GDP growth fell from 2.6% in 2011 to negative 7.4% in 2012. The Iranian Rial weakened considerably and inflation increased sharply, eventually peaking at 45.1% in June 2013 (Dizaji, 2021, p. 330).

The broad range of secondary sanctions and extraterritorial sanctions imposed by the US on Iran began to change with the Joint Comprehensive Plan of Action (JCPOA) in 2015. The agreement was on Iranian nuclear program and reached between Iran and the permanent members of UNSC, together with Germany and European Union. According to the JCPOA, Iran's nuclear program is restricted in exchange for relief from most US and UN Security Council economic sanctions. In accordance with the JCPOA, the US secondary sanctions were either waived or terminated in 2016, but most primary sanctions on direct US-Iran trade remained in place. The secondary sanctions relieved during the implementation of JCPOA included sanctions that limited Iran's exportation of oil and foreign sales to Iran of gasoline and energy sector equipment, and sanctions that limited foreign investment in Iran's energy sector; financial sector sanctions, including trading in Iran's rial; and sanctions on Iran's automotive sector (Humud and Clayton, 2022, p. 9-10).

As consequences of the JCPOA, the EU also lifted its ban on purchases of oil and gas from Iran and the Iranian banks were readmitted to the SWIFT. The UNSC revoked its resolutions that required member states to impose restrictions.

### 3.4.6. Trump Administration

The US and Iran relations changed significantly during Trump administration and the US economic sanctions policy affected by this as well. It was not a secret that Donald Trump was against the JCPOA even before the he was elected. Therefore, the President Trump announced on May 8, 2018 that the US would withdraw from the JCPOA and reimpose the sanctions that the US had waived under the JCPOA (Humud and Clayton, 2022, p. 11). The success of the US sanctions against Iran and the lifting of some sanctions in exchange for Iran's renunciation of its nuclear ambitions are said to might

have been instrumental in Trump's withdrawal from the JCPOA. Because “the Trump Administration might have believed that it could replicate their success and negotiate a “better” deal” (Suzuki, 2020, p. 178).

In connection with the withdrawal from the JCPOA, the Trump Administration laid out two wind-down periods of 90 days and 180 days for business activities in or involving Iran. At the end of these wind-down periods the sanctions lifted under the JCPOA would be reimposed (U.S. Department of the Treasury, 2018a). August 6, 2018, marked the final day of the 90-day wind-down period and on that day the President issued Executive Order 13846, “Reimposing Certain Sanctions With Respect to Iran”, which reimposed relevant provisions of five Iran sanctions Executive Orders that were revoked or amended by Executive Order 13716 of January 16, 2016. The reimposed sanctions were largely a reimposition of secondary sanctions that were previously lifted (Meagher, 2020, p. 2022). However, these new sanctions broadened the scope of the sanctions that were in effect prior to January 16, 2016 as well (U.S. Department of the Treasury, 2018b). Executive Order 13846 imposed the sanctions for activities below:

- Blocking sanctions on persons determined, on or after August 7, 2018, to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the purchase or acquisition of US bank notes or precious metals by the Government of Iran,
- Blocking sanctions on persons determined on or after November 5, 2018, to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), or the Central Bank of Iran,
- Blocking sanctions on persons determined, on or after November 5, 2018, to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of Iranian persons included on SDN List,
- Blocking sanctions on persons determined, on or after November 5, 2018, to have provided material support for, or goods and services in support of, persons

being part of energy, shipping, or shipbuilding sectors of Iran or a port operator in Iran,

- Sanctions relating foreign financial institution that knowingly conduct or facilitate any significant financial transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran or on behalf of any Iranian person included on the SDN List or for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran,
- Blocking sanctions on persons determined, on or after November 5, 2018, to have provided material support for, or goods and services in support of transactions relating to the Iranian Rial,
- Sanctions with respect to the diversion of goods intended for the people of Iran, the transfer of goods or technologies to Iran that are likely to be used to commit human rights abuses, and censorship.

Following the 180-day wind-down period ending on November 4, 2018, the following sanctions that were lifted pursuant to the JCPOA entered into force, including sanctions on associated services related to the activities below (U.S. Department of the Treasury, 2018c; U.S. Department of the Treasury, 2018d):

- Sanctions on Iran's port operators, and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines, South Shipping Line Iran, or their affiliates;
- Sanctions on petroleum-related transactions with, among others, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and National Iranian Tanker Company (NITC), including the purchase of petroleum, petroleum products, or petrochemical products from Iran;
- Sanctions on transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions under Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA);
- Sanctions on the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions described in Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions and Divestment Act of 2010 (CISADA);

- Sanctions on the provision of underwriting services, insurance, or reinsurance; and
- Sanctions on Iran's energy sector

After that, the Trump administration issued several more executive orders imposing sanctions on Iran. E.O. 13871 of May 8, 2019 designated the iron, steel, aluminum, or copper sector of Iran as sanctionable for its operators and the Secretary of the Treasury was authorized to impose sanctions foreign financial institutions that knowingly conduct or facilitate any significant financial transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the iron, steel, aluminum, or copper sectors of Iran. Executive Order 13876 of June 24, 2019 sanctioned the Supreme Leader of the Islamic Republic of Iran and the Iranian Supreme Leader's Office. Executive order 13902 of January 10, 2020 sanctioned the construction, mining, manufacturing, and textiles sectors of the Iranian economy and included secondary sanctions for foreign persons that will knowingly engage in a significant transaction for the sale, supply, or transfer to or from Iran of significant goods or services used in connection with these sectors of the Iranian economy. The last executive order during Trump presidency, that is E.O. 13949 of September 21, 2020, expanded the secondary sanctions on Iran's arms or related materiel sector.

### 3.4.7. Biden Administration

In fact, the sanctions reimposed by the Trump Administration were generally the sanctions that the Obama Administration had imposed prior to the JCPOA. And the sanctions that were imposed by the Trump Administration remain in force under the Biden Administration. On the other hand, the Biden Administration has tried to revive the JCPOA. However, after the September 2022 mass protests in Iran appears to have dissuaded the Biden Administration's from reviving the JCPOA (Humud and Clayton, 2022, p.10). The Biden Administration has not issued any new sanctions authorities but has continued sanctioning Iranian and third-country persons according to existing US laws and executive orders. Entities designated in 2023 include individuals and companies involved in Iran's unmanned aerial vehicle and ballistic missile programs, individuals involved in the provision of Iranian oil to Asia; individuals involved in human rights abuses, senior Iranian officials involved in the detention of US persons

in Iran, and individuals and companies facilitating the Iran's internet censorship (Thomas, 2023a, p. 8).

# CHAPTER 4

# OBJECTIVES, SUCCESS AND EFFECTS OF THE US SANCTIONS AGAINST IRAN AND IRAN'S REACTIONS

This chapter first analyzes the objectives of the US sanctions against Iran and whether they have been successful in achieving these objectives. It also discusses the economic and political impact of these sanctions on Iran. Finally, the ways in which Iran has responded to these sanctions is addressed.

## 4.1. Objectives of the US Sanctions Against Iran and Success and Failure Question

### 4.1.1. Objectives of the US Sanctions Against Iran

The definitions of economic sanctions have two principles in common: the restriction of economic relations and the fulfillment of certain political objectives of the imposing state. On the other hand, economic sanctions can be imposed to achieve many objectives (Bogdanova, 2022, p. 45). The objectives of economic sanctions is an important issue that scholars have focused on. In fact, although the objectives of economic sanctions are considered in the context of the target country, sanctions also have various objectives in the context of third parties and countries other than the target and the citizens of the country imposing sanctions.

Alexander (2009, p. 10) notes that the objectives of economic sanctions have remained essentially the same throughout history, namely to limit foreign trade and financial transactions with the target country or other non-country actors, or to achieve broader security and foreign policy objectives by withholding economic benefits such as state aid. Hufbauer et al. (2007, p. 7) argue that the imposition of sanctions sends a triple signal. It sends a message to the target country that the sanctioning country does not tolerate the target's actions, it sends a message to allies that words will be backed up

by actions, and it sends a message to those at home that the sanctioning country's government will act to protect the vital interests of the nation.

Hufbauer et al. (2007, p. 52-53) identify the foreign policy objectives of economic sanctions as follows: to change the target country's policies to a relatively modest or limited degree; to change the target country's regime; to prevent a military adventure; to weaken the target country's military potential; to otherwise significantly change the target country's policies.

As for the objectives of the US sanctions on Iran, Since the 1979 revolution that ousted Iran's pro-American monarchy and replaced it with a theocratic regime, they were imposed to temper Iran's geopolitical ambitions. To achieve this, the US has resorted to harsh rhetoric as well as sanctions (Takeyh and Maloney, 2011, p. 1297). With sanctions, the US aims to weaken Iran's economy and thereby reduce Iran's ability to project power to its neighbors (Slavin, 2019, p. 23).

Thomas (2023b) notes that the US uses sanctions to deter, constrain, and encourage change in the adversarial behavior of the Iranian regime, including its support for international terrorism, nuclear and missile development programs and proliferation activities, destabilizing regional interventions, and human rights abuses.

In 2022 National Security Strategy of US, it is noted that the framework for the US policy in the Middle East is based on five principles like partnership with certain countries in the Region; protecting the freedom of navigation through the Middle East motorways, including the Strait of Hormuz and not tolerating efforts to dominating other countries; maintaining regional stability; promoting regional integration between the US partners; and promoting human rights. In the context of this framework, countering Iran and not allowing it to destabilize the Middle East and acquire a nuclear weapon are stressed as objectives of the US policy (Biden, 2022, p. 42). On the other hand the National Security Strategy of the US during Trump administration stressed the sanctions more boldly and noted that sanctions would be used to isolate states and leaders who threaten the US interests and whose actions run contrary to the US values (Trump, 2017, p. 42). It is stressed that it would be worked with the US partners to deny to Iran all paths to a nuclear weapon and neutralize its "malign influence" (p. 49).

These principles and objectives generally form the rationale for the US sanctions against Iran.

One of the objectives of the US sanctions against Iran is said to be an expectation in Washington that economic pressure on the Iranian population will lead to further unrest and protests against Iran, which will ultimately yield a political change. However, empirical evidence does not support the idea that there is an automatic link between economic hardship and political change, especially in countries like Iran where political freedoms are limited (Zamirirad, 2019, p. 7-8). When the US sanctions were reimposed 2018, Iranian people started to suffer economic hardship, besides many other challenges (Vogt and Jalilvand, 2019, p. 3). However, it is argued that the impacts of these sanctions, instead of leading Iranian people further protest against Iran state, will leave a scar on Iranian society for a long time and further deepen the anti-Western sentiments (Khajehpour, 2019, p. 14).

Between 2010 and 2014, during the Obama administration, the US sanctions on Iran were accompanied by both the UN and EU's own sanctions on Iran. The main political objective of these sanctions was to force the Iranian state to give up its nuclear ambitions. At the end, Iran accepted this demand and signed the JCPOA agreement on the condition that sanctions be lifted. However, in May 2018, after the US President Trump announced that the US would withdraw from JCPOA, the US Secretary of State Mike Pompeo set out twelve demands for a new nuclear deal with Iran (Al Jazeera, 2018). However, Pompeo did not outline a timeline for achieving the stated objectives (Kolinovsky, 2018). The stated demands and objectives were very bold such as ending its threats to destroy Israel, ceasing all nuclear activity, ending military support for militant groups like Hezbollah, Hamas and the Houthis in Yemen, pulling Iranian forces out of Yemen and Syria and respecting the sovereignty of the Iraqi government.[18] Later that year, Pompeo added improvement in Iran's human rights practices to the 12 demands (Annan, 2018). Unsurprisingly, Iran quickly rejected these demands (Gordon, 2018).

[18] For the list of twelve demands: https://www.aljazeera.com/news/2018/5/21/mike-pompeo-speech-what-are-the-12-demands-given-to-iran

### 4.1.2. Success and Failure Question of the US Sanctions Against Iran

The success of economic sanctions is directly related to what objectives are. In addition, the relative economic size and interests of the sanctioning state and the target state, their dependence on each other and the global economy, the number of other states participating in sanctions, the number of states or non-state actors willing to trade with the target state despite sanctions, and the political regimes (autocracy or democracy) of the sanctioning state and the target state affect the success of sanctions (Şimşek, 2021, p. 2064).

One of the most comprehensive and important studies on the effectiveness of sanctions was conducted by Hufbauer et al. (2007). These scholars analyzed nearly two hundred cases of economic sanctions imposed in the last century and based their conclusions on this analysis. In this study, the success rates of the cases were evaluated on policy goals (Table 3). The policy goals are divided into five categories: modest policy changes, regime change and democratization, disruption of military adventures, military impairment, and other major policy changes. In economic sanctions cases where the goal was modest policy change, the success rate was found to be around 50 percent. On the other hand, in sanctions cases where the goal was regime change (which corresponded to the goals in 80 of the 204 cases analyzed), just under one-third were found to be successful. This is considerably lower than the success rate of cases where the goal was modest policy change.

**Table 3: The Success of sanctions according to policy goals**

| Policy goal | Success cases | Failure cases | Total | Success ratio (percent of total) |
|---|---|---|---|---|
| Modest policy changes | 22 | 21 | 43 | 51 |
| Regime change and democratization | 25 | 55 | 80 | 31 |
| Disruption of military adventures | 4 | 15 | 19 | 21 |
| Military impairment | 9 | 20 | 29 | 31 |
| Other major policy changes | 10 | 23 | 33 | 30 |
| All cases | 70 | 134 | 204 | 34 |

Source: Hufbauer et al, 2007, p. 159

In the case of the US, it is noted that only 13 percent of the unilateral sanctions imposed by the US since 1970 have achieved their foreign policy goals. And when the goal is relatively modest, the target country is much smaller than the US and target country has a substantial trade with the US, the sanctions are most likely to be effective (Elliott, 1997).

Accordingly, the following conclusions can be drawn in the context of the US sanctions on Iran. The likelihood of succes of these sanctions is higher when these sanctions aim for certain goals such as change of an unacceptable policy and when they are supported by the sanctions of other actors such as UN, EU and trade partners of Iran (Slavin, 2019, p. 21). These arguments for the success of the US sanctions on Iran have been confirmed in two cases. These are the comprehensive sanctions imposed after 2010 because of Iran's nuclear program and the sanctions adopted during the Trump Administration.

When US sanctions are not aimed at a certain policy change but threatens the very existence of the Iranian state, such as regime change or the erosion of Iran's regional power, they increase Iran's motivation to fight back and therefore failure is inevitable. Furthermore, the legitimacy of such goals is questioned in the international community, and therefore, they do not gain the support of other states. Without the support of other states, in general, it is very difficult for sanctions to be successful. Because in this case, the sanctioned state can provide alternative trade partners among other states. Due to decades of US sanctions, trade between Iran and the US is very low and US unilateral sanctions alone do not have much impact on the Iranian economy.

The US has been imposing sanctions on Iran since its foundation. However, although their severity has been increasing, they were not successful until the 2010s and failed to change Iran's general policy. Even though the sanctions have caused significant costs to the Iranian economy, Iran has not given up on its nuclear ambitions and refused to discuss the issue with the US and other countries (Takeyh and Maloney, 2011, p. 1297).

Under Obama, comprehensive sanctions were imposed on Iran. The US acts such CISADA, IFCA, NDDA and ITRSHRA sanctioned many of Iran's manufacturing

sectors and placed many Iranian banks, including the Central Bank of Iran, on the SDN list, isolating Iran's financial sector from the world. The US has imposed more secondary sanctions against Iran than ever before. In addition, the EU has largely supported these sanctions and imposed its own sanctions against Iran. Many Iranian banks were removed from the SWIFT system. Moreover, UN sanctions also put pressure on Iran. Even countries such as China's trade relations with Iran declined during this period (Bogdanova, 2022, p. 55).

The success of the sanctions during this period was also due to the US secondary sanctions. In general, US secondary sanctions have been more successful due to US dominance in the global economy and finance. This is because actors who do not want to be excluded from the US market end their relations with individuals or states targeted by US sanctions. The US Treasury Department leave foreign firms with two options: Either they can have access to the US financial system and the dollar, or they can do business with Iran. Due to this policy, Iran has struggled to find alternative trade and financing partners (Feaver and Lorber, 2015, p. 23).

As a result of these sanctions, Iran agreed to substantially restrict its nuclear program in exchange for the lifting of sanctions against it. In 2015, the JCPOA was signed between Iran and the permanent members of the UN Security Council plus Germany and EU.

Starting from 2018, the Trump Administration adopted much more severe sanctions, including secondary sanctions, against Iran. These sanctions are far more severe than those that helped bring Iran to the negotiating table under the Obama administration, and they are having a profound effect on the Iranian economy (Sly and Haidamous, 2019). However, it is observed that these sanctions have not achieved the desired goal.

There are many reasons for that (Salvin, 2019, p. 22-24). However, one of the most important reasons is that there was not any clear political goal of these sanctions. And there were different signals from the Trump administration about the political goals. While the Secretary of state Mark Pompeo, as indicated above, enumerated 12 demands for sanctions to be terminated, some senior officials in Trump administration mentioned about the collapse of the Islamic Republic of Iran (Luce et al, 2018).

Another important reason for the failure of the US sanctions on Iran during the Trump Administration was the lack of support from European and other countries for the termination of the nuclear deal and the re-imposition of sanctions on Iran. In fact, the EU has taken various measures to prevent its own companies from complying with the secondary sanctions imposed by the US on Iran. China also opposes these sanctions and calls for a return to the JCPOA (Al Jazeera, 2022).

Sanctions are more successful when they are a tactic incorporated into a well-considered strategy and they fail when they are employed as a substitute for such a strategy (Feaver and Lorber, 2015, p. 22). The US' Iran sanctions adopted during Trump Administration were used as a tool to harm Iran economically rather than as part of a strategy. For this reason, it was not supported by other major countries of the world and failed to achieve the desired goals.

The Trump administration sanctions failed because, far from destroying Iran's nuclear weapons capability, they led Iran to exceed the limits set out in the JCPOA, thus bringing Iran closer to a nuclear weapon. They have also failed to reduce Iran's regional influence and roll back its ballistic missiles development (Slavin, 2019, p. 21). However, as will be discussed in following section, these sanctions inflicted many harms on Iranian economy and its people.

### 4.3. Effects of the US Sanction on Iran

Since the purpose of economic sanctions is to achieve certain objectives by negatively affecting the economy of the target country, these sanctions are expected to primarily harm the target's economy. On the other hand, some studies suggest that, in general, the sanctions do not affect significantly the GDP of target countries but they have a powerful effect on foreign investment, corruption, ease of doing business, governance, and other measures of a country's hospitability to engagement with the international financial community (Rosenberg et al, 2016).

However, each country is affected differently by economic sanctions, depending on the characteristics of the sending and target countries. It can be argued that the US sanctions on Iran have harmed or have a high potential to harm Iran economically due to the US position in the world economy and some of the characteristics of the sanctions it imposes. For example, in the Trump era, after the US launched its

"maximum pressure" campaign, Iran's oil exports have plummeted, inflation has soared, and the Iranian people have suffered economic hardship, among others (Vogt and Jalilvand, 2019, p. 3).

Besides, the US sanctions have some important political impacts on Iran and the Middle East region. In the following, the impact of US economic sanctions on Iran and the region will be assessed with reference to the past decade. Since the sanctions during this era have gone through ebbs and flows, it is important and sufficient to make a reliable assessment.

### 4.3.1. Effects on Iran's Economy

The issue of the effects of US sanctions on the Iranian economy is important, as economic sanctions are by their nature trade and financial measures that aim to achieve specific objectives by imposing economic costs on the target. If economic sanctions do not have concrete effects on the target's economy, they are unlikely to change the target's specific policies.

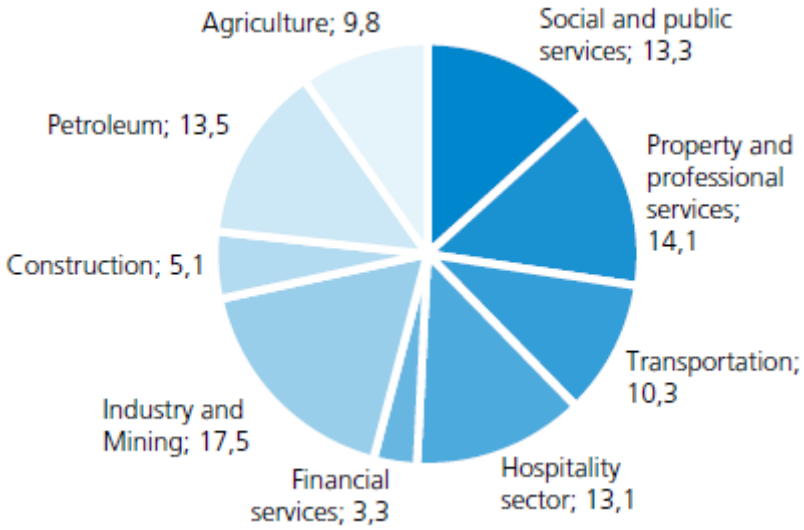
According to the assessment for the period between 1972 and 1999 Iran was classified as one of the rentier states. Rentier states relies on oil for at least 40 per cent of their economic revenue (Altunışık, 2014, p. 76-77). Today, however, Iran can no longer be considered a rentier state. Because, as seen in the Figure 2 below, it does not derive at least 40 per cent of its revenue from oil. Oil is still important for the Iranian economy. However, these numbers show that Iran has a diverse economy.

The Iranian economy is characterized by a high degree of government control, which has a significant impact on economic growth. Economic sanctions along with war and changes in government policies are factors that have significantly affected Iran's economic growth over the years (Abdelbary and ALshawa, 2023, p. 8).

There is a general consensus that the sanctions imposed by the US between 2010 and 2015 and since 2018 have caused great damage to the Iranian economy (Katzman, 2022, p. 52; Thomas, 2023a, p. 21). The US sanctions after 2010 together with other international sanctions have taken a severe toll on the Iranian economy. These sanctions threw its economy into two-years recession. In April 2015, the US Treasury Secretary estimated that Iran's economy was 15 to 29 percent smaller than it would

have been had sanctions not been escalated in 2012. In addition, more than $100 billion of Iran's assets are held in restricted accounts outside the country (Laub, 2015).

**Figure 2: Sectoral contribution to GDP in percentage (for the Iranian year 21/03/2017-20.03.2018)**




Source: Khajehpour, 2019, p. 10

According to the UN special rapporteur on unilateral coercive measures, sanctions have affected Iran's main export groups, banks and also several companies and nationals, including some pharmaceuticals and food production and this has led to inflation and growing poverty. Nevertheless, after the US withdrawal from the JCPOA in 2018 and the re-imposition of secondary sanctions, the US administration's expectation that the Iranian economy would collapse within a few months did not materialize (Khajehpour, 2019, p. 10).

In addition to directly affecting the Iranian economy, economic sanctions also have an impact on foreign investors' decisions to invest in Iran. Foreign investors, concerned about violating sanctions, refrain from investing even in non-sanctioned sectors of Iran. The lack of foreign investment has a negative impact on the Iranian economy, preventing the entry of modern technologies and reducing Iran's competitiveness on a global scale (Abdelbary and ALshawa, 2023, p. 9).

In addition, the fact that Iran's financial sector is under sanctions and almost all of its banks are on the SDN list makes it impossible for Iranian banks to find foreign correspondent banks, which makes it difficult for Iranian companies in terms of trade financing and foreign currency transactions. The inability to carry out international transactions led to a decline in trade, which had negative consequences on the country's overall economic performance (Abdelbary and ALshawa, 2023, p. 9).

After the JCPOA agreement in 2015, there were very positive expectations for the Iranian economy. During that time, Iranian President Hassan Rouhani portrayed the nuclear agreement as a big win for Iran that would set off a “gold rush” of foreign investment. However, these expectations did not materialize as desired and the easing of sanctions led to few business deals (Mostaghim and Richter, 2014). Contrary to popular opinion, the implementation of the JCPOA did not lead to a sudden windfall of 100-150 billion dollars for the Iran and a rapid wave of new investment (Rosenberg et al, 2016, p. 13).

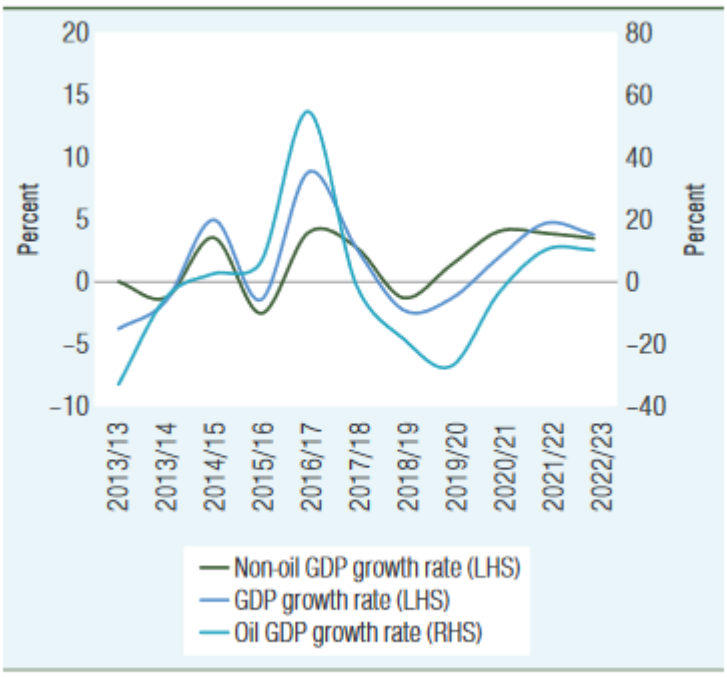
The sanctions adopted under the Trump administration were more severe than those under the Obama administration (Sly and Haidamous, 2019). These sanctions stalled Hassan Rouhani's efforts to boost economic growth. Rouhani tried to reform the old banking system, strengthen the private sector, increase transparency and attract much-needed foreign direct investment. In fact, these initiatives were starting to yield good results, but the re-imposition of secondary sanctions by the US changed the course (Zamirirad, 2019, p. 6).

#### 4.3.1.1. Effects on GDP

Iran GDP growth is affected by economic sanctions directly (Segal and Gerstel, 2018). After 2010, sanctions imposed on Iran's energy, financial and shipping sectors due to concerns over the country's nuclear program led to a decline in foreign investment, lowered oil exports and reduced access to international financial markets, all of which negatively affected the country's real GDP per capita growth (Abdelbary and ALshawa, 2023, p. 9). During 2011-2015, Iran’s economy contracted approximately 20% over the period. Only in 2014 it emerged with a modest growth (Laub, 2015) However, after 2015, Iran reached a nuclear deal with P5+1 and many sanctions were lifted. This led to an increase in foreign investment and a boost in oil exports, which

positively affected the country's real GDP (Abdelbary and ALshawa, 2023, p. 9). However, the JCPOA-related sanctions relief enabled Iran to achieve 7% annual growth during 2016-2018 (Katzman, 2022, p. 52). According to the World Bank's 2018 economic outlook, Iran's GDP decreased 1.5 percent in 2018 and would further shrink 3.6 percent in 2019 (Azodi, 2019). The IMF reported that Iran's economy declined by about 8% during March 2019-March 2020, however Iran achieved some growth in 2021, according to the World Bank (Katzman, 2022, p. 53).

**Figure 3: Iran's GDP development**




*Source*: Central Bank of Iran (CBI) and World Bank staff calculations.

Source: Iran Economic Monitor Spring/Summer 2023 by the World Bank

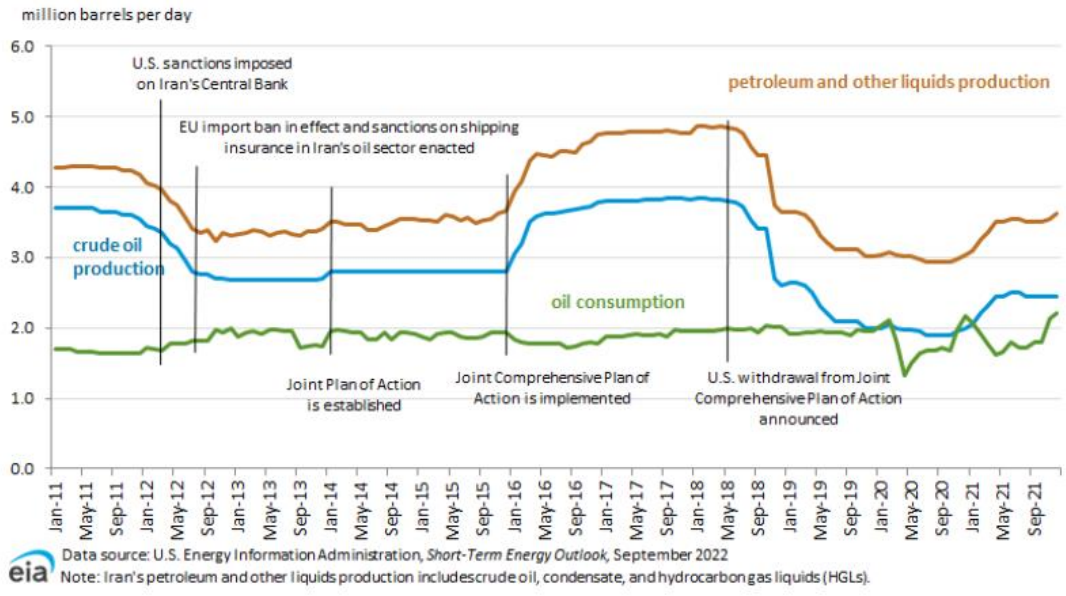
According to the World Bank's Iran Spring/Summer 2023 report, real GDP grew by 3.8 percent in 2022/23, driven by expansions in services and manufacturing. And despite expansion in the oil sector Iran economy continues to face growth constraints notably related to the economic sanctions, restricted access to external markets and to the latest technology, and much needed foreign investment (The World Bank, 2023).

#### 4.3.1.2. Effects on Oil Sector:

Iran has rich natural resources, especially oil, gas and minerals, which have traditionally contributed significantly to its GDP. Iran has the world's fourth largest proven crude oil reserves and the second largest natural gas reserves. The oil sector is a major contributor to GDP and historically oil exports have accounted for around 80% of Iran's total export revenues and 50% to 60% of government revenues (Abdelbary and ALshawa, 2023, p. 9-11). Knowing the importance of oil for the Iranian economy, the US administration, in order to put pressure on Iranian economy, has targeted Iran's oil sector through economic sanctions (Majidi and Zarouni, 2016, p. 90). Some US officials have even stated that their goal is drive Iran’s oil exports down to zero in an effort to maximize economic pressure (Sen, 2019)

Besides the political events such as Islamic Revolution and Iran-Iraq war, international economic sanctions also have significantly influenced Iran's oil industry (Abdelbary and ALshawa, 2023, p. 11). As can be seen in the Figure 4 below, US sanctions directly affect Iran's oil production and exports and create fluctuations.

**Figure 4: Oil production and exports of Iran**




Until 2010, unilateral sanctions on Iran were mainly imposed by the US. After this period, however, Iran's oil production declined sharply as many international actors imposed sanctions on Iran and the US designated many Iranian institutions, including

the Central Bank of Iran, and adopted secondary sanctions for third party persons and entities that handle oil exports from Iran. Until 2012, when sanctions tightened, Iran's crude oil production was between 3.5 million and 4 million barrels per day.

However, these figures declined after 2012 and hovered around 2.5 million barrels until 2015. Iranian oil exports also fell below 1 million barrels per day during this period. With these figures, revenues also fell sharply. In 2011, Iran's oil export revenues amounted to 95 billion dollars, while in 2012 they dropped significantly to 69 billion dollars (EIA, 2013). As a result, Iran's market share both globally and within the OPEC has contracted accordingly (Abdelbary and ALshawa, 2023, p. 11).

After the start of the nuclear negotiations, this trend started to reverse. At that time, Iran's oil exports exceeded 1 million barrels per day for the first time in almost three years (Lawler, 2022). After the implementation of the JCPOA and the lifting of sanctions, Iran has successfully rehabilitated its crude oil production and regained some of its lost share in the international oil market and became the world's fourth-largest oil producer in 2017, after the US, Saudi Arabia, and Russia (Abdelbary and ALshawa, 2023, p. 12). As shown in Figure 4, crude oil and condensate production peaked at 4.8 million barrels per day (mbpd) in January 2018. This production figure was even higher than the peak before the wave of comprehensive sanctions imposed in 2011 (Khajehpour, 2019, p. 12).

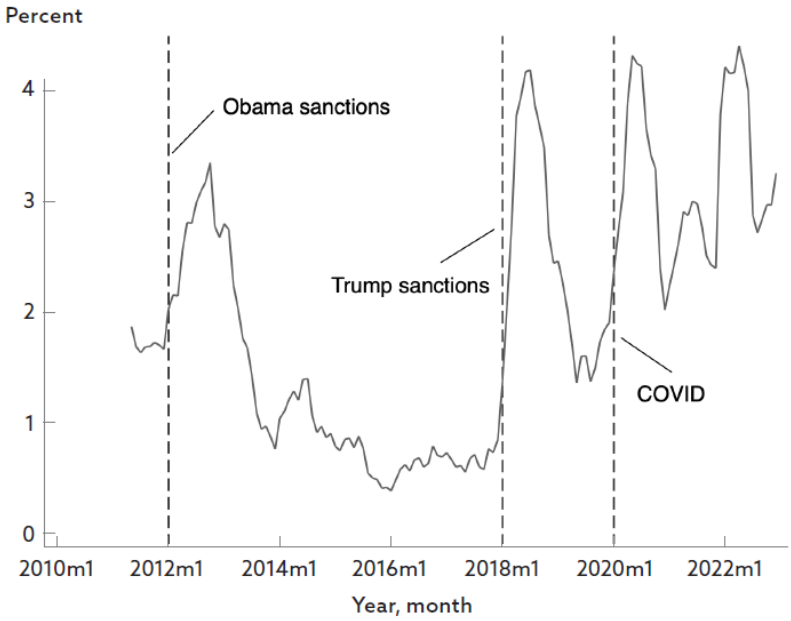
This positive picture in the oil sector entered a new downward trend with a new wave of secondary sanctions adopted in May 2018. This decline continued until 2021. Iran managed to increase exports in 2021 despite the US sanctions and Iran's oil exports exceed 1 million barrels per day for the first time in almost three years. However, those figures remain well below the 2.5 million barrels per day shipped before the reimposition of sanctions (Lawler, 2022). The oil production of Iran still remains around 1.1 million barrels per day (the World Bank, 2023). In 2023, Iran's oil sales increased and it is reported that this was due to unrecorded oil sales with China, the largest buyer (Xu, 2023).

#### 4.3.1.3. Effects on Inflation Rate:

Since the 1970s, inflation rates in Iran have been fluctuating and it is noted that sanctions also have played an important role in this. For example, in 2013, the year

after the sanctions were tightened, Iran's inflation rate rose to around 40% (Abdelbary and ALshawa, 2023, p. 10).

**Figure 5: US sanctions and inflation in Iran**




Source: Bajoghli et al, 2024, p. 88

As a result of Iran signing the JCPOA with the P5+1 and the measures taken by the Rouhani administration to reduce inflation, inflation fell to single digits after 2014 (Figure 5). However, the reimposition of the US sanctions in 2018 together with the devaluation of the national currency, pushed the inflation above 30 percent (Khajehpour, 2019, p. 11). The sanctions limited the ability of Iran's merchants to import goods, which had a negative impact on inflation. The inflation rate was about 45% in 2021 (Katzman, 2022, p. 53). Although mismanagement is also a factor in the inflation rate, the role of sanctions cannot be denied (Bajoghli et al, 2024, p. 88-89).

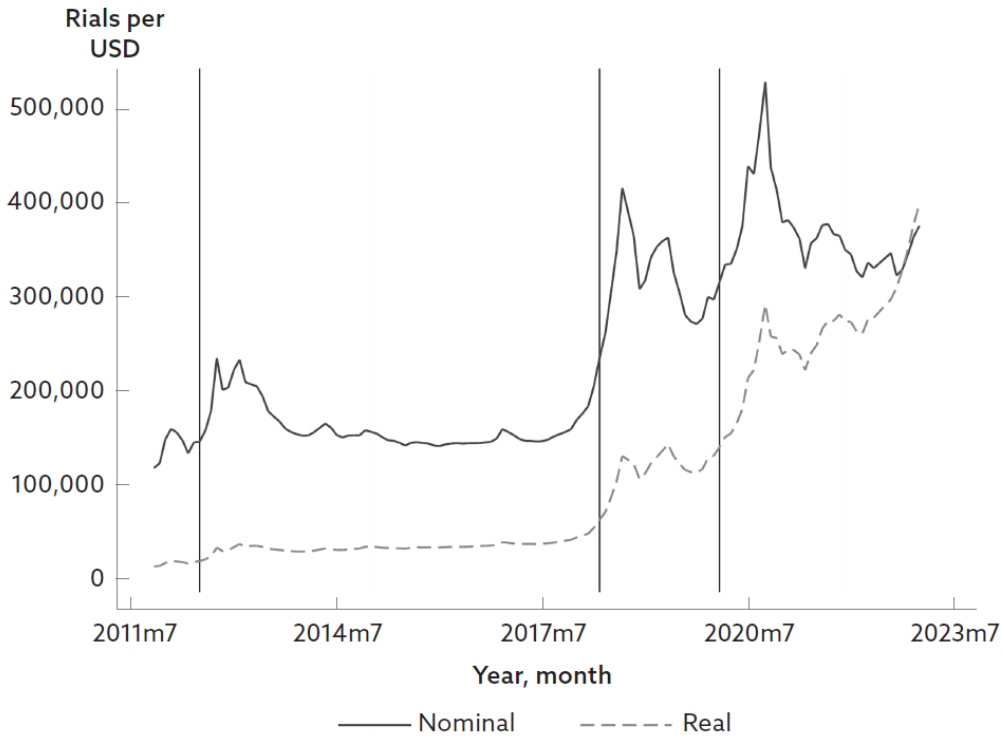
#### 4.3.1.4. Effects on Exchange Rate:

The exchange rate of the Iranian rial has been very volatile over the years. The exchange rate is affected by sanctions as well as wars and political developments in Iran. The severity of the negative impact of the US sanctions can best be seen in the value of the national currency, the rial (Khajehpour, 2019, p. 11).

The sanctions imposed on Iran by the US, the EU and the UN in the early 2010s had a negative impact on the Iranian economy in general, as well as on the exchange rates. As a result of sanctions, the Iranian rial suffered significant depreciation until the signing of the JCPOA, which provided for the lifting of some sanctions. (Abdelbary and ALshawa, 2023, p. 9-10). Between January 2012 and January 2014, the value of the rial fell by 56 percent (Laub, 2015)

During the period of JCPOA, the market value of the rial was about 35,000 to the dollar. However, the re-imposition of the US sanctions in 2018 caused the value of the rial to fall as low as 150,000 against the dollar by the November 5, 2018, and to about 265,000 against the dollar in September 2020 (Katzman, 2022, p. 53). The rial has lost significant value since the announcement of the US withdrawal of the JCPOA. The degree of vulnerability was so high in early 2018 that a government plan to unify the existing exchange rates not only failed, but led to the creation of an additional rate (Khajehpour, 2019, p. 11). The exchange rate is around 400,000 rials to the dollar in December 2023 (Figure 6).

**Figure 6: USD- rial exchange rates**




Source: Bajoghli et al, 2024, p. 86

### 4.3.2. Effects on Iran’s Regional Influence

There are contrasting views on the impact of US economic sanctions on Iran's foreign policy in general and its approach to other countries in the Middle East in particular. Some argue that sanctions have had little impact on Iran's foreign policy, while others argue the opposite.

Katzman (2022, p. 51) argues that the imposition or lifting of sanctions have had minimal effect on Iran’s regional behavior. Iran engaged heavily in Syria, Iraq and Yemen during the period 2011-2015, when sanctions had a significant negative impact on its economy. Iran continued its involvement in these regional conflicts after sanctions relief in 2016 and the re-imposition of the US sanctions in 2018 (Johnson, 2012). Despite the tides of international sanctions, Iran's intervention in four key Arab countries - Lebanon, Syria, Iraq and Yemen - and in its eastern neighbor Afghanistan is still in place (Slavin, 2019, p. 23). Iran is expanding its political influence in Syria and Lebanon, and with new economic investments, it may become in a position to compensate for the economic losses caused by the US sanctions and alleviate the pressure (Altunisik and Göçer, 2023, p. 140).

Despite the severe sanctions, Tehran has continued to provide more than 700 million dollars a year to Hezbollah and other groups in Lebanon and up to 100 million dollars a year to Hamas and other Palestinian groups. It has also transferred to Palestinian groups many weapons, including rockets and missiles, as well as the know-how and equipment to produce them (Donovan et al., 2023). Moreover, despite many unilateral and multilateral sanctions since the US invasion in 2003, Iran has established strong ties with various Shi’a and Kurdish groups in Iraq that its position and wishes in Iraq cannot be ignored (Parsi, 2019, p. 18).

The Trump administration justified its withdrawal from the JCPOA in part on the grounds that the lifting of sanctions under the agreement had increased Iran's ability to exert influence in the region. However, there is little evidence that the JCPOA has provided a political incentive or financial support to Iran's regional influence (Parsi, 2019, p. 19). According to the officials in Trump's administration, reimposing sanctions would put "maximum pressure" on Iran, depriving it of the necessary revenues to fund, arm and train regional allies and proxies, such as Lebanese

Hezbollah, Iraqi Shiite militias, Houthi rebels in Yemen, Hamas in the Gaza Strip, militant groups in Bahrain and Taliban factions in Afghanistan (Katzman, 2019). Contrary to the Trump administration's prediction of the consequences of US sanctions on Iran, Iran remains a key partner of Hezbollah in Lebanon, fights alongside the Assad regime in Syria, is deeply involved in Iraq and supports the Houthis in Yemen. Iran has also renewed its support for Hamas (Radio Farda, 2019).

Another view argues that Iran's foreign policy has been greatly affected by sanctions. According to this view, Iran has adopted a more aggressive and confrontational approach towards its neighbors due to the sanctions. As a result of this assertive foreign policy, Iran has experienced tensions in the region (Abdelbary and ALshawa, 2023, p. 20). Despite the US withdrawal from the nuclear deal in 2018 and the reimposition of sanctions against Iran, Iran showed “strategic patience" and complied with the JCPOA. However this policy changed in 2019. As a result, the security situation in the Persian Gulf has deteriorated. In June 2019, Iran shot down a US drone. Furthermore, there were attacks on several oil tankers in the Arabian Peninsula, as well as on oil refineries and pipelines in Saudi Arabia. Iran has denied responsibility for these attacks (Vogt and Jalilvand, 2019, p 3). However, previously Iran president Rouhani, referring to the secondary sanctions, said the US would not succeed in cutting Iran's economic ties with the region and the world and “if one day they want to prevent the export of Iran’s oil, then no oil will be exported from the Persian Gulf” (Reuters, 2018). Besides, Iran demonstrated its deterrence capabilities by using mines against vessels and shootingdown an advanced US drone. The technological and military sophistication of this latest attack fits a pattern in which Iran was trying to show the US administration that continued pressure on Iran could lead to war, and that it would be costly for the US as well. Moreover, attacks on Saudi oil facilities and refineries show that Saudi deterrence, including massive spending on US military equipment, is not effective and that Iran and/or the Houthis, with relatively cheap hardware, can cripple Saudi oil production and market credibility (Parsi, 2019, p. 19).

Another impact of the US sanctions on Iran's regional influence is said to be making it harder for Iran to fund its allies. For example, the Trump administration's reimposition of sanctions against Iran in 2018 made it difficult for Iran to finance its allies in the region, such as Hezbollah and the Houthis. Consequently, Hezbollah, one

of Iran's best-financed proxies, has been deprived of a significant source of revenue and has been forced to significantly cut its spending, including some benefits of its members. In addition, many Hezbollah members have withdrawn from Syria, where Hezbollah plays an important role in fighting on behalf of President Bashar al-Assad (Sly and Haidamous, 2019).

In conclusion, it can be argued that while the US sanctions have led to some changes in Iran's regional policy for financial or tactical reasons, they have not led to a change in its overall policy and strategy towards the Middle East. Because it is argued that Iran is a very ideological country and rational cost-benefit analysis does not work for it and the economic coercion caused by sanctions is not sufficient to alter Iran's fundamental foreign policy goal, which is increasing its influence in the Middle East (Johnson, 2012). Besides Parsi (2019, p. 17) argues that Iran's foreign policy actions are heavily influenced by power politics within the system and for the Iranian policymakers, threats against and opportunism towards the system are more influential than the money lost by sanctions

### 4.3.3. Effects on Domestic Policy

While some in Washington have occasionally mentioned regime change in relation to Iran, no US Administration has ever officially expressed this goal in the context of economic sanctions (Katzman, 2022, p. 52). Instead, the policy change is mentioned as one of the objectives of the US sanctions. However, the US sanctions seem to have had the opposite impacts. Instead of supporting moderates in Iran, the recent US sanctions and maximum pressure campaign undermined President Hasan Rouhani and bolstered Iranian hardliners. One of the main reasons for this was the disappointment created by the US sanctions during Trump administration. These sanctions illustrated that negotiations with the US do not produce better relations and normalization with the US. Accordingly, it is noted that the US policy of maximum pressure and sanctions has brought more radical voices to the fore in Iran (Zamirirad, 2019, p. 6). As if to confirm that the Iranian hardliners overwhelmingly won Iran’s February 2020 parliamentary elections and a hardliner, Ibrahim Raisi, won the June 2021 presidential election (Katzman, 2022, p. 52).

After the US withdrew from the nuclear deal and reimposed secondary sanctions on Iran, the positive economic outlook under Rouhani government began to deteriorate. This weakened the government. (Zamirirad, 2019, p. 6). The government has lost significant political ground, with a new economic crisis looming and harsh criticism of the president for failing to fulfill his economic promises.

While the government was weakened, other power centers in Iran were less affected and, in some cases even strengthened by the sanctions. One of them is the Islamic Revolutionary Guard Corps (IRGC). The IRGC is very important even for the Iran's economy, active in many sectors from the energy market to communications, agriculture and transportation. The IRGC's corporate affiliates are assessed by some experts as controlling at least 20% of Iran's economy. Rouhani sought to push the IRGC out of Iran's economy through divestment, but with limited success (Katzman, 2022, p. 54). The IRGC also controls Iran's borders, thereby controlling smuggling and profiting significantly from sanctions evasion measures. But US sanctions are not only enriching the IRGC; they are also contributing to the government's withdrawal from parts of the economy, allowing actors like the IRGC to take over (Zamirirad, 2019, p. 6).

It is noteworthy that one of the arguments put forward by the Trump administration when reimposing sanctions in 2018 was that the lifting of sanctions had increased the IRGC revenues, enabling it to fund its proxies in the Middle East and pose a national security risk to the US. However, Batmanghelidj (2018) argues that the funding for proxies is by no means dependent on revenues from Iran's legitimate economy. He stresses that for groups such as the IRGC, the real opportunities are in the black market and lucrative smuggling in oil, cash, narcotics, and consumer goods. Therefore, as the US sanctions expand, so does the scale and value of smuggling and black market controlled by the IRGC. A 2007 estimate of the IRGC's smuggling operations suggests annual revenues of $12 billion. Consequently, it is fair to say that the sanctions imposed under Trump have strengthened the IRGC rather than weakening it.

While there seems to be an expectation in the US administration that economic pressure on the Iranian people will lead to greater unrest and protests against the state, research shows that economic sanctions often harm opposition groups and have little

impact on the coercive capacity of the state (Zamirirad, 2019, p. 8). States are more repressive in terms of human rights when faced with severe economic sanctions (Peksen, 2009). Moreover, there does not seem to be much connection between political protests in Iran and sanctions. In late 2017 and in November 2019, unrest broke out over economic conditions and government repression. U.S. sanctions were suspended at the time of the unrest in late 2017. Besides, the large Green Movement uprising was in 2009-2010 and there were few secondary sanctions during that time (Katzman, 2022, p. 52)

### 4.3.4. Effects on Nuclear Program and Defence Capabilities

Iran's nuclear program is a controversial issue in international relations and it is the cause of many US sanctions as well. Iran calls its nuclear program peaceful and claims that it is a legimate right to peacefully develop its nuclear program to access nuclear energy (TASS, 2023; Anadolu Agency, 2013). On the other hand, without invoking Iran's right to peaceful nuclear energy and uranium enrichment, which states are authorized to do under the Treaty on the Non-Proliferation of Nuclear Weapons, the US claims that Iran is conducting nuclear activities for military purposes (Nephew, 2017, p. 64).

Economic sanctions imposed on Iran have significantly affected its nuclear program and hampered its ability to develop its nuclear program. Because the sanctions on Iran have made it difficult for Iran to acquire the necessary technology and materials, such as advanced centrifuges and other equipment for the program. The sanctions restricted Iran’s ability to enrich uranium, which is crucial for developing nuclear weapons. Besides, the sanctions restricted Iran’s ability to access the necessary financing (Abdelbary and ALshawa, 2023, p. 18)

The international sanctions imposed on Iran in 2011-2015 led to Iran's acceptance of the JCPOA, which limited Iran’s nuclear program (Katzman, 2022, p. 50). During the period leading to JCPOA, not only the US but also the EU imposed heavy sanctions against Iran. The pain inflicted by the P5+1 (composed of China, France, Germany, Russia, the United Kingdom, and the US, under the coordination of the EU) has undermined Iran's ability to resist the sanctions and created the need to reach a negotiated settlement (Nephew, 2017, p. 102).

However, Katzman argues that while sanctions between 2011 and 2015 might have made Iranian leaders more open to negotiating nuclear limits, they never prevented Iran from advancing its nuclear program. During 2016-2019, when Iran was adhering to JCPOA limits, its breakout time[19] was estimated to be about one year (Katzman, 2022, p. 50-51). According to International Atomic Energy Agency's last quarterly report, which was published in November 2021, experts have generally put breakout time at around three to six weeks but say weaponization would take longer- often roughly two years (Murphy, 2022). Today, it is said that Iran would need only about a week to produce enough for its first nuclear weapon (Albright, 2024).

In response to Trump Administration to reimpose certain sanctions Iran accelerated its nuclear progress. According to International Atomic Agency (IAEA) by enriching at 60 percent, Iran is at the nuclear weapons grade, while commercial enrichment grade is 2 or 3 percent. Additionally, according to IAEA report, Iran has not fulfilled its obligations regarding IAEA controls. Accordingly, Iran has repeatedly failed to declare nuclear material and related activities to the IAEA, denied or delayed IAEA inspectors' access to facilities containing such material, attempted to clean up facilities before inspectors arrived to cover up activities, and repeatedly provided false responses to IAEA investigations (Levite, 2021).

The defense is another Iranian economic sector that has affected by sanctions. Iran's ability to finance its military depends mainly on its oil revenue, which declined after the sanctions were imposed (Abdelbary and ALshawa, 2023, p. 19).

Besides, in early 2000s, indications of uranium enrichment spurred international sanctions by the UN, EU and the US. While these sanctions prevented Iran’s access to nuclear-related goods it also restricted Iran’s ability to purchase other arms from third countries (Laub, 2015). However, the US arms embargo against Iran goes back much further, to 1984, the year Iran was designated as a state sponsor of terrorism. International sanctions have made it difficult for Iran to acquire advanced weapons systems that have been vital in recent conflicts (Katzman, 2014).

[19] The time needed to accumulate enough highly-enriched uranium for one nuclear weapon.

US and EU sanctions on Iran's missile programs continued even after the implementation of the JCPOA. However, as demonstrated by Iran's September 14, 2019 strike on Saudi Arabia's critical energy infrastructure and its January 2020 attack in Iraq in retaliation for the assassination of Qassem Soleimani, Iran's missile capability has not only not been negatively affected by these sanctions, but has actually increased in scale and sophistication (Katzman, 2022, p. 51).

Sanctions and UN Resolution 2231 have prevented Iran from buying significant amounts of major combat systems since the early 1990s. However, the UN ban on Iran's importation and exportation of weaponry expired on October 18, 2020, according to the UNSC. And unilateral US sanctions couldn't prevent Iran from strengthening its domestic defense industry. Instead, it has forced Iran to develop an indigenous defense industry (Abdelbary and ALshawa, 2023, p. 19). According to the US reports Iran continues to develop increasingly advanced military equipment, including armed drones, missiles, and rockets, some of which are transferred to the regional armed factions that Iran supports (Katzman, 2022, p. 51). The 2019 edition of the Defense Intelligence Unit's Iran Military Power describes Iran's advances in detail on ballistic missiles. According to report, Iran has the largest and most diverse ballistic missile arsenal in the Middle East, with a substantial inventory of close-range ballistic missiles, short-range ballistic missile, and medium range ballistic missiles that can strike targets in the region up to 2,000 kilometers from Iran's borders, as far as Israel and southeastern Europe. Iran has used its missiles against targets in Iraq and Syria. The report adds "Iran has an extensive missile development program, and the size and sophistication of its missile force continues to grow despite decades of counterproliferation efforts" (Cordesman, 2020, p. 94-95). This indicates that despite being the object of an arms embargo, Iran has developed increasingly lethal weapons systems (Slavin, 2019, p. 23).

It can be argued that sanctions have had varying effects on Iran's defence capabilities. Iran's defense capabilities have not noticeably either slowed down or advanced more rapidly since the severe sanctions in 2011 (Katzman, 2022, p. 52). However, the types of sanctions are important with regard to their effects on the Iran's defense programs. Secondary sanctions play a decisive role in this regard. Because when the US imposes secondary sanctions on Iran's missile program and defense industry, Iran cannot

acquire foreign technology for its missile development and production. Because Iran needs foreign technology to produce its missiles. Therefore, limiting access to these technologies has prevented Iran's ability to produce advanced missiles. Sanctions also led Iran to shift its focus towards domestically produced weapons and equipment (Abdelbary and ALshawa, 2023, p. 19).

### 4.3.5. Effects on Iran's Economic Relations with Other Countries

One of the main objectives of the US sanctions on Iran has been to undermine Iran's trade relations with other countries and thus further damage Iran economically. One of the most important tools used by the US in this context is secondary sanctions, which it uses as a threat against third parties and countries that maintain business relations with Iran. Therefore, the US sanctions are one of the factors that affect Iran's trade relations with other countries together with oil price fluctuations, the pandemic, and the country's trade policies (The World Bank, 2023, p. 15). On the other hand, US sanctions have also led Iran to develop economic relations with some countries.

During the international pressure between 2012 to 2015, European companies did completely stop importing Iranian oil. At a time when international pressure was highest on Iran over its nuclear program, in addition to US sanctions, the EU also had restrictions on Iran (Dagres and Slavin, 2018). The re-imposition of secondary sanctions during Trump administration has led EU companies, which could not forgo the US market, to terminate their Iranian enterprises despite the EU countermeasures prohibiting compliance with US sanctions (AP News, 2021).

Turkey considered the Trump administration's May 2018 withdrawal from Iran nuclear deal as an "unfortunate step" and continued its dialogue and cooperation with Iran even though the two countries came face-to-face militarily on the ground in Idlib in Syria in 2020 (Altunısık, 2020, p. 7). The Turkish government declared that Turkey could only agree to abide by the UN sanctions and not the additional sanctions imposed by the US, citing Ankara's interest to increase trade with its neighbors, including Iran (Altunışık and Martin, 2023, p. 86).

However, the economic sanctions of Iran had a significant impact on Iran's relationship with its neighbors and affected its economic relationships with many countries in the region, including Turkey. For example, Iran's oil exports to Turkey, a significant trade

partner, fell by more than 70% from 2018 to 2019 (Abdelbary and ALshawa, 2023, p. 20).

On the other hand, some countries, such as China, have maintained and even improved their trade relations with Iran (Reuters, 2022b). After the signing of the nuclear deal, China began to increase economic relations with Iran. The US withdrawal from the JCPOA has further bolstered this relationship (Altunışık and Göçer, 2023, p. 141). China became the biggest buyer of Iranian oil and Iran's largest trading partner. It also set up an oil-purchasing platform denominated in yuan after the re-imposition of the US sanctions (Dagres and Slavin, 2018). In 2021, the Comprehensive Strategic Partnership Agreement was signed with China. The agreement also covers oil production, transportation and security and a reference to the use of national currencies in international banking activities (Altunışık and Göçer, 2023, p. 142).

The negative impact of sanctions on Iran's exports with other countries has been significant, with exports declining by 17 percent annually between 2012-2014 and 26 percent between 2019-2020, when US sanctions were reimposed. Since the late 1990s, the share of trade with Asian countries has been increasing at the expense of European partners. This trend became more evident during periods of sanctions escalation. In this context, the increase in trade with China is noteworthy. While China accounted for only four percent of Iran's total trade in the late 1990s, by 2023 it had risen to 30 percent (The World Bank, 2023, p. 15).

On the other hand, Iran's economic relations with Shi'ite countries have increased due to political and military engagement and in spite of or because of the US sanctions. In this sense, Syria and Lebanon stand out. Iran's economic relations with the eastern Mediterranean have continued to increase since 2010, after the Arab uprising and the Syrian war. The IRGC plays an important role in this regard, and through its subsidiaries has established a number of business links in Syria, including the establishment of a mobile phone network. Likewise, Iran's trade relations with Lebanon have fluctuated, but this has been due to the economic situation in Lebanon rather than the US sanctions. Iran's exports to Lebanon have been characterized as a defiance to the US sanctions (Altunisik and Göçer, 2023, p. 139-140).

### 4.3.6. Effects on Human Rights in Iran

The US imposes extensive economic sanctions on Iran, some of which are justified by Iran's human rights violations. For example, Executive Order 13553, adopted in 2010, regulates that Iranian government officials involved in the commission of serious human rights violations against Iranian citizens will be sanctioned by asset freezing. In fact, based on this Executive Order, on April 24, 2023, the OFAC sanctioned four senior officials of the Iranian Law Enforcement Forces and IRGC, the Iranian security forces responsible for the suppression of the protests that erupted in September 2022 following the arrest and death of Mahsa Jina Amini (U.S. Department of Teasury, 2023d).

It is unclear whether the real objective of the US is to make the Iranian government more respectful of human rights, but studies indicate the opposite. According to Peksen's study (2009) on the effect of Sanctions on human rights, economic sanctions cause further deterioration of human rights conditions in target countries. Besides, this study also points out that comprehensive sanctions seem to be more detrimental to human rights than targeted sanctions.

Katzman argues that it is difficult to establish a direct relationship between US Sanctions and Iran's human rights practices (2022, p.56). Iran suffered many sanctions after 2010, including comprehensive US sanctions. After 2016, most sanctions were lifted. However, US secondary sanctions were reintroduced in 2018. Despite all these changes in sanctions, the US State Department 2020 Country Reports on Human Rights states that there has been almost no change in Iran's human rights practices.

However, it is not possible to say that the US sanctions have no impact on human rights in Iran. The intensification of US sanctions and the regime change statements of some US administration officials during these periods increase the threat perception of the Iranian state. At such times, the state displays a more repressive approach towards the people. The further securitization of domestic sphere in Iran is considered a by-product of the sanctions regime (Zamirirad, 2019, p. 8). During these periods, for instance, holders of dual citizenship were seen as a threat and sometimes even accused of espionage.

### 4.3.7. Humanitarian Effects

One of the most controversial aspects of economic sanctions is the negative humanitarian impact they have or may have on people in the target country. According to Pekşen (2011, p. 248), economic sanctions can worsen health conditions by restricting access to basic needs, disrupting the economic well-being of civilians and undermining the effective functioning of health services. In the case of comprehensive economic sanctions, as was the case in Iraq in the 1990s, this impact would be greater. In the case of secondary sanctions, this effect is expected to intensify as the sanctioning country forces other countries and individuals to comply with its sanctions. The US economic sanctions regime against Iran is both comprehensive and heavily reliant on secondary sanctions. Therefore, the humanitarian impact of US sanctions on Iran would be expected to be worse. Peksen confirms this arguement and notes that the human cost of US sanctions is greater.

However, the US administration claims that, by prioritizing smart sanctions, their sanctions are carefully designed and tailored to minimize the unintended negative humanitarian impact (Feaver and Lorber, 2015, p. 22). Accordingly, OFAC indicates that the sale of food, agricultural commodities, medicine, and medical devices to Iran is not subject to sanctions, and that US persons may sell these products to Iran without a license (U.S. Department of Treasury, 2013).

It is recognized that the US sanctions on Iran have socio-economic as well as economic effects (Khajehpour, 2019, p. 14). The US exemption of humanitarian commodities from its economic sanctions has also not worked in practice. There are several reasons for this, such as restrictions on trade, the reluctance of financial institutions to process transactions related to Iran, as well as the Iranian government's misguided policies (Azodi, 2019).

A Report by Human Rights Watch shows that the broad scope of the economic sanctions of the US, especially on the global banking system, has restricted Iranians' right to health by interfering with access to healthcare, education, and other human rights (Atlantic Council, 2019). A UN official, after a visit to Iran, said that economic sanctions had increased inflation and poverty, worsened overall humanitarian conditions (Thomas, 2023a, p. 22).

One of the most important humanitarian impacts of the US sanctions is seen in the field of health. Reports indicate that medicine prices increased by 50 to 75 percent between 2012 and 2013, and with the economic downturn and increase in unemployment, medicines have become less affordable for Iranian patients (Azodi, 2019). And after the reimposition of sanctions in 2018, the cost of health and medical services increased by about 19 percent in spring 2019 compared to the previous year. International companies refrained from selling medical or pharmaceutical products to Iran, fearing the risks of sanctions. This has contributed to additional shortages of essential products, such as paracetamol or even cancer medication (Zamirirad, 2019, p. 7-8).

One of the consequences of US sanctions is declining state revenues and the impoverishment of the Iranian people. The oil embargo pushed down Iran's oil revenue from $100 billion in 2011 to approximately $50 billion the following year (Azodi, 2019). Trump administration officials stated that they had wiped $10 billion from Iranian revenues since November 2018 (Sly and Haidamous, 2019). These declines in revenues have reduced the state's ability to invest in health, education and social security services. Consequently life has become difficult for many poor Iranians. Other living costs are also rising due to sanctions. Housing costs increased by nearly 20 percent and meat prices by 57 percent, making meat products unaffordable for many low-income households. This has led to large sections of the population relying on state subsidies to make ends meet, while the middle class has been undermined (Zamirirad, 2019, p. 8).

The report, Class Bias of Economic Sanctions in Iran, which assessed the impact of sanctions on household incomes between 2010 and 2020, notes the consequences of sanctions as follows (Kalb, 2023, 1).

- Household consumption and welfare have been severely affected by the sanctions on Iran.
- Social groups have been affected differently by sanctions, with a particularly strong impact on agricultural workers and civil servants.
- The easing of sanctions in 2016-2017 led to an increase in household welfare.

- The differential impact of sanctions on different classes sheds light on the gender, ethnic and regional intersections in recent protest movements led by women and minorities.

### 4.4. Iran's Reactions to the US Sanctions

Iran has resorted to both legal remedies against the US sanctions, which it considers illegal and unjust, as well as various political and evasive measures to circumvent the sanctions. These are discussed below.

#### 4.4.1. Challenging the Sanctions in the Courts

One of the first thing that Iran does against US sanctions is challenging the US sanctions decision in the US courts. There are a number of US legal documents or executive orders ordering the freezing of Iranian assets in US territory. Iran opposes these decisions in the US courts. Besides, Iran challenges the US sanctions before the ICJ.

##### 4.4.1.1. Challenging the Sanctions in the US Courts

Iran consistently pursues lawsuits in US courts against US sanctions decisions and rules that it considers unlawful. However, it is generally observed that US courts have ruled in favor of the US state, in some cases, even when the practice in question is contrary to established legal principles of US law.

In this regard the *Bank Markazi v. Peterson* (136 S. Ct. 1310 (2016)) ruling is very important. Because this decision has shown how difficult it is for Iran to obtain a favorable ruling against US sanctions in US courts. This is because the US Congress, disregarding the principle of legislative generality, passed a law that Iranian funds in the US could be seized to be paid to certain victims, and Iran's lawsuit against this law was rejected both in the lower court and in the Supreme Court.

The 1983 Beirut Marine Barracks bombings, which the US government believes were carried out by Iran but Iran denies any link, killed hundreds of American and French servicemen and wounded dozens more. The surviving victims and relatives of the deceased have sued the Iranian state and asked for compensation. However, since the Iran did not have enough assets in the US to cover these amounts, they sued the Central

Bank of Iran and blocked its assets in the US. However, since the Central Bank of Iran enjoys immunity, the US Congress enacted the ITRSHR in 2012 in order for the claimants to benefit from these assets (Zoldan, 2016, p. 1- 2)

The Central Bank of Iran argued that the law violated the separation of powers by allowing the Congress to decide the merits of a legal dispute that should be resolved by the federal courts hearing the cases (Morrison, 2016). The Bank further argued that ITRSHR was constitutionally defective because it applied only to a single, pending case identified specifically in the statute itself. The effect of statute is thus was the legislative settlement of a particular dispute among the parties (Zoldan, 2016, p. 3).

However, both the United States District Court for the Southern District of New York and, on appeal, the United States Court of Appeals for the Second Circuit upheld the constitutionality of the ITRSHR and allowed the plaintiffs to enforce their judgment against the account holding approximately 2 billion USD in cash.

Zoldan (2016, p. 1) states that by allowing the US court to change the law applicable to an ongoing dispute, the US court made it clear that it was allowing Congress to pick the winner in that case and did not recognize a constitutional principle of legislative generality (Zoldan, 2016, p. 1).

Iranian officials condemned as "theft" the US Supreme Court's ruling that Iran's frozen assets should be paid to the American families of those killed in attacks blamed on the Islamic Republic (Hafezi, 2016)

#### 4.4.1.2. Challenging the Sanctions in the International Court of Justice

When its claims are rejected in the US courts, Iran's legal resort is to appeal to the ICJ. In this regard, when the US Supreme Court ruled that Iran's frozen assets should be paid to the American families in 2016, Iran has filed a lawsuit against the US in the ICJ. Iran also filed a lawsuit against the US at the ICJ after the Trump administration reimposed many secondary sanctions against Iran in 2018.

In both of these cases before the ICJ, Iran relied on the 1955 Treaty of Amity, Economic Relations, and Consular Rights with the US. The fact that such a treaty was

in force between the two countries until 2018, despite the longstanding hostility between the US and Iran, is in itself a remarkable fact worthy of discussion.

In the case initiated in 2016 (Certain Iranian Assets -Islamic Republic of Iran v. United States of America), the Court eventually delivered its judgment on the merits on March 30, 2023. The Court ruled that several US measures were in violation of the 1955 Treaty of Amity and awarded compensation to Iran. However, as the Court accepted some of Iran's requests and rejected others, in their respective statements, both countries considered the judgment a victory (Ruys and Deweerdt, 2023, p. 1).

On June 14, 2016, the Islamic Republic of Iran filed an application to initiate proceedings against the US with regard to a dispute concerning "the adoption by the US of a series of measures that, in violation of the Treaty of Amity, Economic Relations, and Consular Rights signed at Tehran on 15 August 1955". In its petition to the Court, Iran stated that the US measures had a serious adverse impact upon the ability of Iran and of Iranian companies to exercise their rights to control and enjoy their property, including property located outside the territory of Iran and within the territory of the US.

In particular, Iran requested the Court to adjudge, order and declare that the US had breached certain obligations under the Treaty of Amity and that it was under an obligation to make full reparation for the damage thus caused to the Islamic Republic of Iran. The Court concluded that the turnover of assets of other Iranian agencies and instrumentalities to US victims of Iran's sponsorship of terrorism was inconsistent with the Treaty. Due to the termination of the Treaty of Amity in 2018, the Court could not order the cessation of the US acts. Instead, the Court ordered the US to compensate Iran for the treaty violations (Ruys and Deweerdt, 2023, p. 1).

As mentioned above, Iran applied to the ICJ again in 2018 on the basis of the Treaty of Amity after the US withdrew from the JCPOA and reimposed the secondary sanctions. Iran's Foreign Ministry Spokesman, on July 2018, announced that in order to make up for the US re-imposition of secondary sanctions Iran put on its agenda the filing of a complaint with the ICJ against the US for breaching its international obligations, especially with regards to the Treaty of Amity, Economic Relations and Consular Rights in 1955. Articles 4, 7, 8, 9 and 10 of the 1955 Treaty of Amity were

alleged to have been violated by the re-imposition of sanctions (Tasnim News Agency, 2018).

After this latest suit filed by Iran on the Treaty of Amity, the treaty was finally terminated by the US in October 2018. The US Secretary of State Pompeo announced the termination, which he called a decision 39 years overdue, arguing that Iran had sought to interfere with US sovereignty and had abused the ICJ for political and propaganda purposes (US Department of State, 2018). This case is still pending at the ICJ.

Although the ICJ is the highest court of the UN and its decisions are binding, it has no power to enforce them. This is why countries, including the US, have at times ignored these rulings.

### 4.4.2. Iran's Other Reactions

In addition to legal actions, Iran has resorted to other means to circumvent US sanctions. These include improving relations with Eastern countries, developing new payment methods with Europe and, last but not least, various sanctions circumvention practices.

#### 4.4.2.1. Improving Economic and Political Cooperation with Eastern Countries

As mentioned above in the section on the effects of sanctions on Iran, Iran's trade relations with some countries have increased considerably after the recent secondary sanctions imposed by the US. Eastern countries such as China are at the forefront of these countries. The others are Russia and India. Iran's political and economic rapprochement with these countries dates back to the past as a necessity of its geography and being a cusp state (Akder, 2014, p. 88). However, especially after the US sanctions, this policy has imposed itself.

This is also in line with the "Look East" policy that started in 2005 under Ahmadinejad. This policy, which seeks to balance US pressure through cooperation with Eastern countries, has become more meaningful with the increasing sanctions pressure. On the other hand, the easing of sanctions by the US and other Western countries negatively effect this policy. Iran's status as a cusp state allows it maneuver in this way (Altunışık and Göçer, 2023, p. 141).

China's historical position on sanctions has been to oppose unilateral sanctions like those of the US and to recognize only sanctions imposed by the UN. However, China reduced its investments in Iran oil during the Obama administration thanks to successful negotiations with the US. However, the negative US attitude towards China during the Trump Administration has weakened the US position when it comes to any cooperation with China on Iranian oil sanctions. Following the re-imposition of sanctions, Iranian Foreign Minister Javad Zarif met with foreign leaders for support and his first visit was to Beijing. Following the visit, the Chinese state news agency Xinhua announced the launch of a new rail link between Bayannur in China's Inner Mongolia Autonomous Region and Iran (Lavietes, 2018).

Iran's "look East" policy started to reach its peak after 2018, when US sanctions increased. In 2021, a 25-year Comprehensive Strategic Partnership Agreement with China and the beginning of Iran's accession process to the Shanghai Cooperation Organization. But there is also a political message in Iran's efforts to improve its relations with eastern countries like China and Russia. Iran has been negotiating with the US to lift sanctions and return to the nuclear deal and has been using the "Look East" policy as a bargaining tool in these negotiations (Altunışık and Göçer, 2023, p. 141-142).

Recent disputes have brought Russia and Iran closer together, but Iran is also trying to get closer to Russia and develop trade after the tightening of US sanctions. However, it is argued that despite their political and military cooperation on Middle Eastern affairs, their trade cooperation remains limited and it would not be at the expense of Russian interests and its big companies (Shamsaldin, 2018, p.8). On the other hand, Russia's conflict with Ukraine and the severe Western sanctions imposed on it also prevent Iran from receiving the support it expects from Russia.

Another important country for Iran is India. Iran has been signing major projects with this country for a long time. US sanctions not only increase the importance of these projects, but also prevent their realization. India's stance on the US sanctions against Iran has been quite cautious given its strategic relations with the country (Shamsaldin, 2018, p. 9). One of the major investment projects between Iran and India is the construction of the Chabahar port. However, it seems that this project continues

despite the US sanctions. It is reported that India has received an exemption from Washington for the continuation of this project (Gilani, 2020).

#### 4.4.2.2. To Set Up a New Financial Channel Between Iran and Europe

EU is the largest economic bloc on the world and an important actor in the international arena. The EU is also among the actors that most frequently uses sanctions as foreign policy tools (Giumelli, 2019, p. 117). However, it should be noted that EU and US are also the world's largest trading partners and have the most integrated economic relations in the world. The interdependence of these two economies makes EU countries more vulnerable to the US secondary sanctions that restrict their trade with third countries such as Iran. For example, after the US reimposed sanctions on Iran in 2018, European investments and transactions with Iran worth 13 billion dollars had to be canceled (Ruys and Ryngaert, 2020, p.5). Therefore, any steps taken between Iran and the EU to frustrate US sanctions must be considered in light of this reality. And the failure of efforts to establish an alternative payment system to SWIFT between Iran and the EU after 2018 is partly related to this.

There have been times when EU countries have resolutely opposed and frustrated US secondary sanctions against Iran. The 1996 Iran and Libya Sanctions Act is an example. Such actions showed that the EU was able to protect itself from US secondary sanctions by using its global power. However, despite this example, there are also criticisms that EU countries fell into line with US policy regarding Iran after 2010. For example, in the period between 2010 and 2012, instead of raising a strong objection against the secondary sanctions imposed by the US on Iran, EU countries followed the US policies and imposed sanctions on Iran as well (Meagher, 2020, p.1013-1014).

However, generally, there was no conflict between the EU and US at the time over the sanctions against Iran because the respective foreign policies these two sides of the Atlantic were parallel (Meagher, 2020, p. 1014). If the EU institutions resisted the measures of the US in the context of Iran sanctions, the US sanctions would not be able to target them and be successful (Geranmayeh and Rapnouil, 2019, p. 2).

Following the UNSC Resolution 1929 (2010) on Iran's enrichment of uranium and one month after US President Obama signed the Comprehensive Iran Sanctions,

Accountability, and Divestment Act of 2010 (CISADA), which includes secondary sanctions on financial institutions, the EU expanded the scope of its sanctions on Iran beyond the UN sanctions. Accordingly, EU Regulation 267/2012 prohibited financial messaging service providers such as the Society for Worldwide Interbank Financial Telecommunications (SWIFT) from providing services to Iranian banks subject to EU sanctions (Sossai, 2020, p. 69-70).

SWIFT, which until then had not excluded any country from the system, under pressure from the EU, cut off the access of several sanctioned Iranian banks, including Mellat, Saderat and Sepah (Blenkinsop and Younglai, 2012). Thus, Europe set a dangerous precedent by allowing the US secondary sanctions to directly deprive European companies of their business partners (Meagher, 2020, p.1014).

Therefore, the secondary sanctions of the US against Iran were part of a foreign policy more or less coordinated with that of the EU during Obama administration. In the following period, during Trump Administration, the US will be seen to take the example of depriving European companies of their business partners even further. The EU was affected by US sanctions decisions, especially secondary sanctions, significantly. And European governments have, for the first time, begun to think seriously about how to escape or even counter the US measures (Geranmayeh and Rapnouil, 2019, p. 2).

On May 8, 2018, the Trump administration announced the US withdrawal from the nuclear deal with Iran, the JCPOA, and on the same day, a number of secondary sanctions in the Iranian context were decided to be adopted or reimposed in the specified dates indicated in the OFAC announcement. These sanctions included sanctions which were removed under the JCPOA such as transactions related to purchase or sale of Iranian rial, transactions related to significant Iranian rial accounts held outside Iran, and transactions related to financial messaging services provided to the Central Bank of Iran and other listed Iranian financial institutions.

The EU, on the other hand, declared that the JCPOA nuclear deal would be fully and completely valid as long as Iran complies with its commitments regarding nuclear deal (Sossai, 2020, p. 62). Besides, in order to protect EU-based companies from the re-imposes US secondary sanctions, EU foreign policy makers took several measures

(Lohmann, 2019, p. 2). One of the EU's response to the US sanctions was reviving the blocking statute in the 90s (European Union, 2018). In the same vein, the EU prohibited European companies from complying with US sanctions while introducing a clawback provision to recover incurred damages in European courts (Lohmann, 2019, p. 3). This regulation was seen more as a political tool, as its rules were unclear and difficult to enforce (Emmott and Carbonnell, 2018).

However, the global dimension of the US financial system and the fact that many EU companies also operate in the US raised questions about the effectiveness of the EU regulation. On the other hand, this regulation provides for an exception, which can be enjoyed by obtaining a license from EU. In order to obtain a license, the applicant must prove that they or the EU will suffer serious harm if they fail to comply with the US sanction. However, this method of obtaining licenses has proven to be useless as they are rarely granted (Meagher, 2020, p.1015-1016). However, blocking regulations have the following benefit for EU companies: First, US court decisions against these companies are not recognized by EU courts. Second, the regulation authorizes European individuals who have suffered losses due to an individual or company complying with US sanctions to apply for compensation to these individuals or companies.

After the US withdrawal from the JCPOA, the EU's updated blocking statute in support of the nuclear deal with Iran entered into force on August 7, 2018. Despite the EU's apparent efforts, experts doubt the ability of the blocking statute to influence private companies' decisions on compliance with the reimposed US sanctions (Bogdanova, 2022, p. 92-93). In support of this view, information on the impact of these sanctions on EU-Iran bilateral trade immediately began to emerge: Iranian imports to the EU fell by 92.8% in 2019, while exports to Iran fell by 50%. Mineral products took the biggest blow, with imports falling by 99.7%, while imports of general industrial products fell by 95.5%. (Stoll et al, 2020, p. 31-32). In addition, many European Companies lost revenue due to post-2018 US sanctions against Iran. For example, Airbus lost 17 billion euros, Total 4.25 billion euros, PSA Group and Renault 850 million euros and Quercus 550 million euros (Stoll et al, 2020, p. 92).

Moreover, despite the EU's best efforts, SWIFT removed sanctioned Iranian financial institutions from its system in 2018 to avoid the risk of the US sanctions. The EU Commission criticized SWIFT's decision and called it regrettable (Reuters Staff, 2018). However, work has also begun to establish a new system to enable trade between Iranian and European companies as an alternative to SWIFT. Through negotiations between France, the United Kingdom and Germany, and with the support of the European Commission, a new mechanism called the "Instrument in Support Trade Exchanges (INSTEX)" was launched (Batmanghelidj and Geranmayeh, 2019). In a joint statement by the foreign ministers of the three countries, it was emphasized that the initial objective will be the sectors most needed by the Iranian people, such as pharmaceuticals, medical devices and agricultural products, and in the long term, the system will be opened to organizations operating in third countries that want to trade with Iran (Foreign & Commonwealth Office and Hunt, 2019). It was announced on November 29, 2019 that five more countries would join the system, which was established on January 31, 2019 (Didili, 2019). In March 2020, the German government announced that the first transaction for the export of medical goods to Iran took place through INSTEX.

However, European countries announced on March 7, 2023 that they were dissolving the system, citing Iran's lack of cooperation (Associated Press, 2023). The statement claimed that Iran had systematically prevented INSTEX from fulfilling its mandate, with the exception of the first transaction. Iran's supreme leader, Ali Khamenei, had previously called the EU's failure to do what it was supposed to do regarding INSTEX a "knife in the back" (Tehran Times, 2019).

In conclusion, efforts to open a trade and payment channel between the EU and Iran after US sanctions, appear to have failed. There is much debate about the reasons for this.

It should be noted that despite EU countries struggling for countermeasures that can minimize the impact of US sanctions on their commercial and strategic interests, they have been unable to significantly change the US stance on Iran (Geranmayeh and Rapnouil, 2019, p. 2). However, it is also debatable how serious they are in these efforts. Because the EU policy on Iran has shifted towards the US over time. It is

argued that this is due to the Iranian regime's continued support for terrorism, which directly affects Europe, and its refusal to stop developing its nuclear capability (Stoll et al, 2020, p.31).

EU states have also failed to deter European companies from pre-emptive alignment and overcompliance with the US secondary sanctions (Geranmayeh and Rapnouil, 2019, p. 2). Because the US statements and regulations leave “plenty of grey areas” which means multinational companies need to be “very conservative and stay as far away from those grey lines as possible” (Love, 2020). This trend and lack of EU support lead to overcompliance of European companies. Most dramatically, the EU could not demonstrate to the world that, despite their interdependence with the US, European capitals ultimately govern EU foreign policy. (Geranmayeh and Rapnouil, 2019, p. 2).

Some differences between the US and EU sanctions regimes may also have played a role in European firms’ preference to comply with US sanctions rather than EU regulations. This is because US sanctions rules may be vague, but they are also relatively coherent and strict. Violation of a US sanctions rule can lead to both civil and criminal penalties. In the EU, however, member states each have their own approach to enforcement. Even the criminalization of violations varies between member states. Some member states may impose only civil or administrative penalties for violations of a sanction norm (Love, 2020).

#### 4.4.2.3. Iran’s Sanctions Evasion and Circumvention Practices

One of the methods Iran has developed to counter US sanctions, which have caused it great economic damage, has been sanctions evasion and circumvention practices. These practices are often supported by other countries that consider the US sanctions against Iran, especially the secondary sanctions, to be unjust.

As is well known, Iran's oil exports are one of the main targets of US sanctions. Against this, Iran has developed various measures. With regard to the Iranian oil tankers, these can be summarized as follows (Shamsaldin, 2018, p. 13-15; Dagres and Slavin, 2018; Xu, 2023; Radio Farda, 2018). Thanks to these methods, Iran even managed to increase its oil exports in 2021 (Lawler, 2022)

1. Turning of AIS transponders of vessels. By this way it is not possible to track these vessels and the final destination oil sold. In this way, almost all of the Iranian oil entering China is disguised as coming from Malaysia or other Middle Eastern countries.
2. Hiding of shipments among other countries' cargo.
3. Faking locations and conducting ship-to-ship operations at locations outside of authorised transfer zones and sometimes in poor weather to conceal activities.
4. Iran stores oil in giant tankers off its shores and in large warehouses in other countries for later sale. During the 2014 sanctions, Iran stored oil in the Chinese port of Dalian and later sold it to South Korean and Indian customers.
5. Oil incentives such as significant price cuts or free shipping to attract buyers. Tehran has offered a variety of incentives to importers. Iran has also resorted to providing its own insurance for oil cargos as major international insurance companies do not provide insurance because of sanctions. The countries like China and India are assisting Iran to circumvent sanctions in these operations.
6. Instead of China's large oil refineries, Chinese refineries that are small and not integrated into the dollar-based global financial system are buying Iranian oil. These Chinese refineries, numbering more than forty, do not need Western technology and therefore accept the sanction risk.
7. Some Iranian oil importers have offered to pay Iran through barter.

Another circumvention method used by Iran is using neighbors and border smuggling. Iran relies heavily on neighboring Afghanistan and Iraq to circumvent the sanctions. The rial goes Afghanistan, where it is then converted into US dollars. Iranians also purchase US dollar in Iraq. Smuggling is mostly carried out through Iraq. The IRGC, which controls Iran's borders, is actively involved in this operation. Iraq has a large network of smugglers and an underground market to help this circumvention (Zamirirad, 2019, p. 6; Dagres and Slavin, 2018).

Another method used by Iran to evade sanctions is the establishment of front companies in foreign countries. For example, it was found that Iran had established front companies in Hong Kong and purchased sanctioned military equipment on behalf of these companies and shipped them to Iran (Daragahi, 2018). Iran has also heavily relied on front companies to conduct business in countries including China, Iraq,

Liechtenstein, and the UAE. Iran has utilized private companies in the UAE and Iraq owned by Arab citizens from Iraq, Lebanon, and Syria. These persons buy commodities and ship them from the UAE and Iraq through legal ways, and finally smuggle them through land or water routes to Iran (Dagres and Slavin, 2018).

One of the methods used by wealthy Iranians linked to the Iranian government to circumvent sanctions is to gain citizenship through investment in small countries such as Saint Kitts and Nevis, the Comoros Islands, and Antigua. After gaining citizenship, these individuals establish companies and open bank accounts in these countries and carry out sanctions evasion transactions (Dagres and Slavin, 2018). The Iranian government does not formally allow the country's citizens to hold a second passport. However, it is said that Iran's Ministry of Intelligence had given the green light for some senior business figures to acquire foreign passport for such evasion reasons (Sharafedin and Lewis, 2018).

Another method Iran has resorted to avoid US sanctions is to use a currency other than the US dollar. Because currency is a major roadblock for Iranian trade with other countries. Not only Iran but also Russia, which suffers from US sanctions, has launched various initiatives to conduct international trade in local currency rather than USD. China, the largest buyer of Iranian oil, has also been trying to use the Chinese Yuan instead of the USD. However, despite all attempts, this issue has not achieved the desired progress (Dagres and Slavin, 2018).

There are other methods Iran has used to circumvent US sanctions. These include wire-stripping, bitcoin mining, hawala, and the use of Eastern European countries such as Belarus and Romania (Dagres and Slavin, 2018). However, it is likely that there are other methods of circumvention that have not been disclosed yet (Shamsaldin, 2018, p. 20).

# CHAPTER 5

# THE LEGALITY OF THE US SANCTIONS AGAINST IRAN

In this chapter, the highly controversial US sanctions against Iran, the legal justifications put forward by the US is discussed and their evaluation in terms of international law is done. In this context, both the US extraterritorial sanctions and the secondary sanctions under the Iran Sanctions regime are analyzed. In the last part of this chapter, the extraterritorial and secondary financial sanctions, one of the most important parts of the US sanctions against Iran, will be discussed. The US financial sanctions have recently dominated other sanctions.

## 5.1. Introduction and Delimitation of Legality Analysis of the US Extraterritorial and Sanctions Against Iran

In terms of conventional international law, the US, like any other state, has wide authority to restrict its trade and financial transactions (Lohmann, 2019, p. 6). The right of a state to determine its own trading partners is a well-established principle of international coexistence and international law imposes no obligation on any state to trade with any other country (Henderson, 1986, p. 179). However, this right can be limited in two cases. One is treaties and the other is some principles of customary international law.

States can waive their right to impose sanctions by the treaties. The Treaty of Amity signed between the US and Iran in 1955, which interestingly remained in force until 2018, is an example of such treaties. However, in this chapter, the legality of the extraterritorial and secondary sanctions imposed by the US on Iran will be based on customary international law, not on the treaties between the two countries.

The basic limitation on states' sanctions decision stems from the jurisdiction principles of customary international law. With regard to the jurisdiction principles of customary

international law, the US as a sovereign state is permitted to assert prescriptive and enforcement jurisdiction both territorially and extraterritorially on the basis of following principles: Territoriality principle (subjective territoriality principle), effects doctrine (objective territoriality principle), nationality principle (active natonality principle and passive nationality principle), the protective principle and the universality principle. In the following section, the legality of the US extraterritorial and secondary sanctions on Iran will be examined in the context of these jurisdictional principles of international law.

### 5.2. The Legality of the US Extraterritorial Sanctions Against Iran

The US is one of the countries that does not hesitate to use its economic power and therefore economic sanctions against countries that it believes act against its interests or do not abide by the rules of the international system. In this context, the US has been imposing sanctions of various types and severity on Iran for a long time.

The US imposes primary sanctions on Iran and prohibits its citizens from doing business with this country and its nationals. The US sanctions against Iran can be considered as a total embargo. This is because, with a few exceptions, all trade between the US and Iran is prohibited. In addition, services provided by the US persons to Iran or Iranian persons are also under sanctions. However, the US does not consider these sanctions on Iran, which are called primary sanctions, to be sufficient, and in order to increase the impact of these sanctions, it expands the definition and limits of its jurisdiction over its citizens and goods, that is, it turns to extraterritorial sanctions, and finally, through secondary sanctions regulations, it tries to prevent third countries and their citizens from entering into business relations with Iran and Iranian persons, which are the targets of its primary sanctions.

The extraterritorial sanctions imposed by the United States on Iran and their legitimacy under international law will be examined under two headings: one is the extraterritorial sanctions imposed by the US on Iran regarding the nationality of companies and the other is extraterritorial export controls on US-origin goods to Iran.

### 5.2.1. Extraterritorial Sanctions Imposed by the US on Iran Regarding the Nationality of Companies

One of the controversial issues regarding the US sanctions on Iran is the nationality of companies. Normally, the general rule applies in the US law. Accordingly, the nationality of a company is determined according to the place of its incorporation or its principal place of business (Alexander, 2009, p. 82). The nationality of a companies under international law is addressed in case regarding the Barcelona Traction, Light and Power Company, Limited at the ICJ as well. The court held that the nationality of the corporation is either that of the state of incorporation or that of the state of principal place of business. It was also ruled that the nationality of the shareholders does not affect the nationality of the company (Repa, 2015. p. 28). In this approach, the owners of the company and who controls or manages the company are not important. For subsidiaries and affiliates, since the traditional practice recognizes them as separate legal entities, it is envisaged that these companies are also subject to the law of the country in which they are located. Accordingly, these companies are governed by the law of the jurisdiction where they are incorporated or where their principal place of business is located.

However, US sanctions regulations provide exceptions to these rules. One of these is that in some sanctions regulations, including the Iran sanctions, US law recognizes foreign subsidiaries and affiliates of US-based international companies as US persons and subject to the US jurisdiction and requires them to comply with the sanctions rules. It is interesting to note that while the US normally does not interfere in matters such as how much these subsidiaries and affiliates pay their employees or how much annual leave they give them, it does interfere in whether it is acceptable to trade with countries subject to the US sanctions, such as Iran, Cuba or North Korea (Lowenfeld, 2008, p. 902).

Another exception is to remove the "veil of corporation" and apply the US law even if the company is incorporated under another law, if the company is controlled by US persons or the majority of its shares are owned by US persons. In determining the nationality of a company based on the shareholding structure, the US sanctions regulations apply the 50% rule. Accordingly, if 50% or more of the company's shares are held by US persons, the company is considered a US company and subject to the

US jurisdiction and is required to comply with US law, including sanctions regulations, as any other US person wherever it is located. In this case, by applying the personality principle, US law is applied extraterritorially to legal entities controlled by US persons (Alexander, 2009, p. 76).

The US has four sanctions regulations related to Iran: Iranian Assets Control Regulations (31 CFR Part 535), Iranian Transactions and Sanctions Regulations (31 CFR Part 560), Iranian Financial Sanctions Regulations (31 CFR Part 561) and Iranian Human Rights Abuses Sanctions Regulations (31 CFR Part 562). Iranian Assets Control Regulations defines “person subject to the jurisdiction of the United States” as follows (31 CFR Part 535.329):

> The term person subject to the jurisdiction of the United States includes: (a) Any person wheresoever located who is a citizen or resident of the United States; (b) Any person actually within the United States; (c) Any corporation organized under the laws of the United States or of any state, territory, possession, or district of the United States; and (d) Any partnership, association, corporation, or other organization wheresoever organized or doing business which is owned or controlled by persons specified in paragraph (a), (b), or (c) of this section.

As can be seen from this definition, the US regulations consider a company to be a US company if it is owned or controlled by a US person, wherever it is incorporated or wherever its principal place of business is located. Such a company is therefore expected to comply with the Iran sanctions just like any other US company. Apart from the compatibility of the Regulations with international law, another problem voiced by legal scholars stems from the terms "owned" and "controlled". This is because these terms differ among sanctions regimes, which leads to ambiguity (Bogdanova, 2022, p. 100).

The second example can be found in the Iran Transactions and Sanctions Regulations. According to Article 560.215 of this regulation, entities "owned" or "controlled" by a US person, even if they are incorporated and operate outside the US, may not "knowingly" engage in any transactions with the Iranian Government or persons, whether “directly or indirectly". Unlike some other sanction regulations, such as Cuba's, the "knowingly" clause is included here. Paragraph (b) of the same article defines what is meant by "owned" or "controlled". Accordingly, the relevant entity is owned or controlled by the US person if the US person (i) holds a 50 percent or greater equity interest by vote or value in the entity; (ii) holds a majority of seats on the board

of directors of the entity; or (iii) otherwise controls the actions, policies, or personnel decisions of the entity. In the same article, the term "knowingly" is defined as "the person engages in the transaction with actual knowledge or reason to know".

Similar provisions are also included in the Iranian Human Rights Abuses Sanctions Regulations and Iranian Financial Sanctions Regulations. The definition of the US financial institutions includes subsidiaries and affiliates of the US financial institutions (31 CFR Part 561.309; 31 CFR Part 562.310).

After the US decision to withdraw from the JCPOA during the Trump administration, a similar provision was added to Executive Order 13846, which entered into force on August 6, 2018. According to Article 8 of this Order, " No entity owned or controlled by a United States person and established or maintained outside the United States may knowingly engage in any transaction, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran."

The obligation of US-owned or controlled companies to comply with US sanctions norms faces various objections. First, some governments, including the EU and Canada, oppose these provisions on the grounds that they take away their legitimate authority to regulate companies incorporated in their countries. Although EU practice requires EU citizens abroad to comply with the sanctions, this definition of "citizen" does not include foreign companies controlled by EU persons or companies (Kerbrat, 2021, p. 171).

Likewise, the Canadian legislation contains provisions parallel to those of the EU. Bogdanova (2022, p. 101) states that these regulations of the US mean that other countries are deprived of their legitimate right to prescribe norms of conduct, and it is doubtful whether such an extension of the territorial jurisdiction is permissible under the effects doctrine or the protective principle of jurisdiction. However, it should be noted that the principle applied here is not the effects doctrine or the protective principle, but the personality principle. This is because there is an exercise of jurisdiction over personality, even if its scope has been expanded.

Sossai (2020, p. 68) argues that the US bases its exercise of jurisdiction over foreign companies owned or controlled by the US person on the principle of active personality,

but this so-called control theory was largely dismissed as contrary to international law based on the Barcelona Traction case decision.[20] In the same vein, Emmenegger points out that states cannot exercise jurisdiction based on the personality principle over the control of a foreign company by its nationals. Therefore, the practice of the US exercising jurisdiction over companies incorporated outside the US territory but owned by a US parent company is illegal under international law (Emmenegger, 2016, p. 650).

Under the personality principle, a state may require its nationals in other countries to abide by its own rules. Therefore, the most important issue here is whether these entities can be considered as the US persons. If they are considered as the US persons, the US will have the legitimate authority to require them to comply with its own sanctions against Iran. However, as mentioned above, it does not seem possible to legitimize the US rules regarding 50% ownership or control in accordance with the rule of international law accepted in determining the nationality of companies. This is because the nationality of companies is determined according to the place of incorporation, not the nationality of their shareholders (Ruys and Ryngaert, 2020, p. 18). The prevalent international law view on this issue is that this practice of the US exceeds the limits of the personality principle used for determining jurisdiction. (Bogdanova, 2022, p. 92).

Even the American Law Institute's Restatement (Third) of Foreign Relations Law takes a different position from the US government (Lowenfeld, 2008, p. 904). Because, pursuant to Restatement (Third) a state should not regulate activities of companies organized under the laws of a foreign state on the grounds that they are owned or controlled by nationals of the regulating state.

On the other hand, it should be noted that the rule of the place of incorporation or the principal place of business is far from considering the complex structures and the

[20] In the case before the ICJ, Belgium brought an action at the ICJ claiming that Belgian nationals holding shares in Barcelona Traction, Light and Power Company, Limited had suffered damages as a result of decisions taken by Spanish state organs. The court dismissed the case based on Spain's jurisdictional objection, stating that the concept and structure of the company are based on and determined by the strict distinction between the company and its shareholders as distinct persons (Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain) (New Application: 1962)" I.C.J. Reports 1970, Judgment (February 5, 1970), p. 3, 37.

globalization of ownership, management and workforce of today's companies (Alexander, 2009, p. 82). Besides, it is always not possible to draw an absolute corporate veil around a member company of multinational enterprise and parent company. For example, a claim by General Motors South Africa or Philips South Africa that they are ultimately different from their parent companies and that they can continue to invest in South Africa during the anti-apartheid movement in the 1980s would not be welcomed by many critics of the US sanctions practice (Lowenfeld, 2008, p. 905).

### 5.2.2. Extraterritorial Export Controls on the US-Origin Goods to Iran

One of the controversial issues in the context of the US sanctions norms is the application of the personality principle on the US-origin goods. The US prohibits the resale of its goods from a foreign country to a sanctioned country, such as Iran. This practice is rejected by other countries as it is considered an illegal exercise of extraterritorial jurisdiction. However, the US argues that the personality principle in international jurisdiction law should also be applied to the goods and technologies it exports (Alexander, 2009, p. 84). The US prohibition of re-exporting certain US-origin items first adopted in early 1980s, after the US enacted the 'Soviet Pipeline Regulations' pursuant to which the re-export of US origin parts, components, or materials to the Soviet Union was prohibited. This decision garnered substantial controversy and the ensuing uproar led the Reagan Administration to lift these sanctions in 1982 (Ruys and Ryngeart, 2020, p. 19).

As explained above, there is almost a total ban on the exchange of commercial goods between the US and Iran and this includes export and re-export ban. According to Iranian Transactions and Sanction Regulations, "the importation into the United States of any goods or services of Iranian origin or owned or controlled by the Government of Iran" is prohibited (31 CFR 560.201). On the other hand, "the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran" is also prohibited (31 CFR 560.204). It is also prohibited sell, export, reexport or supply goods, technology, or services to a person in third country if there is knowledge that these will be supplied, transshipped, reexported to Iran or the Government of Iran.

The details of the rules on the US export sanctions are contained in the EAR. Pursuant to this regulation, it is prohibited to re-export US-origin goods to other sanctioned countries, and pursuant to Article 734.4 of the EAR, it is prohibited to sell goods manufactured in a third country but containing more than 10% US-origin goods to sanctioned countries and persons, and thus to Iran or Iranian residents, without authorization from the BIS.

Other countries oppose these rules on the grounds that once these goods are sold, they cease to be subject to the US law and become subject to the law of the country to which they were sold. Ruys and Ryngaert (2020, p. 20) argue that the US export controls are illegally extraterritorial in character and therefore contrary to international law. They argue that once they are imported from the US, they lose their jurisdictional nexus to the US, these goods do not have US nationality, and therefore jurisdiction cannot be defended under the personality principle.

The US officials base the legitimacy of export controls on the US-origin goods on end-user certificates (or import authorizations) signed by the countries and individuals when purchasing the US goods and technologies. These certificates commit the purchasers of the US goods and technologies not to sell them to certain persons and countries. If such a certificate is signed, it will not be possible to challenge the US jurisdiction (Ruys and Ryngaert, 2020, p. 20). This is because the person importing goods from the US would be liable, first and foremost, in accordance with the principles of contract, since they have made a commitment. In addition, some individuals and firms may engage in fraudulent transactions. For instance, they may buy weapons and sensitive technology from the US as if they will use them themselves and then sell them to Iran. In this case, even though the person concerned is a foreign national, the US jurisdiction will come into play and the person concerned will be liable under the US law.

Therefore, individuals and companies that engage in false and fraudulent transactions to circumvent the US export control laws are considered subject to the US criminal laws, regardless of their nationality. In this case, locus delicti is not considered. The fact that the fraudulent transaction took place partially or completely in the US territory has no effect on the decision (Alexander, 2009, p. 83).

The problem, however, is that the US can exercise this authority even if the third-country national or company that purchases goods and technology from the US has not committed not to sell them to the sanctioned Iranian government or Iranian persons, or even if there is no fraudulent transaction. Legally, in principle, the goods that are sold are subject to the law of the country in which they are sold and the buyer can transfer ownership of the goods to whomever they wish.

In conclusion, the purchase by a third country or person from the US of a product or technology that the US will not sell to Iran or Iranian persons under sanctions, and reexport to Iran, may be considered legal in the event of fraud or a previously given commitment. However, it does not seem possible under the rules and principles of international law to justify the exercise of jurisdiction in other sales of goods or in the context of the 10% quota.

### 5.3. The Legality of the US Secondary Sanctions

As seen above, by interpreting the principles of jurisdiction of international law, such as the principles of territoriality and personality, very broadly, the US considerably expands the boundaries of the territory to which its Iran sanctions rules apply. Secondary sanctions are another sanctions tool that the US has recently imposed in increasing numbers in order to increase the impact of its sanctions against Iran. It should be noted that secondary sanctions are not a new tool used by the US, but their number has multiplied since 2010 (Kerbrat, 2021, p. 180). However, the US secondary sanctions against Iran have been discussed more in the context of the Iran and Libya Sanctions Act of 1996.

There are various types of US secondary sanctions. Some of them cause the person who establishes a business relationship or conducts substantial transactions with the sanctioned person to be added to the US sanctions lists (SDN, etc.), and thus their assets in the US can be frozen and they can be prohibited from entering this country. Others take the form of penalties that restrict access to US financial or commercial markets (Kerbrat, 2021, p. 180). For financial institutions such as banks, these secondary sanctions of access restriction are formulated in the form of correspondent account or payable-through account bans.

### 5.3.1. First Type of Secondary Sanctions: Asset Freezing

All recent executive orders issued by the president of the US include a provision for secondary sanctions. According to this provision under the first article of the executive orders by the presidents, the property or rights of persons designated by the Treasury Department, in consultation with the Secretary of State, in the US or in the possession of the US persons will be blocked and cannot be transferred in any way. Within the scope of this kind of articles, which first enumerate those who are the target of primary sanctions, it is stated that the persons who "have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this order" may also be subject to asset freezes, i.e. secondary sanctions. This provision is included in almost all recent executive orders issued in the context of Iran sanctions. For example, Executive Orders No. 13902 (January 10, 2020), No. 13876 (June 24, 2019), No. 13871 (May 8, 2019), No. 13846 (August 6, 2018).

This provision was added to Executive Order No. 13224, adopted after the terrorist attacks in the US on September 11, 2001, and became a routine secondary sanctions provision in subsequent executive orders. This provision, which defines the significant transactions with listed persons as sanctionable, was not regulated as a reason for listing and thus asset freezing in Executive Order No. 12947 of 1995, which was adopted prior to this date on terrorism. Executive Order 12947 did not include a provision similar to this provision in the context of a listed person, but only in the context of support for acts of violence, such as terrorism. However, in its current form, this provision is truly a secondary sanction provision (as the provision of support to a listed person is regulated as a stand-alone ground for sanctions, independent of the listed person's activity). This provision also provides the legal basis for the rule that the establishment of business relationships with persons on the SDN list is a ground for the US sanctions.

The second set of secondary sanctions provisions is included to some of the laws adopted in the Iranian context. One examples of these is the Iran Freedom and Nonproliferation Act of 2012 (IFCA), which was passed as part of the National Defense Authorization Act for Fiscal Year 2013 (NDAA). Section 1244 of the NDDA primarily authorizes the US president to sanction the “[e]ntities that operate ports in

Iran and entities in the energy, shipping, and shipbuilding sectors of Iran", but also includes secondary sanctions. The President's secondary sanction authority in this Article is codified as follows:

> (C) knowingly provides significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of—(i) a person determined under subparagraph (A) to be a part of the energy, shipping, or shipbuilding sectors of Iran; (ii) a person determined under subparagraph (B) to operate a port in Iran; or (iii) an Iranian person included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury (other than an Iranian financial institution described in paragraph (3))

As can be seen, in this provision, a non-US person's business relationship with an Iranian person operating in certain sectors of Iran or an Iranian person added to the SDN list is regulated as a reason for secondary sanctions, even if there is no US nexus. In the same article, the sanction to be applied is also determined. Accordingly, the president will block and prohibit all property and interests in property of these persons in the US or in the possession or control of a US person.

Kerbrat (2021, p. 182) argues that these sanctions, which can be imposed on third-country citizens and firms, are clearly extraterritorial as they concern transactions and actions carried out abroad. He also argues that they cannot be justified on the basis of the existence of a territorial or personal nexus (in the context of the principles of territoriality and personality) with the US.

However, since the relevant article of the IFCA states that the US imposed the sanctions in response to Iran's nuclear weapons development (Article 1244 (a) (1) of the NDDA), it is evident that the US has accepted these secondary sanctions under the protective principle. In order for the protective principle to be applied here, Iran must actually pose a nuclear threat to the US and trade between the third country and Iran must serve that threat. Iran's nuclear activities are well known to the world community and have even led to the UN sanctions in the past. However, even if it is true that Iran poses such a threat, it does not seem legally possible to argue that the trade of a third country, person or entity with Iran serves this purpose of Iran and therefore sanctions can be imposed on these transactions (Bogdanova, 2022, p. 97). Moreover, these sanctions do not merely restrict the foreign person's access to the US for transacting with Iran. They also freeze all assets subject to the US law as a result of being added

to the SDN List. This kind of secondary sanctions are the result of a concept expressed by a US senator as follows: “Now the nations of the world will know they can trade with them [i.e. Iran and Libya] or trade with us. They have to choose,” (Bechky, 2018, p. 10-11). Ultimately, they are illegal under international law because they do not fall within the scope of terrinational secondary sanctions.

### 5.3.2. Second Type of Secondary Sanctions: Access Restriction

Another US act that provides for secondary sanctions in the context of Iran is the ILSA of 1996. Some provisions of this Act were later amended by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) and the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRA).

In the original version of ILSA, investing more than $40 million per year in Iran's energy sector was a reason for secondary sanctions for foreign companies (Bogdanova, 2022, p. 94-95). In other words, if a foreign person or firm, or their successor, subsidiary or affiliate, knowingly invested more than this amount in Iran's energy sector, the US president would impose two of the sanctions listed in Article 6. The law stipulates that before imposing sanctions, the president must first make certain initiatives with the state of the person committing the sanctionable act. The president must impose sanctions unless he determines and certifies to Congress that the government with primary jurisdiction over that foreign person has taken some effective actions to dissuade the foreign national from committing the sanctionable act.

After ILSA was amended by CISADA in 2010, the ground for secondary sanctions was defined as "an investment that directly and significantly contributes to the enhancement of Iran’s ability to develop petroleum resources". The amount of investment was set at a minimum of 20 million dollars per year and the number of sanctions to be imposed was increased to at least three out of six sanctions described. In addition, in this enactment, instead of subsidiaries and affiliate companies, the liability has been changed to cover the persons who owned and controlled by the person that engaged in sanctionable conduct. In 2012, the amendment by the ITRA introduced the obligation to select at least five out of twelve sanctions and also expanded the scope of activities for which secondary sanctions may be imposed. The

set of twelve sanctions, at least five of which to be chosen by the President consist of the following:

1. The president directing Export-Import Bank of the US not to give approval to assistance for export of any goods or services to any sanctioned person.
2. The president ordering the US Government not to provide any specific license and any other specific permission or authority to export any goods or technology to a sanctioned person.
3. The US Government prohibition of any US financial institution from making loans or providing credits to any sanctioned person totaling more than $10,000,000 in any 12-month period.
4. Certain prohibitions on financial institutions:
    a. The Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York prohibitions on foreign financial institutions so that they cannot be a primary dealer in the US Government debt instruments.
    b. Banning such foreign financial institution from serving as agent of the US Government or serving as repository for US Government funds.
5. The US Government ceasing to purchase any goods or services from a sanctioned person.
6. The president's prohibition of foreign exchange transactions subject to US jurisdiction in which the sanctioned person has any interest.
7. The president prohibition of any transfers of credit or payments between financial institutions or by, through, or to any financial institution, insofar these transactions are subject to the US jurisdiction and involve any interest of the sanctioned person.
8. The president prohibitions on property transactions:
    a. Prohibition of acquiring, holding, withholding, using, transferring, withdrawing, transporting, importing, or exporting any property that is subject to the US jurisdiction and with respect to which the sanctioned person has any interest,
    b. Prohibition of dealing in or exercising any right, power, or privilege with respect to such property, or
    c. Conducting any transaction involving such property.

9. The president prohibition of any US person from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person.
10. The president directing the Secretary of State to deny a visa to, and the Secretary of Homeland Security to exclude from the US, any alien that the president determines has senior position or controlling share in a sanctioned person.
11. The president sanctioning authority on other officers of any sanctioned person with any of these twelve sanctions.
12. The president sanctioning authority to restrict imports with respect to a sanctioned person, in accordance with the IEEPA (50 U.S.C. 1701 and following).

These sanctions were highly criticized by the EU when they were first adopted by the US and as a result, the US agreed to a diplomatic solution for European companies doing business with Iran (Bogdanova 2022, p. 96). Nevertheless, these secondary sanctions continued to apply to third party persons other than those from EU countries.

Bogdanova (2022, p. 96-97) argues that these secondary sanctions in the Iranian context can be justified according to the effects doctrine or the protective principle. Bogdanova then adds that according to the effects doctrine, in order jurisdiction of a state to be exercised, the act of the foreign national must have a direct, substantial and logically foreseeable effect on the state seeking to rely on the effects doctrine, but this condition is not met, and that the protective principle cannot be relied upon since the threat comes from the Iranian trading partner, not the third-country national.

While the arguments put forward by Bogdanova are valid, the secondary sanctions adopted by the US here fall under the category of terrinational sanctions as described by Meyer (2008). That is, the US prohibits its own citizens from transacting with third-country nationals who transact with the target of the primary sanction. From this perspective, it is not possible to see these sanctions as illegal under public international law. This is because there is no rule of international law that prevents a state from regulating the acts and behaviors of its own citizens within its own territory. As mentioned before, the authority of states to set rules for their own citizens (prescriptive legislation) within their borders, in principle, is not subject to any terms and conditions.

Ruys and Ryngaert (2020, p.11-12), citing Meyer (2008), also argue that these kind of US sanctions are in accordance with international law. As a rule, these sanctions restrict access to the territory of the US and the obligations they impose relate to acts of US persons that take place in the US territory. Therefore, even though the ultimate target of these sanctions is non-US persons, they are legal due to the combined application of the principles of territoriality and nationality. As a rule, international law does not authorize non-US persons to access the US financial system, economy or territory. Moreover, if the US has granted such a privilege, it can, as a rule, revoke it at any time.

### 5.4. The Legality of the US Financial Sanctions Against Iran

It can be argued that financial sanctions are one of the most important and effective economic sanctions tools of the US. Therefore, financial sanctions are the most frequently used sanction measures by the US recently (Gordon et al, 2019, p. 2). After 9/11, financial sanctions have taken on a prominent role in the national security strategy of the US (Rosenberg et al, 2016, p. 5). Not surprisingly, the US has also imposed many financial sanctions on Iran and Iranian individuals and institutions.

Due to its role in the global financial world and the extensive use of the dollar as a reserve currency and in trade, the US has recently resorted to financial sanctions more often. Therefore, before moving on to the characteristics and legality of the US financial sanctions against Iran, it is important to recall some information about the role of the US in the global financial system and the use of the dollar in international markets in order to understand why the US has recently resorted more and more to financial sanctions.

First of all, the dollar is by far the most widely used currency in the world. The Bank for International Settlements reports that the US dollar is involved in 88 percent of all foreign exchange transactions and is used in about 40 percent of international payments. The dollar is also used extensively in international trade in goods, even outside the US. Economists calculate that the dollar's share of invoicing is about 4.7 times higher than the share of the US goods (Goldman and Lindblom, 2021, p. 131). In other words, the parties prefer the US dollar over their own currencies when trading. The dollar is also preferred as a reserve currency outside of trade. In the last quarter of

2022, according to the International Monetary Fund (IMF), official foreign exchange reserves were approximately 12 trillion, of which 6.5 trillion were held in dollars (International Monetary Fund, 2023). The dollar is followed by the euro with $2.3 trillion and the Chinese renminbi with $300 billion.

These numbers show how intensively the dollar is used. And these dollar transactions are carried out through dollar accounts in international banks. Most dollar payment transactions use dollar accounts in the US, especially in New York. In other words, there is always a bank located in the US on one side of these transactions. Therefore, when you make a transaction in dollars, you are, as a rule, entering or using US jurisdiction in one way or another. Falling under US jurisdiction means being subject to US law. Therefore, there is no option for any bank not to comply with US sanctions and OFAC rules (Zarate, 2013, p. 26). Unless, of course, they accept risk of OFAC penalties.

However, this dependence on the US financial system and the use of dollar as global currency force foreign financial institutions to comply with US sanctions with a risk-based approach. Because if a financial institution such as a bank wants to be a serious international institution with the ability to operate globally, it needs access to the New York and Amsterdam banking systems (Zarate, 2013, p. 25). In order not to lose this access, compliance with US sanctions is mandatory. This access is usually realized through correspondent banking agreements signed in advance. The routine sanctions clauses in these agreements usually include a commitment to comply with the main sanctions regimes, such as those of the US, EU and United Kingdom together with the UN sanctions, and that the account will not be used for transactions contrary to these sanctions regimes.

As mentioned above, the intensive use of the dollar in both international trade and financial transactions and the need for foreign financial institutions to have access to the US financial system have recently led the US to revise its sanctions regime to financial sanctions. This decision of the US has strengthened the compliance activities of foreign financial institutions with the US sanctions with a risk-based approach. Moreover, recent developments indicate that financial institutions are willing to pay

astronomical amounts to OFAC rather than lose their access to the US financial market (Bogdanova, 2022, p. 109-110).

Under the "settlement agreement" reached with OFAC, BNP Paribas agreed to pay $8.9 billion in penalties for its sanctions-evasion conspiracies in 2014, a record in this regard (U.S. Department of Treasury, 2014b). UBS Bank, on the other hand, agreed with OFAC in 2015 to pay $1.7 million for violating sanctions (U.S. Department of Treasury, 2015). Also, in 2014, Deutsche Bank AG was fined $258 million for conducting transactions on behalf of residents of countries subject to US sanctions, such as Iran (Barlyn, 2015).

Despite the highly controversial and criticized BNP Paribas agreement, OFAC's settlement agreements with banks continued after that. Below are the fines paid by the foreign banks as a result of the settlement agreements between OFAC and these banks in the last five years. It can be seen that the banks, which admitted that they had violated OFAC sanctions and paid the agreed fines are generally European banks. Below Table 4 indicates the foreign banks that agreed to pay certain amount of fines under Settlement Agreements with OFAC.

**Table 4: Settlement agreements between OFAC and financial institutions**

| | Date | Name of FI | Settlement (USD) | Country of FFI |
|---|---|---|---|---|
| 1 | 27.08.2021 | First Bank SA and JC Flowers & Co | 862.318. (U.S. Department of Treasury, 2021b) | Romania |
| 2 | 26.08.2021 | Bank of China (UK) Limited | 2.329.99 (U.S. Department of Treasury, 2021c) | United Kingdom |
| 3 | 4.01.2021 | Union de Banques Arabes et Françaises | 8.572.500. (U.S. Department of Treasury, 2021d) | France |
| 4 | 28.12.2020 | National Commercial Bank | 653.347. (U.S. Department of Treasury, 2020) | Saudi Arabia |
| 5 | 17.09.2019 | British Arab Commercial Bank plc | 4000.000. (U.S. Department of Treasury, 2019a) | United Kingdom |
| 6 | 15.04.2019 | UniCredit Group Banks | 611.000.000. (U.S. Department of Treasury, 2019b) | Germany Austria, Italy |

**Table 4 (continued)**

| | Date | Name of FI | Settlement (USD) | Country of FFI |
|---|---|---|---|---|
| 7 | 9.04.2019 | Standard Chartered Bank | 639.023.750 (U.S. Department of Treasury, 2019c) | United Kingdom |
| 8 | 19.11.2018 | Société Générale S.A. | 53.966.916. (U.S. Department of Treasury, 2018e) | France |
| 9 | 13.01.2017 | TD Bank | 516.105. (U.S. Department of Treasury, 2017). | Canada |

Source: OFAC web page

In addition to these fines, the banks are also committed to taking various measures to improve their compliance programs. For example, according to the Settlement Agreement between OFAC and UniCredit Bank AG in 2019, this Bank agrees that it processed to or through the US or involving the US financial institutions in apparent violation of various OFAC sanctions programs such as Iran, Cuba, Sudan, Burma and Syria and to maintain policies and procedures to minimize the risk of recurrence of similar conduct in the future (U.S. Department of Treasury, 2019d). UniCredit Bank AG is a European Bank and its headquarters are mainly located in Italy, Germany and Austria, however OFAC has subjected it to various commitments as if it were a US bank. The Bank commitments with regard to OFAC's sanctions compliance measures include:

- to implement a new sanctions compliance program that ensures senior management of the Bank will support the program and safeguards autonomy of sanctions compliance department,
- to ensure compliance unit will have adequate resources such as human capital, expertise, information and technology,
- to establish risk assessment methodologies,
- to create written policies and procedures outlining the sanctions compliance program,
- to set up internal controls that address the results of its OFAC risk assessment and profile,

- to create OFAC-related record-keeping policies,
- to communicate the sanctions compliance program's policies and procedures to all relevant staff,
- to have testing and audit function and procedures (they must be appropriate and sophisticated),
- to organize OFAC-related training programs for employees and even for stakeholders such as clients, suppliers, business partners and counterparties,
- and lastly for five years starting from 180 days after the date the Settlement Agreement is executed, the Bank will submit a certification that it has implemented and maintained these sanctions compliance measures.

These measures are of the kind that an institution of a certain state may impose on the citizens of that state. However, the penalties and commitments on these banks are usually justified by the following: Providing dollars or financial services through the US financial system to countries and persons subject to US sanctions regimes by concealing or falsifying certain information. In this sense, Iran and Iranian nationals are leading the list of people to whom financial services are provided despite the ban.

The OFAC statement dated April 09, 2019 regarding the French bank Standard Chartered Bank provides similar justifications: The bank removed, omitted, concealed, obscured, or otherwise failed to include references and information regarding the parties of transactions when conducting the transactions with the US or the US financial institutions, and the transactions were in clear violation of the Cuba Asset Control Regulations, the Iran Transactions and Sanctions Regulations, and the Sudan Sanctions Regulations. According to the OFAC statement, from June 2009 until June 2014, Standard Chartered Bank processed 9,335 transactions totaling $437,553,380 that were processed to or through the US. All of these transactions involved persons or countries subject to comprehensive sanctions programs administered by OFAC. The majority of the conduct concerns Iran-related accounts maintained by Standard Chartered Bank's Dubai, UAE branches, including accounts at Standard Chartered Bank Dubai held for a number of general trading companies, and a petrochemical company. Standard Chartered Bank Dubai processed USD transactions to or through Standard Chartered Bank Dubai's branch office in New York or other US financial institutions on behalf of customers that sent payment instructions to Standard

Chartered Bank Dubai while physically located and/or ordinarily resident in Iran. As noted in OFAC's note on this agreement, the voluntary reporting of violations by banks to OFAC is also a mitigating factor in determining the penalty.

Under the settlement agreement between OFAC and Standard Chartered Bank, similar to the agreement with the UniCredit Bank AG, bank has agreed to sustain its commitment to implementing robust compliance procedures by ensuring that it has a management team in place that: (1) is committed to a culture of compliance; (2) conducts regular risk assessments; (3) ensures that its internal controls appropriately mitigate the entity's sanctions-related risks; (4) conducts regularized audits; and (5) provides ongoing sanctions compliance training throughout Standard Chartered Bank.

In general, it can be argued that the US imposes two types of sanctions on financial institutions for non-compliance with the Iran sanctions. One of them is the norms that the US explicitly regards as secondary sanctions rules, the violation of which will result in the imposition of a correspondent banking restriction on the relevant financial institutions. The other is penalties or civil liability settlement agreements, where financial services provided by foreign financial institutions to Iranian persons subject to US sanctions have somehow an US nexus, such a US bank or a US financial system. This second set of sanctions can be categorized as extraterritorial sanctions. However, there are also scholars who consider them as secondary sanctions (despite the existence of the US nexus and the fact that the US does not consider them secondary sanctions) on the pretext that they aim to regulate economic transactions between a third country and a target country (Ruys and Ryangaert, 2020, p. 7). The freezing of deposits of sanctioned Iranians in bank branches in other countries will also be discussed under the second type of financial sanctions.

### 5.4.1. First Type of the Financial Sanctions: Correspondent Account Ban

Secondary sanctions that directly target foreign financial institutions have been in force since early 2010 (Kerbrat, 2021, p. 182). As mentioned above, OFAC also has a list called CAPTA for these types of sanctions. Currently, there is a Chinese bank, Bank of Kunlun, on the CAPTA list (U.S. Department of Treasury, 2022a). There are also several Russian banks that are banned from having correspondent or payable-

through account under Directive No. 2 of Executive Order 14024 on Russia. However, these Russian banks are kept under another list, not CAPTA list.

The OFAC statement on Bank of Kunlun states that Kunlun's direct access to the US financial system has been cut off. Directive No. 2 on Russia explicitly states that no correspondent or payable-through account may be opened for these Russian banks, nor may transactions with these financial institutions be intermediated (U.S. Department of Treasury, 2022b). Therefore, a foreign bank placed on the CAPTA list cannot conduct any transactions using the US financial system. In the OFAC announcement dated July 31, 2012, in which Bank of Kunlun and Elaf Islamic Bank[21], an Iraqi bank, were placed on the CAPTA list, the US banks holding correspondent or payable-through accounts on behalf of these banks were given 10 days to close these accounts. The reason for listing of Bank of Kunlun and Elaf Islamic Bank under CISADA was stated by OFAC announcement as "knowingly facilitating significant transactions and providing significant financial services for designated Iranian banks" (U.S. Department of Treasury, 2012).

This kind of financial sanctions were first adopted in the context of the Iran sanctions of the US. In June 2010, UNSC adopted Resolution 1929 on Iran for its nuclear activities. Among its measures, UNSCR 1929 includes targeted asset-freezing provisions and calls upon all states to prevent the provision of financial services, if such financial services could contribute Iran's nuclear aspirations. The Resolution also drew attention to transactions by Iran's banks and the potential connection between Iran's energy sector and the funding of Iran's nuclear endeavor. Since the adoption of UNSCR 1929, many countries, including the EU, Canada, Japan, South Korea, and Australia limited Iran's access to their banking and finance systems. As for the US, on July 1, 2010, the CISADA entered into force after it was signed by the US President Obama. Building upon UNSCR 1929, this Act strengthened existing US sanctions with respect to the Iranian energy industry, and included sanctions on foreign financial institutions that could limit their access to the US financial system if they engage in certain transactions involving Iran. The financial provisions of CISADA are implemented through the Iranian Financial Sanctions Regulations (IFSR), which the

[21] Elaf Islamic Bank was removed from this list later.

Treasury Department issued in August 2010 (U.S. Department of Treasury, 2010). Section 104 of CISADA prohibits or imposes strict conditions on the opening or maintaining in the US of a correspondent or a payable-through account by a foreign financial institution that is found out knowingly engages in activities that facilitate the Government of Iran to acquire or develop weapons of mass destruction or delivery systems for weapons of mass destruction or to provide support for organizations designated as foreign terrorist organizations, or a person subject to financial sanctions pursuant to UNSC Resolution 1737 (2006), 1747 (2007), 1803 (2008), or 1929 (2010) or facilitates certain efforts by the Central Bank of Iran or any other Iranian financial institution.

NDAA, the Act mentioned above, is also important in terms of the sanctions against financial institutions because it expanded the scope this kind of sanctions. Article 1245 of this Act states that Iran as a jurisdiction of primary money laundering concern, the Central Bank of Iran, which regulates Iranian banks, had assisted designated Iranian banks by transferring billions of dollars to these banks in 2011 and Iranian banking sector, including the Central Bank of Iran, as posing terrorist financing, proliferation financing, and money laundering risks for the global financial system. According to Article 1245 of this Act the president of the US;

> shall prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by a foreign financial institution that the President determines has knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another Iranian financial institution designated by the Secretary of the Treasury for the imposition of sanctions pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)

Similar sanctions against foreign financial institutions are included in other sanctions documents against Iran. For example, the Article 2 of Executive Order 13846 of August 6, 2018.

Kerbrat (2021, p. 183-184) argues that since the sanctions adopted by the US against the transactions of the foreign financial institutions do not have any links to US territory or any US persons, the US cannot base its prescriptive jurisdiction on the territoriality and personality principles. Kerbrat also argues that the US justifications for sanctions, a response to threats against international and domestic security of the US because of the nuclear proliferation in Iran, which means the protective principle

is applied, are far from convincing and this principle has very limited usage and this cannot be considered one of them. Therefore, the author claims that when these sanctions are evaluated under the principle of protection, this principle cannot be applied on the grounds that the vital interests of the US are not threatened. Kerbrat discuss these sanctions in the context of countermeasure as well and claim that as the countermeasures should be directed to the author of the wrongful act and be proportional but these conditions are not met here. Because the measures here are not directed to the Iran but to the foreign financial institutions. For these reasons, Kerbrat claims that these sanctions are not legal under the rules and principles of international law.

However, it is not possible to agree with these views in the following respects. There are no provisions directly regulating the activities of foreign financial institutions and imposing any obligations on them in these US regulations in the context of Iran sanctions. Although it may seem so at first instance, the US regulates the activities of its own nationals, not those of foreign financial institutions. In other words, these sanctions are territorial and personal (terrinational) sanctions in the sense mentioned by Meyer (2008). If a foreign financial institution continues to provide services to a person on the SDN list, the US will prohibit the opening of a correspondent account or a payable-through account or subject to one or more restrictions or strict conditions (i.e., it will place that foreign financial institution on the CAPTA list), and this prohibition will apply to US resident banks.

It should be added that, in today's correspondent banking world, even in the absence of these secondary sanction provisions, it would not be possible for a bank providing financial services to a person that the US has placed on the SDN list on the ground of terrorism-related activities to acquire a correspondent bank in the US. This is because the correspondent banking agreements signed between US banks and third country banks include a commitment that the third country bank will comply with the US sanctions lists. Financial institutions in many countries, especially European banks, comply with these requirements if they do not want to violate this agreement.

Can the US or any other country regulate to whom its banks can or cannot provide correspondent banking services? Of course, in principle, there is no legal obstacle to

this. There are certainly secondary sanctions here, but as we have already mentioned, the fact that a sanction is secondary does not by itself render it illegal in terms of international law, and terrinational secondary sanctions are not in principle contrary to international law.

Ruys and Ryngaert, as mentioned earlier, take the same view. Prohibiting access to the US financial system and markets, or preventing individuals from accessing the US, amounts to revoking a privilege. As a rule, under customary international law, it is not possible to enter the territory of any country without permission from that country. Since international law does not grant foreigners the right of financial, economic and physical access to the US, such measures taken by the US do not, as a rule, give rise to jurisdictional and legality problems (Ruys and Ryngaert, 2020, p. 12).

### 5.4.2. Second Type of the Financial Sanctions: Existence of a US Nexus

Another important issue in the context of foreign financial institutions and US economic sanctions arises when the US exercises jurisdiction over a territorial American nexus (usually under the principle of territoriality). This includes the asset freezing of sanctioned Iranian deposits at branches in other countries and the above-mentioned penalties imposed by OFAC on foreign banks by settlement agreements. In these cases, there is a US nexus, such as US currency, financial sector, or a bank. In other words, there is a US nexus in one form or another. However, the exercise of US jurisdiction over these nexuses is legally questionable.

Indeed, Ruys and Ryngaert (2020, p. 25-26) note that the US has never exercised jurisdiction without a US nexus, although this does not mean that it will not do so in the future. This is because some US sanctions regulations explicitly state that they would apply to "United States person" when stating prohibitions or restrictions. However, some regulations simply use terms such as "person" or "entity". The use of "person" instead of " United States person" has also increased recently. For example, Executive Order No. 13219 of June 26, 2001 on the Balkans uses the term "United States person" when specifying who is prohibited from taking actions contrary to the executive order. However, in Executive Order No. 14033 of June 10, 2021 on the Balkans, the term "United States person" is removed and it is set out that it is prohibited

to violate or circumvent any prohibition in the Executive Order, without specifying to whom this prohibition applies.

Likewise, in the Executive Order No. 13059 dated August 21, 1997 (Executive Orders No. 12957 (March 16, 1995) and 13959 (May 7, 1995) also have the same provisions) on Iran, the prohibited activities are specified as "any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order," while in the Trump-era Executive Order No. 13846 dated August 7, 2018, also on Iran, prohibited activities are specified as follows: "Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order … prohibited". In this latest Executive Order, the phrase "by a United States person or within the United States" is omitted. It is understood that the purpose of this change is to make the provision suitable for extraterritorial application.

In the same vein, the 2007 amendment to the IEEPA, on which all country-based US sanctions, including Iran sanctions, are based, states that “It shall be unlawful for a person to violate, attempt to violate, conspire to violate, or cause a violation of any license, order, regulation, or prohibition issued under this chapter" and sets out the civil and criminal penalties to be imposed on "any person" who commits these acts. It is clear from both the wording of the act and the US executive and judicial decisions that these penalties can be applied not only to the US citizens but also to foreign persons.

Starting with bank deposits and the freezing of assets, the US freezes the accounts of the Iranian state and its central bank or SDN-listed institutions and individuals in US banks. In 2022, the US added 2,275 individuals and entities to the SDN list. In 2021, this number was 743 persons (Frazer and Trainer, 2023). Although the increase in 2022 is attributed to the Russia-Ukraine conflict that began that year, there were a large number of Iranians added to the SDN list in these years. For instance, 179 individuals were added to the SDN list in 2022 under Iran sanctions. The consequence of being added to the SDN list is that: all property and interests in property that are in the US, that will come within the US, or that are or will come within the possession or

control of any US person of such person are frozen (E.O. 13846). Pursuant to Iranian Asset Control Regulations (IACR) all Iranian assets are blocked as well (31 C.F.R. 535.201).

In the case of bank accounts, the US persons, therefore the US banks are required to freeze the accounts of sanctioned Iranian persons. And therein lies the problem. Because the US definition of US person or persons subject to the US jurisdiction encompass some foreign persons. IACR, Article 31 C.F.R. 535.329 defines the US persons and this definition was given above, under the heading "5.2.1. Extraterritorial Sanctions Imposed by the US on Iran Regarding the Nationality of Companies". Pursuant to this definition the accounts below Table 5 will be frozen.

**Table 5: Bank Accounts to be frozen**

| | **Denomination** | **Depositary** | **Place of Account** | **US Link pursuant to Iranian Asset Control Regulations** |
|---|---|---|---|---|
| 1 | Dollar Account | US Bank | New York | Any person who is a citizen of the US |
| 2 | Dollar Account | British Bank | New York Branch | Any corporation organized under the laws of the US |
| 3 | Dollar Account | US Bank | London Branch | Any person wheresoever located who is a citizen or resident of the US |
| 4 | Sterling Account | US Bank | London Branch | Any person wheresoever located who is a citizen or resident of the US |
| 5 | Dollar Account | British Bank | London | Not defined |
| 6 | Sterling Account | British Bank | London | Any person actually within the US |

Table is largely based on that of Lowenfeld (2008, p. 907)

It can be argued that these bank accounts are more or less linked to the US. First two accounts do not pose a major legality problem depending on territoriality and nationality principles. The category 3 is problematic. In this case, the sanctioned Iranian persons deposited dollars with London branch of a US bank and the US government requested the related bank to block these accounts. This even became

subject of lawsuit between the Iranian Banks and US banks in UK. These cases were not concluded. However, in another ruling by High Court in UK on Libyan Arab Foreign Bank v Bankers Trust Co., it was decided that the proper law of contract is the law of the place where the account is kept. The US government did not appeal the judgement and issued a license for the US banks for obeying the order of the British court (Lowenfeld, 2008, p. 907-908).

The category 4 also under the regulation and the US maintained the formal assertation of jurisdiction but later issued a general license for releasing such accounts upon objection by foreign governments. Legally, this category 4 is not much different from category 3. Because the ony difference is denominations.

The category 5 is not included in IACR. To define all US dollars all over the world as "property subject to the jurisdiction of the United States" would be unreasonable (Lowenfeld, 2008, p. 908). There is not a uniform definition of reasonableness in public international law but reasonableness means that extraterritorial jurisdiction should not create problems for international community by interfering with the internal affairs of other countries (Repa, 2015, p. 40). The reasonableness generally demands that the assertation of an extraterritorial jurisdiction does not interfere with the interests of other states, does not violate other norms of international law, and that the conduct is sufficiently connected to the territory (Şimşek, 2021, p. 2010; Repas, 2015, p. 23). In conclusion, it should be noted that while it is generally accepted that extraterritorial exercise of jurisdiction should be reasonable, there is no agreement on the definition and limits of reasonableness (Zerk, 2010, p. 21-22). Therefore, states like the US develop their own definitions and apply them accordingly.

In category 6, the link between the US and the Iranian account is very loose. Because the sole link is that the British bank has a branch in the US. In this case the reasonableness condition is not met and the US will not be able to impose its jurisdiction.

As seen above, in some cases, the sanctions adopted in the context of foreign financial institutions restrict their access to the US financial system through correspondent account or payable-through account sanctions, even if there is no US nexus. As a requirement of state sovereignty, states are not obliged to open their borders to foreign

persons and countries, and therefore it is not possible to argue that these sanctions violate international law. However, the US can take enforcement actions, impose penalties, or seize assets against non-US financial institutions for violating its sanctions and these measures goes beyond the access restriction (Ruys and Ryngaert, 2020, p. 21). In particular, OFAC officials of the US Treasury Department enter into agreements with foreign banks to pay a set amount of fine for providing access to the US market to nationals of countries targeted by US primary sanctions, such as Iran. Some examples of these fines were given above.

The US exercise of jurisdiction over foreign banks in correspondent banking transactions is directly related to the structure of payment and transfer systems in international banking. When a foreign bank wants to make a transaction in dollars, the transaction must be cleared in dollars. Dollar clearing means converting foreign currency into US dollars. Electronic payments are made at the request of the bank making the payment. These electronic requests are made through messaging between banks, a system established by SWIFT. SWIFT is a private organization established in Belgium in 1973 and provides a secure network for the exchange of messages for financial transactions. The most commonly used messages for international electronic transactions are MT103 and MT202 messages. The financial institution sending the message must fill in the relevant sections in these messages. These messages contain a lot of information about the sender, the receiver and the transaction: the names of sender and reciever, currency type, subject of the transaction, the reason for the payment, etc (Repa, 2015, p. 15). In many transactions by foreign banks, which were penalized by OFAC, this information is missing or falsified. For example, it is alleged that the names of the sender or receiver are omitted or changed in these messages regarding the financial transaction, that the countries are not mentioned in transactions in favor of sanctioned countries, and that the names of companies are hidden.

In addition, as seen in some settlement agreements, even if the parties to the transaction are not US persons and even if no US bank is used for clearing of dollar transactions via SWIFT message, it is observed that the US considers this as a violation of US sanctions and can penalize foreign banks (Şimşek, 2021, p. 2070). This is because the fact that the transaction is made in dollars, even if there are no other US nexus, is seen

as a sufficient reason to use jurisdiction in terms of some OFAC sanctions regimes, such as the Iran sanctions.

The largest penalty ever imposed by the US for sanctions violations through correspondent banks was imposed on the French bank BNP Paribas. The basis of the US's jurisdiction is clear from the OFAC statement. In fact, it can be seen from the expressions in the OFAC statement that the US bases its jurisdiction on the territorial principle (USD payments to sanctioned persons are made using US territory), effects doctrine (BNP Paribas caused its US correspondent bank to violate the sanctions), the protective principle (BNP Paribas' transactions threaten the national security of the US) and the universality principle (threat to international security) (Emmenegger, 2016, p. 654-659).

The Department of Justice announced that BNP Paribas conspired to violate IEEPA and TWEA by conducting billions of dollars in transactions through the US financial system on behalf of Sudanese, Iranian and Cuban individuals (US Department of Justice, 2014). In 2014, the investigation into the settlement reached with the French bank BNP Paribas concluded that the bank systematically concealed, omitted, or covered up information about persons subject to US sanctions in 3,897 financial and commercial transactions through US banks, in violation of multiple sanctions regimes (Ruys and Ryngaert, 2020, p. 21). In the Settlement Agreement signed between the OFAC and BNP Paribas, it is stated that from July 15, 2005, to November 27, 2012, BNP Paribas processed 318 electronic funds transfers to or through financial institutions located in the US in apparent violation of the prohibitions against the exportation or reexportation of services from the US to Iran, set out in ITSR (U.S. Department of Treasury, 2014b)

As seen in this Settlemen Agreement between OFAC and BNP Paribas, the basis for the US exercise of jurisdiction in this circumstance stems from the fact that the foreign financial institutions making dollar payments through the US financial system. The US views such transactions as exporting services from the US territory in violation of Iranian sanctions programs. Accordingly, Judge Berman in US v Reza Zarrab confirmed that transferring funds through a US bank is "exportation of services from

the United States", which provides sufficient US territoriality nexus for the exercise of US jurisdiction (Ruys and Ryngaert, 2020, p. 21).

As mentioned, OFAC decisions do not clearly specify the jurisdiction on which they are based. However, it is observed from the wording of the settlement agreement with foreign banks that the jurisdiction is based on territoriality principle, effects doctrine and protective principle as wel as the universality principle (Şimşek, 2021, p. 2069). In order for the authority exercised by the US over foreign financial institutions through OFAC to be legal under international law, one of these principles of jurisdiction must be present. In addition, the extraterritorial jurisdiction claims over persons and conducts in other states must also be reasonable (Zerk, 2010, p. 20).

In the context of these principles, the legitimacy of the US exercise of jurisdiction over foreign financial institutions through correspondent accounts and in the context of the economic sanctions against Iran is discussed below.

Emmenegger (2016, p. 654-657) argues that the exercise of jurisdiction on the grounds that the US financial system is used is primarily based on two reasons. The first is the use of a US correspondent bank for the US dollar payments, which means that the transaction takes place, at least in part, in the US territory. The other is that foreign banks make the payment within the US system, causing the US correspondent bank to unintentionally violate the US law. Both of these justifications actually point to the principle of territoriality. As discussed previously, one of these is the subjective territorial principle and the other is the effects doctrine (objective territorial principle).

There is an increasing use of US jurisdiction based on the use of correspondent accounts. Essentially, there is a payment transaction between two foreign banks, and both of these banks are foreign banks located outside the US. However, since the transactions are in dollars, the financial transactions must necessarily take place through the US financial system, which implies a link with the US territory. However, the dollar payment does not always have to be made through the US. In fact, an analysis of OFAC's transactions shows that although some transactions took place through US banks, some transactions took place between two foreign banks with eurodollar accounts and without the involvement of a US bank (Repa, 2015, p. 32-35).

However, since all penalized banks also conducted transactions using US systems, the assessments here will be based on this fact.

In accordance with subjective territorial principle, a substantial part of the transaction must take place within the country. Emmenegger (2016, p. 655) states that the fact that a transaction is denominated in dollars (for example a dollar transfer from an Iranian person to a Swedish person) and, as a consequence, the clearing and settlement takes place within the US does not mean that a substantial part of the transaction takes place in the territory of the US. Therefore, Emmenegger adds, the US cannot exercise jurisdiction over this kind of transactions solely for the correspondent banking service provided by the US banks to the foreign banks.

However, in cases where the clearing transaction takes place in the US, i.e. the foreign currency is converted into USD at a bank in the US, it can be argued that a significant part of the transaction takes place in the US. This is because, in this case, the transfer would not be possible without the US correspondent bank's clearing operation. There are also arguments to the contrary, putting forward the claim that the US bank performs an automated computer process (Repa, 2015, p. 33).

However, under the effects doctrine, in order for a state to exercise jurisdiction, the foreign transaction or act must have direct, substantial and foreseeable effects within the territory of the state concerned (Bogdanova, 2022, p. 111; Emmenegger; 2016, p. 657). Emmenegger argues that even if foreign banks have caused a violation of American domestic law, this is not a direct violation, and furthermore, it is difficult to say that US payment systems have been substantially damaged by the execution of these payments (2016, p. 657).

The US claims that the transactions through the correspondent banks threatens its national security shows that it bases its jurisdiction on the protective principle (Emmenegger, 2016, p. 657). In terms of some sanctions regimes, it does not seem possible for the US to assert protective principle claim. For example, it is not reasonable to claim that Cuba or Sudan could pose a threat to the national security of the US. On the other hand, the recent tensions between Russia and the Western countries over Ukraine and Russia's constant invocation of nuclear weapons as a threat also demonstrate the applicability of this principle in the context of Russian sanctions.

However, since we are discussing the US sanctions on Iran, we need to make an assessment in the Iranian context. Iran, as the international community believes, has been trying to develop nuclear weapons for a long time and it can be logically argued that this program may pose a threat to the national security of the US. These two states have been adversaries since the establishment of the Islamic Republic of Iran and have constantly threatened each other with weapons of mass destruction.

However, Emmenegger (2016, p. 658) argues against the use of jurisdictional claims for ordinary business dealings that have nothing to do with nuclear weapons and therefore argues that the protective principle should not be used for activities that are not related to a national security threat. Indeed, it would be legally more justifiable not to rely on this jurisdiction for financial services rendered to an ordinary Iranian person. However, it may be legally valid to apply this principle to persons sanctioned for proliferation of weapons of mass destruction or terrorist activities against the US. However, it is generally considered that the concept of national threat should be interpreted narrowly regarding the legitimization of extraterritorial financial sanctions under the protective principle and that this principle does not provide sufficient grounds for this (Bogdanova, 2022, p. 111-112).

International security, which OFAC relies on in its penalties against foreign financial institutions, means that the universality principle is applied. Emmenegger (2016, p. 658) argues that the use of the universality principle in this context is problematic because it is not recognized in the context of economic relations, but even if its application is accepted, there are some obstacles to overcome. As a rule, however, general allegations such as nuclear proliferation, human rights violations or support for terrorism are not sufficient to justify the exercise of jurisdiction.

In the same vein, Ruys and Ryngaert (2020, p. 22) argue that exercising jurisdiction over a non-US transaction simply because the US financial system is used is questionable under the jurisdictional rules of international law: "grounding jurisdiction on the mere routing of (financial) messages via US servers without any other link with the US whatsoever, cannot be considered to be compatible with the international law of jurisdiction".

In conclusion, it can be argued that the US can legally exercise its jurisdiction in some cases with respect to transactions for the benefit of Iran and Iranian persons through its own banks. It does not seem possible to categorically claim that it cannot exercise its jurisdiction. To claim otherwise may be contrary to the ordinary course of life and may lead to abuse of the system. Especially in cases where foreign banks deliberately conceal the sanctioned Iranian parties to the transaction, to apply jurisdiction becomes more legal. Concealing or altering information such as the sender, receiver and subject of the transaction in SWIFT messages is an attempt to defraud the system and no legal system will tolerate this.

However, the main problem in the context of US sanctions stems from the measures taken by the US in response to this matter. Because, the most appropriate and legal measure that the US could take in the context of these deliberate violations would be to prohibit the US banks from providing correspondent banking services to the foreign financial institution, whereas the US, through OFAC, imposes astronomical penalties on foreign banks under the name of agreements. However, if the US were to revise its sanctions in the form of terrinational sanctions, it would not only prevent the abuse of its financial system, but would also not violate international law in principle. However, it is worth to note that almost all the foreign banks, the majority of which are European banks, have agreed to pay the amounts set by OFAC without any objection. The lack of a sufficiently strong response against the US sanctions and their enforcement in violation of international law and, in particular, the reaction of European persons and entities to unilateral US sanctions only when their interests are violated, leads the US to apply its sanctions in an increasingly bold and violative manner.

# CHAPTER 5

# CONCLUSION

While making the final revisions to the thesis, on November 21, 2023 the US Treasury announced the largest settlement agreement in history with world's largest virtual currency exchange Binance Holdings, Ltd. for violations of the US anti-money laundering and sanctions laws. According to press release by the US Department of Treasury the violations include, among others, matching trades between the US users and those in sanctioned jurisdictions like Iran, North Korea, Syria, and the Crimea region of Ukraine (U.S. Department of Treasury, 2023b). It was also added that Binance's settlement is the largest in OFAC history, and Binance could face exposure up to billions of dollars in further penalties if it materially breaches its compliance commitments as described under the agreement. In the Settlement Agreement, it is stated that Binance matched and executed 1,205,784 trades totaling 599,515,938 USD in virtual currency and futures products between the US persons and persons located in Iran in apparent violation of the prohibition against the direct or indirect exportation, reexportation, sale or supply of goods or services to Iran, § 560.204 of the ITSR, 31 C.F.R. part 560, and the prohibition against causing violations of the ITSR~ 31 C.F.R. § 560.203 (U.S. Department of Treasury, 2023c). Secretary of the Treasury Janet L. Yellen said "Binance turned a blind eye to its legal obligations in the pursuit of profit." and added "Any institution, wherever located, that wants to reap the benefits of the U.S. financial system must also play by the rules that keep us all safe from terrorists, foreign adversaries, and crime, or face the consequences" (U.S. Department of Treasury, 2023a). The reason for the US action stated as protecting American national security and the integrity of the international financial system in the said press release. This decision has once again demonstrated how important sanctions, especially US sanctions, are for the international economy and finance and it will continue to be

discussed in international arena in the coming period. And Iran sanctions, one of the largest US sanctions regimes, will also be high on the agenda.

The most important aspect of this decision for this thesis is that the US Department of the Treasury's decision completely banned Binance from entering into business relationships with US persons, while imposing many obligations regarding sanctions compliance, together with money laundering, know your customer (KYC) and customer due diligence (CDD) requirements, which Binance agreed to fulfill within a certain period of time. As demonstrated in the Binance decision, the US acts as a supreme authority in international law and takes decisions that are effective outside its jurisdiction. The US not only order Binance exit completely out of the US jurisdiction, but also impose many obligations regarding AML/CFT and sanctions compliance such as risk assessment, internal controls, audition, training laundering. With such measures, the US is taking decisions that normally an supranational organization like the UN would or should take. And, as explained in this thesis, such US actions and decisions are the basis for international and legal criticism of the US sanctions.

Prior to modern times, the order of international relations between states was initially anarchic, as there was no superior authority that prescribed laws in the context of international law, ensured the enforcement of these rules and subjected parties to judicial processes and punished them when the rules were violated. However, especially in the last century, it has been witnessed that this area has begun to be subject to certain rules, albeit partially, as states have given up their certain powers through treaties. Regional and global organizations such as the UN and EU have emerged, trade and good relations between states have increased, and these developments have started to serve as platforms for solving international problems. Moreover, international treaties such as the UN Charter have urged states to settle their disputes peacefully and even prohibited the settlement of international disputes through war. The UN Charter also provides for a regime of economic sanctions to be applied in combination with other measures against states that violate international rules and order. Since the UN Charter is binding on all UN member states, the economic sanctions adopted by the UNSC under the Charter must also be implemented by other states.

However, in addition to the UNSC sanctions, there are also unilateral economic sanctions adopted by individual states. Unlike the sanctions adopted by the UNSC, the legitimacy of unilateral sanctions is controversial in international law. However, as seen above, the general opinion of academics who are experts on the subject is that unilateral sanctions are in accordance with international law if they are adopted in accordance with certain rules and principles, and contrary to what is claimed, the UN Charter does not prohibit unilateral sanctions. In this context, in international law, states can legally adopt unilateral sanction decisions by complying with some rules and principles of customary international law.

Within this general framework, it is mentioned that the US is the country that has imposed the most unilateral sanctions in the world. On the other hand, Iran is one of the countries that the US has imposed the most sanctions against. In terms of both scope and diversity, the US sanctions on Iran are the leading US sanctions regime. Although the primary sanctions imposed by the US on Iran are also controversial, it has been determined that the criticisms directed in this context are mainly focused on two types of sanctions. These are extraterritorial sanctions and secondary sanctions. In the thesis, basically the legality of the extraterritorial and secondary sanctions in international law was discussed.

As presented in the thesis, the US sanctions on Iran have many impacts on Iran, the Iranian economy and the Iranian people. The Iranian state and its elites have been able to circumvent these sanctions through some tactics and strategies. However, the Iranian people are the most affected by the damage caused to the Iranian economy by the US economic sanctions. In other words, those responsible for the policies of the Iranian state that led to the US sanctions are generally not affected by the the sanctions, while the Iranian people, who are not responsible for these policies, suffer the most. Despite the US sanctions, the Iranian state continues to enrich uranium and increase its regional influence.

When addressing the legality of the US extraterritorial and secondary sanctions against Iran, the differences between these two types of sanctions are emphasized. Because it has been observed that these two types of sanctions have been confused in some studies and that there are different or conflicting approaches to their legal nature and

validity. Therefore, first of all, the differences between these two types of sanctions are defined and they are analyzed in detail. In general, it is observed that opponents of unilateral sanctions are more vocal in their objections regarding the legality when it concerns extraterritorial and secondary sanctions. Moreover, those who do not categorically consider unilateral sanctions to be contrary to international law tend to change their minds when it comes to extraterritorial and secondary sanctions. However, despite all the negativity connoted by these two terms, their legality is also subject to general rules. International treaties and customary international law constitute the sources of sanction decisions, and individual states can take legal sanction decisions, even extraterritorial and secondary ones, provided that they comply with the rules and principles of these legal sources.

In conclusion, within the framework of the rules and principles of international law explained and as a result of the study conducted in this thesis, it has been concluded that there are some extraterritorial and secondary sanctions imposed by the US on Iran that are contrary to international law, as well as some sanctions that can be considered consistent with it. As stated at the beginning of the thesis, the assessment that some US sanctions are legal in terms of international law does not mean that they are legitimate. Indeed, it is a fact that some of the US sanctions on Iran, which are considered legal, are not seen as legitimate by the world at large due to the negative humanitarian impacts they cause.

First, the US ownership or control criteria for determining the nationality of international companies, i.e. the 50% rule, is contrary to accepted rules of international law for determining the nationality of companies. The US is thus expanding its jurisdiction and compelling foreign entities to comply with its sanctions as if they are US persons. The nationality of a company is, as a rule, determined by the place of incorporation or the principal place of business, not by the nationality of its shareholders. The US practice goes beyond the limits of the personality principle used to determine jurisdiction.

Another controversial US extraterritoriality practice is applied in the context of the US goods or technology. The sale of products containing 10 percent or more (de minimis amount) US goods or technology to Iran or Iranian persons subject to US sanctions is

considered by the US as a ground for sanctions. However, it is concluded that de minimis rule of the US is not legal under the rules of international law. This is because when a good or technology is sold to a third party or country, it becomes their property and the new owner can dispose of it as they wish, unless there is a agreement to the contrary.

In order to determine whether the secondary sanctions imposed by the US against Iran are legal or not, the secondary sanctions were divided into two and the legality assessment was made accordingly. The first type of secondary sanctions is what Meyer (2008) calls terrinational sanctions, which have an impact on the US's own territory and nationals. In other words, these secondary sanctions imposed by the the US on Iran regulate and restrict the conduct and activities of its own nationals in its own territory. Therefore, even though the ultimate target of these sanctions is non-US persons, they are legal due to the combined application of the principles of territoriality and individuality. In these types of sanctions, the US prohibits its own nationals from engaging in transactions with individuals and entities that have business relations with the Iranian government or persons. Although these sanctions ultimately affect a foreign third party, they do not violate international law as there are no measures that directly target them and, as a rule, sovereign states are free to regulate the conducts of their nationals in their own territory.

The second type of the US secondary sanctions against Iran differs in regard that they directly target individuals doing business with Iran. For example, a non-US person's business relationship with an Iranian person operating in certain sectors of Iran or with an Iranian person added to the SDN list is regulated as a reason for secondary sanctions, even if there is no US nexus. As per the regulation, the US president may block and prohibit all property and interests in property of these persons in the US or in the possession or control of a US person. While the US officials have argued that these sanctions are legal under the protective principle because of Iran's nuclear program, this claim is problematic. Iran's nuclear activities are well known to the world community and have even led to UN sanctions in the past. However, even if it is true that Iran poses such a threat, it does not seem legally possible to argue that the trade of a third country, person or entity with Iran serves this purpose of Iran and therefore sanctions can be imposed on these transactions. Moreover, these sanctions do not

merely restrict the foreign persons' access to the US in the face of their transactions with Iran. They also freeze all assets subject to the US law as a result of being added to the SDN List. Ultimately, they are illegal under international law because they do not fall within the scope of terrinational secondary sanctions and the other jurisdiction claims are undefendable.

As for financial sanctions of the US against Iran, the US imposes two types of sanctions on financial institutions for non-compliance with the its Iran sanctions. One of them is sanctions that the US explicitly regards as secondary sanctions, the violation of which will result in the imposition of a correspondent banking restriction (by adding to CAPTA list) on the relevant financial institutions. These sanctions are also territorial and personal (terrinational) sanctions in the sense that Meyer (2008) refers to. If a foreign bank continues to provide services to a person on the SDN list, the US will prohibit the opening of a correspondent account or a payable-through account for that bank and this prohibition will apply to all US banks. As these sanctions are terrinational sanctions, they comply with international law. Prohibiting access to the US financial system and markets, or preventing individuals from accessing the US, amounts to revoking a privilege. As a rule, under customary international law, it is not possible to enter the territory of any country without permission from that country. Since international law does not grant foreigners the right of financial, economic and physical access to the US, such measures taken by the US do not, as a rule, give rise to legality problems.

The legality of other US sanctions against financial institutions are problematic. These sanctions are penalties or civil liability settlement agreements, where financial services provided by foreign financial institutions to Iran or Iranian persons subject to US sanctions have somehow a US nexus, such as US currency, financial sector or a bank. The US exercises jurisdiction based on one of these American nexuses (usually under the principle of territoriality). Therefore, this second set of sanctions were categorized as extraterritorial sanctions in the thesis.

Consequently, it is argued that, in some cases, the exercise of jurisdiction by the US over transactions conducted through its financial system for the benefit of Iran and Iranian persons is in accordance with international law, but in others it violates the

jurisdictional limits of international law. In cases where foreign banks intentionally conceal the sanctioned Iranian parties to the transaction, the exercise of US jurisdiction is considered legal. However, it would be unlawful to exercise jurisdiction in transactions where the transaction through the US is a simple automatic dollar clearing.

However, the real legal problem with these secondary sanctions imposed by the US on financial institutions stems from the measures taken by the US in this regard. Because, as Meyer (2008) points out, the most appropriate and legal measure that the US could take in context of willful violation of its own law would be to prohibit US banks from providing correspondent banking services to foreign financial institutions, whereas the US, through OFAC, imposes astronomical penalties on foreign banks under the name of settlement agreements. This is generally considered a violation of international law and has been widely criticized.

However, as noted, almost all foreign banks, the majority of which are European, admit that they have failed to comply with the US sanctions and pay the penalties imposed by OFAC without objection. This not only creates the assumption that there are no US practices that violate international law, but also prevents judicial review of their legality.

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# APPENDICES

## C. TURKISH SUMMARY / TÜRKÇE ÖZET

Bu tez çalışması, esas olarak, ABD'nin İran'a uyguladığı ülke dışı ve ikincil ekonomik yaptırımların uluslararası hukuka uygun olup olmadığını tespit etmeyi amaçlamaktadır. Ayrıca, ABD'nin İran uyguladığı ekonomik yaptırımların amaçları ve bunda başarılı olup olmadıkları, İran üzerindeki etkileri ile İran devletinin bu yaptırımların etkisini bertaraf emek için başvurduğu yol ve yöntemler de ele alınmıştır.

ABD, tek taraflı yaptırımları en çok uygulayan ülkeler arasında yer almaktadır. ABD'nin ekonomik yaptırımları kapsam, çeşitlilik ve diğer ülkeler üzerindeki etkisi bakımından diğer devlet ve örgütlerin yaptırımlarından farklılık göstermektedir. Bu nedenle günümüzde ekonomik yaptırımlar üzerine yapılan akademik çalışmaların çoğu ABD'nin uyguladığı ekonomik yaptırımlara yoğunlaşmaktadır.

Küresel ekonomiye ve özellikle küresel finans dünyasına yön veren ABD'nin ekonomik yaptırımları sadece hedef devlet, kuruluş ve kişileri değil, aynı zamanda hedefle iş ilişkisi olan ülke ve kişileri de etkileyebilmektedir. Dolayısıyla ABD yaptırımlarından olumsuz etkilenmek istemeyen devlet, kurum ve kişiler de hedefle olan iş ilişkilerini ya sınırlandırmak ya da sonlandırmak zorunda kalmaktadır. ABD, üçüncü tarafları hedef ülke veya kişi ile iş ilişkisi kurmaktan caydırmak için iki yönteme başvurmaktadır: yasa ve kurallarını ülke dışı olarak uygulamak ve ikincil yaptırımları kullanmak. Bunlar ABD'nin hasım olarak gördüğü devlet ve kişilerle mücadele etmek için benimsediği nispeten yeni yöntemlerdir.

Öte yandan İran, Orta Doğu'nun en önemli ülkelerinden biri olup 1979'daki rejim değişikliğinden sonra vuku bulan rehine krizinden itibaren ABD ile siyasi çatışmalar içinde olmuştur. ABD, hasım olarak gördüğü İran'a karşı birçok tedbire başvurmuştur. Bunlar arasında ekonomik yaptırımlar önemli bir yer tutmaktadır. ABD, İran ile

yaptırımlar yoluyla mücadele etme arayışında hem birincil hem de ikincil yaptırımlara başvurmaktadır. ABD'nin İran yaptırım rejiminin bir parçası olarak uyguladığı ülke dışı ve ikincil yaptırımların sayısı 2010 yılından sonra artmaya başlamıştır.

Ekonomik yaptırımlar, genel olarak, bilinçli ve devlet destekli olarak olağan ticareti veya finansal ilişkileri sonlandırma veya sonlandırma tehdidi olarak tanımlanmaktadır. Bu yaptırımların esasını, yaptırım uygulayan aktör ile hedef arasındaki ithalat ve ihracat ile finansal ilişkilerin kısıtlanması oluşturur. Ekonomik yaptırımların tek taraflı yaptırımlar-çok taraflı yaptırımlar; kapsamlı yaptırımlar-akıllı yaptırımlar ve birincil yaptırımlar- ikincil yaptırımlar gibi türleri vardır.

Uygulayıcıların sayısı bakımından yaptırımlar tek taraflı ve çok taraflı yaptırımlar olarak ikiye ayrılmaktadır. Tek taraflı yaptırımlar, bir ülkenin başka bir ülke ya da örgüt olmaksızın tek başına uyguladığı yaptırımlardır. Çok taraflı yaptırımlar ise birden fazla ülkenin veya bir ülkeler ittifakının veya uluslararası bir örgütün ortak bir hedefe uyguladığı yaptırımlardır. En geniş kapsamlı çok taraflı yaptırımlara örnek olarak BM yaptırımları verilebilir. Bazı araştırmacılar tek taraflı yaptırımların uluslararası hukuka aykırı olduğunu iddia etmektedirler. Ancak tezde, tekil ülkelerin belirli şart ve kurallara riayet ederek uluslararası hukuka uygun olarak tek taraflı yaptırımlara karar verebileceği ileri sürülmektedir.

Kapsamlı yaptırımlar hedef ile mal, hizmet ve teknoloji alışverişini tamamen kesmeyi ifade etmektedir. Akıllı ya da hedef gözeten yaptırımlar ise kapsamlı yaptırımların olumsuz sonuçlarından sonra ortaya çıkmış olup görece yeni yaptırımlardır. Bu yaptırımlar kapsamlı yaptırımların tersi olarak tanımlanmakta olup sektörel ve bireysel olarak iki türe ayrılmaktadır. Sektörel yaptırımlarda hedef ülkenin silah, petrol, finans gibi belirli sektörleri hedeflenir. Özellikle BM tarafından uygulanan kapsamlı yaptırımların hedef ülkelerde neden olduğu insani tahribatlardan sonra bu yaptırımlar terk edilmeye başlamıştır.

Birincil yaptırımlarda yaptırım uygulayan devlet, kendi vatandaş ve şirketlerini veya kendi ülkesinde bulunan kişileri hedef ülke ya da kişi ile işlem yapmasını yasaklamaktadır. İkincil yaptırımlar ise yaptırım uygulayan ülkenin (Örneğin ABD'nin) hedef ülke dışında yer alan üçüncü ülke, kuruluş veya kişileri (örneğin AB, AB şirketleri ve AB vatandaşları) yaptırım uyguladığı hedefle (örneğin İran veya İranlı

kişiler) iş ilişkisine girmemesi için uygulamaya koyduğu kısıtlamalardır. Bu yaptırımlar, hedefin uygulanan yaptırımları bertaraf etmek için başka devlet veya devlet dışı aktörlerle iş ilişkisi kurması ve dolayısıyla uygulanan birincil yaptırımların etkisiz kalması nedeniyle ortaya çıkmıştır.

İkincil yaptırımlar ile ilişkili bir diğer kavram ise ülke dışı yaptırımlardır. Temel olarak yaptırım kural ve düzenlemelerinin muhatapları, o ülkenin vatandaşları olup üçüncü ülke vatandaşları veya üçüncü bir ülkede yerleşik kişi ve kurumlar, başka bir ülkenin yaptırımları kapsamındaki kişilerle serbestçe iş ilişkisi kurabilmektedir. Ancak ülke dışı yaptırımlar bunun istisnasını oluşturmakta ve yaptırım uygulayan devletin ülkesi dışında yer alan kişilerin de eylem ve davranışlarını düzenleme yoluna gitmektedir. Ülke dışı yaptırımlar bu şahıslara, kimlerle işlem yapıp kimlerle yapmayacağını dikte etmektedir. Bu yaptırımlardan bazıları, uluslararası hukuktaki yetki kurallarından "mülkilik ilkesi"ne prensip olarak aykırı olduklarından tartışma konusudur. Ancak devletler, ülke dışı yaptırımların uluslararası hukuka uygun olduğunu göstermek için çeşitli gerekçelere başvurmaktadır. Bunlardan biri klasik yetki ilkelerinden mülkilik veya şahsilik ilkesinin geniş yorumlanmasıdır. Bazı durumlarda ise koruma ilkesi veya etki doktrinine yaslanılmaktadır.

İkincil yaptırımlar ile ülke dışı yaptırımlar birbiri ile çok karıştırılan iki kavramdır. ABD başta olmak üzere bazı ülkelerin aslında ikincil yaptırım olarak kabul edilecek kimi kural ve uygulamaları ülkesel olarak değerlendirip bu kapsamda düzenlemeye tabi tutması da bu olguyu desteklemektedir. Öncelikle ülke dışı yaptırımların, bu şekilde genel sayılabilecek kullanım ve bu yöndeki yaygın inancın aksine uluslararası hukuk anlamında bir "yaptırım" çeşidi olduklarını söylemenin güç olduğunu belirtmek gerekmektedir. Çünkü bunlar hedefe ya da ikincil yaptırımlarda olduğu gibi hedefle işlem yapan kişilere yönelen ayrı bir yaptırım çeşidi değildir. Ülke dışı yaptırımlar yetki ile ilişkili olup yetki de bir devletin yaptırım düzenlemelerinin kime uygulanacağı yani uygulama alanları ile ilgilidir. Mülkilik ilkesi gereği bir devletin çıkardığı kanun ve diğer ikincil düzenlemeler kural olarak o devletin ülkesi içinde geçerlidir. Ülke dışı yaptırımlar, bu ilkeye kural olarak aykırılık teşkil etmektedir.

Bazı görüşler bütün ikincil yaptırımların ülke dışı olduğunu yani ülke dışı yaptırımların ikincil yaptırımları da kapsadığını ileri sürmektedir. Ancak yapılan

araştırmalar ikincil yaptırımların iki türü olduğunu ve bazı ikincil yaptırımların ülke dışı olmayabileceğini göstermektedir. Gerçekten de bazı ikincil yaptırım düzenlemeleri yaptırım uygulayan ülkenin kendi vatandaşlarının ülke içindeki eylem ve işlemlerine ilişkindir ve ülke dışı karakterleri yoktur. Sonucu itibariyle bu eylem ve işlemlerden yabancı üçüncü bir kişi etkilense de bu ikincil yaptırımları sırf bu nedenle ülke dışı olarak kabul etmek mümkün değildir.

Bunun dışında, ABD tarafından birincil yaptırım olarak kabul edilen bazı yaptırımların aslında ikincil yaptırım oldukları görülmektedir. Bu durum ABD hukukunun mülkilik yetkisinin sınırlarını geniş değerlendirmesinden kaynaklanmaktadır. Örneğin içeriğinde belli bir orandan fazla ABD malı olan yabancı malların ABD yaptırımlarına tabi üçüncü ülkelere satılma yasağının ya da ABD doları üzerinden işlem yapılması durumunda ABD'nin yetki kullanmasının belirli oranda ABD bağının varlığı nedeniyle birincil yaptırım olduğunu iddia etmek güç görünmektedir. Bu durumlarda hem ülke dışı yetki kullanımı hem de ikincil yaptırım uygulaması söz konusudur.

ABD'nin İran'a yönelik ülke dışı ve ikincil yaptırımlarının hukukiliği ele alınırken, bu iki yaptırım türü arasındaki farklara vurgu yapılmaktadır. Çünkü bazı çalışmalarda bu iki yaptırım türünün birbirine karıştırıldığı, hukuki niteliği ve geçerliliği konusunda farklı ya da çelişkili yaklaşımlar olduğu görülmektedir. Bu nedenle öncelikle bu iki yaptırım türü arasındaki farklar tanımlanmış ve detaylı bir şekilde analiz edilmiştir. Genel olarak, tek taraflı yaptırımlara karşı çıkanların, ülke dışı ve ikincil yaptırımlar söz konusu olduğunda yasallığa ilişkin itirazlarını daha yüksek sesle dile getirdikleri görülmektedir. Dahası, tek taraflı yaptırımları kategorik olarak uluslararası hukuka aykırı bulmayanlar, söz konusu ülke dışı ve ikincil yaptırımlar olduğunda fikirlerini değiştirme eğilimindedirler. Ancak, bu iki terimin çağrıştırdığı tüm olumsuzluklara rağmen, bunların uluslararası hukuka uygunluğu da genel kurallara tabidir. Uluslararası antlaşmalar ve uluslararası örf ve âdet hukuku yaptırım kararlarının kaynaklarını oluşturur ve devletler, bu uluslararası hukuk kaynaklarının kural ve ilkelerine uymak şartıyla ülke dışı ve ikincil de olsa hukuki yaptırım kararları alabilirler.

Bu tez, diplomatiki siyasi, kültürel vb. diğer yaptırım çeşitlerini değil, ABD'nin İran'a uyguladığı uluslararası ekonomik yaptırımları tartışmaktır. Ayrıca, bu tezin ana odağı

ABD'nin İran'a uyguladığı birincil yaptırımlar değil, ABD'nin İran yaptırım rejimi kapsamında uyguladığı ülke dışı ve ikincil yaptırımlarıdır. Buna ek olarak, ABD'nin finansal yaptırımlarına özel önem verilmiştir. Zira ABD, finans sektöründeki küresel hâkimiyeti sayesinde özellikle son dönemde bu yaptırımları diğer ekonomik yaptırım türlerine kıyasla daha fazla kullanmaktadır. Bu tez çalışması ABD'nin İran'a uyguladığı belli başlı bütün ülke dışı ve ikincil yaptırımları kapsaması ve değerlendirmesi bakımından önem arz etmektedir.

Tezin temel sorusu, ABD'nin İran'a karşı uyguladığı ülke dışı ve ikincil yaptırımların uluslararası kamu hukukuna uygun olup olmadığıdır. Bu temel soru dışında tezin cevap aradığı diğer sorular şunlardır:

- Uluslararası ekonomik yaptırımlar nedir?
- Uluslararası ekonomik yaptırımların türleri ve bunlar arasındaki farklar nedir?
- Uluslararası ekonomik yaptırımların uluslararası hukuk kaynakları nedir?
- Genel olarak ekonomik yaptırımlar, özel olarak tek taraflı ekonomik yaptırımlar uluslararası hukukun kural ve ilkelerine uygun mudur?
- Ülke dışı yaptırımlar ile ikincil yaptırımlar nedir? Bunların benzerlik ve farkları nelerdir? Uluslararası hukukun yetki kuralları ile bu yaptırımlar arasındaki ilişki nedir? Uluslararası hukuka uygunlukları farklı kural ve ilkelere mi dayanmaktadır?
- ABD yaptırımlarının İran üzerindeki ekonomik ve insani olumsuz etkileri nedir? İran bu yaptırımların olumsuz etkilerini boşa çıkarmak için hangi yöntem ve yollara başvurmaktadır?
- ABD'nin İran'a uyguladığı ülke dışı ve ikincil yaptırımlardan hangisi uluslararası hukuka uygun, hangileri uluslararası hukuka aykırıdır?

Bu temel ve alt soruları cevaplandırmak için tez, altı bölüme ayrılmış ve konu ele alınmıştır. Birinci Bölüm giriş bölümü olup tezin amacı, içeriği, yöntemi ve argümanları belirtilmektedir.

İkinci bölümde uluslararası hukukta ekonomik yaptırımların teorik çerçevesi incelenmekte ve ülke dışı ve ikincil yaptırımların kapsamına ilişkin görüşler tartışılmaktadır. Bu bağlamda, uluslararası ekonomik yaptırımların temel hukuki kaynakları ele alınmakta ve hangi yaptırımların hangi uluslararası hukuk kaynaklarına

dayandığı ortaya konulmaktadır. Özellikle uluslararası hukukta yetki, ABD'nin İran'a karşı uyguladığı ülke dışı ve ikincil yaptırımların hukuka uygunluğunu değerlendirebilmek açısından önem arz etmektedir. Bu bölümde, tezin temel argümanları için önemli olduğu için hem bazı yaptırım türleri hem de BM'nin yaptırım rejimi de tartışılmaktadır.

Üçüncü bölümde ABD'nin İran'a yönelik yaptırım rejimi analiz edilmektedir. ABD yaptırım mekanizması, yaptırım kurallarının kabulünde rol alan kurumlar, Özel Olarak Belirlenmiş Vatandaşlar ve Yasaklanmış Kişiler Listesi (SDN) gibi farklı yaptırım listeleri ve ABD'nin İran'a yönelik yaptırımlarının zaman içinde geçirdiği evrim ele alınmaktadır. Bu bölümde, ABD'nin İran'a yönelik yaptırımlarının zaman içerisinde değişim geçirdiği ve ülke dışı ve ikincil yaptırımların ABD'nin İran yaptırımları rejiminin önemli bir unsuru haline geldiği savunulmaktadır.

Dördüncü bölümde evvela ABD'nin İran'a yönelik yaptırımlarının hedefleri ve bu hedefleri gerçekleştirmekte başarılı olup olmadığı incelenmektedir. Daha sonra bu yaptırımların İran ve İran halkı üzerindeki etkisi tartışılmaktadır. ABD yaptırımlarının ciddi insani etkileri olduğundan, uluslararası hukuk çerçevesinde hukuka uygun olsalar bile meşruiyetlerinin zayıf olduğu belirtilmektedir. Son kısım, İran'ın ABD'nin ülke dışı ve ikincil yaptırımlarına nasıl karşılık verdiğine ayrılmıştır. İran devleti ABD yaptırımlarının olumsuz sonuçlarını bertaraf etmek için pek çok yönteme başvurmaktadır.

Beşinci bölümde, ABD'nin İran'a karşı uyguladığı ülke dışı yaptırımlar ve ikincil yaptırımlar ele alınmaktadır. Bu yaptırımların uluslararası hukuka uygunluğu, alt türlere ayrılarak değerlendirilmektedir. Devamındaki altıncı bölüm yapılan tartışmada varılan sonuçlara ilişkindir.

Bu tezin teorik kısmının yazımında ağırlıklı olarak kuramsal kaynaklar kullanılmış ve alandaki önemli kitap, tez ve makaleler incelenmiştir. Uluslararası yaptırımlar konusu oldukça politik bir konu olduğundan tezde nesnel bir tartışma yapmak amacıyla birbirinden farklı yaklaşımlara sahip geniş bir görüş yelpazesine yer verilmektedir.

ABD yaptırımları için ABD Kongresi tarafından kabul edilen ilgili kanunlar, başkanlar tarafından çıkarılan başkanlık kararnameleri ve Hazine Bakanlığı Yabancı Varlıkları

Kontrol Ofisi (OFAC) tarafından çıkarılan yönetmelikler ve genel lisanslar birincil kaynak olarak analiz edilmektedir. Zira bu belgelerdeki küçük bir ifade değişikliğinin çok önemli etkiler yaratabileceği tespit edilmiştir. Ayrıca uluslararası antlaşma ve kurallar, ulusal ve uluslararası mahkeme kararları, ilgili tarafların açıklamaları, haber ve makaleler bu tezin yazımında yardımcı kaynak olarak kullanılmıştır.

Yaptırımların temel uluslararası hukuk kaynakları antlaşmalar ve uluslararası örf ve âdet hukukudur. Uluslararası toplum üyelerinin kendi arasında etkileşimi genelde uluslararası örf ve âdet hukuku ile uluslararası antlaşmaların tazmin ettiği hukuki çerçeve içinde gerçekleşmektedir. Dolayısıyla devletler ile uluslararası örgütlerin ekonomik yaptırım kararı alıp alamayacakları ve bunun uluslararası hukuka uygunluğu genel olarak bu iki kaynağın yorumlanması yolu ile tespit edilir.

Antlaşmalar, devletlerin imza koyduğu uluslararası sözleşmelerdir. Bir antlaşma iki veya daha fazla devlet veya uluslararası kuruluş arasında akdedilir ve böylelikle devlet ve kuruluşlar arasında uluslararası hukuk bağlamında bir ilişki oluşturulur. Çok taraflı ekonomik yaptırım örneği olarak BM yaptırımları, BM Şartı'nda düzenlenmiş olup, BM Güvenlik Konseyi belirli şartlara riayet ederek uluslararası hukuku ihlal eden devlet ve kişilere yaptırım uygulayabilmektedir. Öte yandan, tek taraflı yaptırımlar herhangi bir uluslararası belgede düzenlenmemiştir. Bu nedenle bazı araştırmacılar tek taraflı ekonomik yaptırımların uluslararası hukuka uygun olmadıklarını iddia etmektedirler.

Ayrıca devletler kabul ettikleri uluslararası antlaşmalarla birbirine karşı yaptırım uygulama yetkisinden vazgeçebilirler. Bu kapsamda Dünya Ticaret Örgütünün Anlaşmaları örnek verilebilir. Bu Anlaşmalar ile üye devletlerin yaptırım yetkisi oldukça sınırlandırılmıştır. İran ve ABD arasında 1955 yılında kabul edilen Dostluk Anlaşması da buna örnek verilebilir. İran Devleti bu Anlaşmayı Uluslararası Adalet Divanında ABD yaptırımlarına karşı açtığı davada dayanak olarak kullanmış ve bu nedenle ABD bu Anlaşmadan 2018 yılında çekildiğini ilan etmiştir.

Ekonomik yaptırımların dayanabileceği ikinci uluslararası hukuk kaynağı ise uluslararası örf ve âdet hukuku kurallarıdır. Örf ve âdet hukuku kuralları, iç hukukta eski önemini yitirmişse de uluslararası hukukun ana kaynaklarından biri olmaya devam etmektedir. Devletlerin belirli konularda tekrar eden eylem ve davranışları örf

ve âdet hukuku kurallarına temel teşkil eder. Örf ve âdet kurallarının maddi ve psikolojik olmak üzere iki unsuru vardır. Devamlılık denilen birinci şartta belirli bir uygulamanın devamlı ve tutarlı bir şekilde tekrarlanması gerekir. Opinio juris denilen ikinci şart ise psikolojik olup devletlerin kendini bu kuralla bağlı hissetmesidir.

Tezde misilleme, zararla karşılık vb. uluslararası örf ve âdet hukukunun eskiden beri işletilen tedbir ve kurumları ile devletlerin uluslararası hukuka uygun olarak uluslararası hukuku ihlal eden veya hak ve menfaatlerine aykırı hareket eden devletlere karşı tek taraflı yaptırımlara karar verebilecekleri ileri sürülmektedir. Misilleme, bir devletin diğer bir devletin hukuka aykırı olmayan ancak çıkarlarını zedeleyen davranışına karşı devletler hukukunun yasaklamadığı yollarla karşılık vermesi biçiminde tanımlanmaktadır. Zararla karşılık ise bir devletin uluslararası hukuka aykırı bir fiili nedeniyle zarar gören bir başka devletin söz konusu devletin hukuka uygun davranmasını sağlamak amacıyla uluslararası hukuka aykırı yollarla o devlete karşılık vermesi önlemidir.

Uluslararası örf ve âdet hukukunun yetki kuralları da ekonomik yaptırımların uluslararası hukuka uygunluğunu etkileyen unsurlardan biridir. Özellikle ülke dışı yaptırımlar ve ikincil yaptırımların uluslararası hukuka uygunluğunu etkileyen en önemli hususlardan biri uluslararası örf ve âdet hukukunun devletlerin yetkisine ilişkin kuraları ile ilgilidir. Ekonomik yaptırım kararlarının uluslararası örf ve âdet hukukunun aşağıda açıklanan yetki ilkelerinden birine dayanması gerekir. Bu ilkeler devletin kural koyma, bu kuralı yürütme ve uymayanları yargılama yetkilerine getirilen sınırlardır. Bu ilkelerden birine dayanmayan ülke dışı düzenleme ve uygulamalar uluslararası hukuka aykırı olacaktır.

Ayrıca tezde, ABD'nin İran'a uyguladığı ülke dışı ve ikincil yaptırımların uluslararası hukuka uygun olup olmadıkları esas olarak bu yetki ilkeleri kapsamında incelenmektedir. Bu nedenle uluslararası örf ve âdet hukuku kapsamında devletlerin yetkisinin nasıl düzenlediği ve yetki ilke ve türleri, bu tez için son derece önem arz etmektedir. ABD'nin İran'a yönelik kabul ettiği ülke dışı ve ikincil yaptırımlarının genel olarak bu yetkilerden bir ya da birkaçına dayandırıldığı gözlemlenmektedir.

Devletlerin ülke dışı ve ikincil yaptırım kararlarının şu yetki ilkelerinden en az birine dayanması gerekmektedir: Mülkilik ve etki doktrini ilkesi, şahsilik ilkesi, koruma

ilkesi ve evrensellik ilkesi. Ana kural mülkilik ilkesi olup devletler bazı şartların varlığı halinde diğer ilkelere de dayanabilirler. Yani ana kural devletlerin çıkardığı kanun ve diğer kuralların devletin kendi ülkesinde geçerli olmasıdır.

Bunun dışında devletler; şahsilik ilkesi kapsamında, kural olarak, uyruğundaki kişilerin eylem ve faaliyetlerini uyruğundaki kişi nerede olursa olsun düzenlemeye yetkilidir. Kişilerin uyrukluğu vatandaşlıkla, şirket gibi tüzel kişilerin uyrukluğu ise ya kurulduğu veya temel faaliyet merkezinin bulunduğu yere göre belirlenir.

Devletler, evrensellik ilkesi kapsamında bütün insanlığa karşı işlenmiş varsayılan bazı suçlar için yasa koyabilir ve ilgili kişileri yargılayabilir. Korsanlık, köle ticareti, hava araçlarına saldırı ya da bunları kaçırmak, soykırım, savaş suçları ve bazı terörist eylemler vb. bu suçlara örnek olarak verilebilir. Ayrıca devletler, koruma ilkesi kapsamında, kendi ülkesi dışında ve vatandaşı olmayan kişilerden güvenlik veya temel devlet fonksiyonlarına yönelen tehditleri yönetmek için yetkilerini kullanabilir.

Tezde, bazı yaptırımların uluslararası hukuka uygun olduğunu iddia etmenin, bunların meşru olduğu mesajını ve niyetini taşımadığı belirtilmektedir. Zira, diğer devletlere veya yabancı kişilere uygulanan yaptırımların uluslararası hukuka uygun olup olmadığının yanında uluslararası meşruiyetleri de önemlidir. İnsani, etik ve siyasi gibi kriterler de modern uluslararası ilişkilerde önemli bir rol oynamaktadır. ABD'nin ülke dışı ve ikincil yaptırımlarının İran bağlamında yol açtığı büyük olumsuz insani felaketler uluslararası hukuka uygun olsalar bile meşruiyetini zayıflatmaktadır

ABD'nin İran'a uyguladığı yaptırımların İran, İran ekonomisi ve İran halkı üzerinde birçok etkisi bulunmaktadır. İran devleti ve elitleri bazı taktik ve stratejilerle bu yaptırımları aşmayı başarmaktadır. Ancak ABD ekonomik yaptırımlarının İran ekonomisine verdiği zarardan en çok etkilenen İran halkıdır. Diğer bir deyişle, İran devletinin ABD yaptırımlarına yol açan politikalarından sorumlu olanlar genellikle yaptırımlardan etkilenmezken, bu politikalardan sorumlu olmayan İran halkı en fazla zararı görmektedir. ABD yaptırımlarına rağmen İran devleti uranyum zenginleştirmeye ve bölgesel nüfuzunu arttırmaya devam etmektedir. ABD yaptırımlarının sıradan İranlı insanlar üzerindeki olumsuz etkileri bu yaptırımlar uluslararası hukuka uygun olsalar bile uluslararası meşruiyetini sorgulatmaktadır.

ABD'nin İran yaptırımları, ABD'nin herhangi bir ülkeye uyguladığı en kapsamlı ve geniş yaptırımlardır. Bu yaptırımlar İran'ın ABD'deki varlıklarını bloke etmekte, ABD'nin İran'la neredeyse tüm ticaretini yasaklamakta (gıda ve tarım ürünleri, ilaç, tıbbi malzeme ve insani yardımla ilgili mallar hariç) ve dış yardım ve silah satışını yasaklamaktadır.

ABD yaptırımları, İran'ın enerji sektörünü, bu sektöre yatırım yapan yabancı şirketleri ve İran petrolünü satın alan, satan veya taşıyan kuruluşları; Merkez Bankası da dâhil olmak üzere İran'ın finans sektörünü; gemicilik, inşaat, madencilik, tekstil, otomotiv ve imalat dâhil olmak üzere İran ekonomisinin diğer sektörlerini ve bu sektörlerle işlem yapan veya bu sektörlere destek sağlayan yabancı kuruluşları; İran'la silah ticaretini; ve İran hükümetinin birçok bileşenini (Dini Lideri ve İslam Devrimi Muhafızları Ordusu dahil) ve bunlarla işlem yapan veya bunları destekleyen yabancı kişi ve kuruluşları hedef almaktadır.

ABD, tek taraflı ekonomik yaptırımları geniş bir şekilde uygulayan bir ülkedir. Bu nedenle yaptırımlarının yasallığı daha fazla sorgulanmaktadır. Öte yandan İran, kırk yılı aşkın bir süredir ABD yaptırımlarının hedefinde bulunmaktadır. ABD, İran'a ekonomik bir ambargo uygulamakta ve vatandaşları ile İran hükümeti ve İranlı kişiler arasındaki neredeyse tüm işlemleri yasaklamaktadır. Bununla da yetinmeyen ABD, ülke dışı ve ikincil yaptırımlar gibi yaptırım araçlarıyla İran ile üçüncü ülke ve kişiler arasındaki ekonomik ilişkileri de kesmeye çalışmaktadır. ABD'nin bu tür yaptırımları özellikle uluslararası hukuka uygunlukları açısından tartışmalıdır. Sonuç olarak, açıklanan uluslararası hukuk kural ve ilkeleri çerçevesinde ve bu tezde yapılan çalışma sonucunda, ABD'nin İran'a uyguladığı bazı ülke dışı ve ikincil yaptırımların uluslararası hukuka aykırı olduğu, bunun yanı sıra uygun sayılabilecek bazı yaptırımların da bulunduğu sonucuna varılmıştır.

İlk olarak, ABD'nin uluslararası şirketlerin tabiiyetini belirlemeye yönelik sahiplik veya kontrol kriteri, yani %50 kuralı, şirketlerin tabiiyetini belirlemeye yönelik kabul edilmiş uluslararası hukuk kurallarına aykırıdır. ABD böylece yargı yetkisini genişletmekte ve yabancı kuruluşları sanki ABD'li kişilermiş gibi yaptırımlarına uymaya zorlamaktadır. Bir şirketin tabiiyeti, kural olarak, hissedarlarının tabiiyetine göre değil, kuruluş yeri veya ana işlem merkezine göre belirlenir. ABD uygulaması,

yargı yetkisini belirlemek için kullanılan şahsilik ilkesinin hukuki sınırlarını aşmaktadır.

ABD'nin bir diğer tartışmalı ülke dışı uygulaması da ABD malları veya teknolojisi bağlamında uygulanmaktadır. Yüzde 10 veya daha fazla (de minimis miktar) ABD malı veya teknolojisi içeren ürünlerin İran'a veya ABD yaptırımlarına tabi İranlı kişilere satılması ABD tarafından yaptırım gerekçesi olarak kabul edilmektedir. Ancak ABD'nin de minimis kuralının da uluslararası hukuk kuralları çerçevesinde yasal olmadığı sonucuna varılmıştır. Zira bir mal ya da teknoloji üçüncü bir tarafa ya da ülkeye satıldığında, onların mülkiyetine geçer ve yeni sahibi, aksine bir anlaşma olmadığı sürece, bu mal ya da teknoloji üzerinde dilediği gibi tasarrufta bulunabilir.

ABD'nin İran'a karşı uyguladığı ikincil yaptırımların yasal olup olmadığını belirlemek için ikincil yaptırımlar ikiye ayrılmış ve yasallık değerlendirmesi buna göre yapılmıştır. İkincil yaptırımların ilk türü Meyer'in (2008) *terrinasyonel* yaptırımlar olarak adlandırdığı, ABD'nin kendi toprakları ve vatandaşları üzerinde etkisi olan yaptırımlardır. Başka bir deyişle, ABD'nin İran'a uyguladığı bu ikincil yaptırımlar, kendi vatandaşlarının kendi topraklarındaki işlem ve faaliyetlerini düzenlemekte ve kısıtlamaktadır. Dolayısıyla, bu yaptırımların nihai hedefi ABD vatandaşı dışındaki kişiler olsa da mülkilik ve şahsilik ilkelerinin birlikte uygulanması nedeniyle uluslararası hukuka uygundur. Bu tür yaptırımlarda ABD, kendi vatandaşlarının İran hükümeti veya kişileriyle ticari ilişkileri olan kişi ve kuruluşlarla işlem yapmasını yasaklamaktadır. Bu yaptırımlar nihayetinde yabancı bir üçüncü tarafı etkilese de doğrudan onları hedef alan tedbirler olmadığından ve kural olarak egemen devletler kendi vatandaşlarının kendi topraklarındaki davranışlarını düzenlemekte serbest olduklarından uluslararası hukuku ihlal etmemektedirler.

ABD'nin İran'a yönelik ikincil yaptırımlarının ikinci türü, İran ile iş yapan veya işlemler gerçekleştiren bireyleri doğrudan hedef alması bakımından farklılık göstermektedir. Örneğin, ABD'li olmayan bir kişinin İran'ın belirli sektörlerinde faaliyet gösteren ya da SDN listesine eklenmiş bir İranlı kişiyle iş ilişkisi kurması, bu işlemlerin ABD ile herhangi bir bağı olmasa dahi ikincil yaptırım nedeni olarak düzenlenmiştir. ABD düzenlemelerine göre ABD Başkanı, bu kişilerin ABD'deki veya

ABD'li bir kişinin mülkiyetinde veya kontrolünde bulunan tüm malvarlıklarını veya malvarlığı üzerindeki hak ve menfaatlerini bloke edebilir.

ABD yetkilileri, İran'ın nükleer programı nedeniyle bu yaptırımların koruma ilkesi kapsamında yasal olduğunu savunsa da bunun sorunlu yanları bulunmaktadır. İran'ın nükleer faaliyetleri dünya kamuoyu tarafından bilinmektedir. Hatta bu faaliyetler geçmişte BM yaptırımlarına yol açmıştır. Ancak İran'ın böyle bir tehdit oluşturduğu doğru kabul edilse bile, üçüncü bir ülke, kişi veya kuruluşun İran ile ticaretinin İran'ın bu amacına hizmet ettiğini ve dolayısıyla bu işlemlere yaptırım uygulanabileceğini savunmak hukuken mümkün görünmemektedir. Üstelik bu yaptırımlar sadece yabancı kişilerin İran ile yaptıkları işlemler nedeniyle ABD'ye erişimlerini kısıtlamakla kalmayıp, SDN Listesine eklendikleri için bu kişilerin ABD hukukuna tabi olan tüm mal varlıklarını da dondurmaktadır. Sonuç olarak, bu yaptırımlar uluslararası hukuka aykırıdır. Zira terrinasyonel ikincil yaptırımlar kapsamına girmemekte ve ileri sürülen diğer yetki iddiaları da geçerli kabul edilmemektedir.

ABD'nin İran'a yönelik finansal yaptırımlarına gelince; ABD, İran yaptırımlarına uyulmaması halinde finansal kuruluşlara iki tür yaptırım uygulamaktadır. Bunlardan biri, ABD'nin açıkça ikincil yaptırım olarak kabul ettiği ve ihlali halinde ilgili finansal kuruluşlara muhabir bankacılık kısıtlaması (CAPTA listesine eklenerek) uygulanmasıyla sonuçlanacak olan yaptırımlardır. Bu yaptırımlar aynı zamanda Meyer'in (2008) bahsettiği anlamda mülkilik ve şahsilik (terrinasyonel) ilkeleri kapsamındaki yaptırımlardır. Eğer yabancı bir banka SDN listesindeki bir kişiye hizmet vermeye devam ederse, ABD bu banka için muhabir hesap veya aktarmalı muhabir hesap açılmasını yasaklayacak ve bu yasak tüm ABD bankaları için geçerli olacaktır. Sonuç itibariyle bu yaptırımlar terrinasyonel yaptırımlar olduğu için uluslararası hukukla uyumludur. ABD'nin finansal sistemine ve piyasalarına erişimin yasaklanması veya bireylerin ABD'ye erişiminin engellenmesi, bir ayrıcalığın kaldırılması anlamına gelir. Kural olarak, uluslararası örf ve âdet hukuku uyarınca, herhangi bir ülkenin topraklarına o ülkenin izni olmadan girmek mümkün değildir. Uluslararası hukuk yabancılara ABD'ye finansal, ekonomik ve fiziksel erişim hakkı ve ayrıcalığı tanımadığından, ABD tarafından alınan bu tür tedbirler kural olarak hukukilik sorunu doğurmamaktadır.

ABD'nin finans kuruluşlarına yönelik diğer yaptırımlarının uluslararası hukuka uygunluğu sorunludur. Bu yaptırımlar, yabancı finans kuruluşları tarafından İran'a veya ABD yaptırımlarına tabi İranlı kişilere sağlanan finansal hizmetlerin ABD para birimi, finans sektörü veya bir ABD bankası gibi bir şekilde ABD ile bağlantısı olduğu durumlarda uygulanan cezalar veya belirli miktardaki bir para cezasının ödenmesine ilişkin anlaşmalarıdır. ABD, bu Amerikan bağlarından birine dayanarak (genellikle mülkilik ilkesi kapsamında) uluslararası yetkisini kullanır. Bu ABD bağının varlığı nedeniyle, bu ikinci yaptırım grubu tezde ülke dışı yaptırımlar olarak kategorize edilmiştir.

Sonuç olarak, bazı durumlarda, ABD'nin İran ve İranlı kişiler yararına kendi finansal sistemi üzerinden gerçekleştirilen işlemler üzerinde yetkisini kullanmasının uluslararası hukuka uygun olduğu, ancak diğer bazı durumlarda uluslararası hukukun yetki sınırlarını ihlal ettiği ileri sürülmektedir. Yabancı bankaların işlemin yaptırım kapsamındaki İranlı taraflarını kasıtlı olarak gizlediği durumlarda, ABD'nin yetkisini kullanmasını hukuka uygun kabul etmek gerekir. Ancak, ABD üzerinden yapılan işlemin basit bir otomatik dolar takası olduğu durumlarda yetki kullanılması hukuka aykırı olacaktır.

Ancak ABD'nin finansal kuruluşlara uyguladığı bu ikincil yaptırımlarla ilgili asıl hukuki sorun, ABD'nin bu konuda aldığı önlemlerden kaynaklanmaktadır. Çünkü Meyer'in (2008) de belirttiği gibi, ABD'nin yasalarının kasıtlı olarak ihlal edilmesi durumunda alabileceği en uygun ve yasal önlem, ABD bankalarının yabancı finansal kuruluşlara muhabir bankacılık hizmeti vermesini yasaklamak iken, ABD, OFAC aracılığıyla yabancı bankalara uzlaşma anlaşmaları adı altında astronomik cezalar uygulamaktadır. Bu durum genellikle uluslararası hukukun ihlali olarak değerlendirilmekte ve geniş çapta eleştirilmektedir.

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