

The Role of Transnational Private Actors in Ukraine International Flight 752 Crash in Iran Under Economic Sanctions Pressure

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*In Remembrance of the Victims of the Ukraine International Airline Flight
PS752*

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INTRODUCTION—UNDERSTANDING ECONOMIC SANCTIONS REGIMES

Economic sanctions have been a favorite instrument of foreign policy from 432 BC when Athens deployed economic measures against Megara.¹ Over time, sanctions have evolved from the siege of cities to “secondary smart sanctions,” where sanctioning states punish not only specific individuals and

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1. HOSSEIN ASKARI, ECONOMIC SANCTIONS: EXAMINING THEIR PHILOSOPHY AND EFFICACY 5–6 (2003); GEOFF L. SIMONS, IMPOSING ECONOMIC SANCTIONS: LEGAL REMEDY OR GENOCIDAL TOOL? 13–14 (London: Pluto Press, 1999).

entities within their territory who conduct business, but also other persons who reside in foreign countries.

The key players of sanctions regimes are public and private actors, such as international organizations, trading blocs, non-governmental organizations, international firms, governments, transnational private actors, domestic firms, entities, and individuals.² The role of these players varies during a sanctions episode. For example, the principal author of an economic sanction episode is a “sender or sanctioning” state/party and the recipient of sanctions is a “target or sanctioned” body.³

Historically, with the aim of bringing about a change in political behavior or status quo of a target, individual states began with “unilateral” or one-sided economic sanctions and imposed “comprehensive sanctions,” which affected the entire target state, regardless of specific sector. Over time, as part of the ongoing evolution of economic sanctions, sender states realized that imposing sanctions on specific individuals and entities that reside in a target state would improve the outcomes of sanctions yet considerably reduce the negative effects of sanctions on the blameless civilians of target states. “Smart/targeted sanctions,” thus, were created.⁴

Not surprisingly, sender states also understood that the support of third-party states through the establishment of a sanctions coalition to impose “multilateral sanctions” can considerably reinforce their sanctions.⁵ Sender states, however, realized that third-party states might conversely defy the sender’s sanctions if they play the role of “black knights/sanctions-busters” and offset the loss of sanctions for target states.⁶ To reduce third-party states’ sanctions-busting activities, sender states designed “secondary sanctions” to prohibit individuals and entities residing in the jurisdiction of foreign countries from dealing with their counterparts in a target state.⁷ In response, some third-party states adopted retaliatory measures against the sender’s sanctions by enacting “blocking statutes/orders/legislation/regulations,” such as EU Blocking Statutes against US sanctions on

2. GARY CLYDE HUFBAUER, JEFFREY SCHOTT & KIMBERLY ANN ELLIOTT, *ECONOMIC SANCTIONS RECONSIDERED* 10 (3d ed., 2007).

3. *Id.* at 47–48.

4. For more information on comprehensive sanctions and smart sanctions see GARY C. HUFBAUER, JEFFREY J. SCHOTT & KIMBERLY A. ELLIOTT, *ECONOMIC SANCTIONS IN SUPPORT OF FOREIGN POLICY GOALS* 3 (Washington, DC: Institute for International Economics, 1983); *See also* ROBERT EYLER, *ECONOMIC SANCTIONS: INTERNATIONAL POLICY AND POLITICAL ECONOMY AT WORK* 4 (New York: Palgrave Macmillan, 2008).

5. Johan Galtung, *On the Effects of International Economic Sanctions: With Examples from the Case of Rhodesia* 19 *WORLD POLICY* 378, 381 (1967).

6. Li, Yitan, *US Economic Sanctions Against China: A Cultural Explanation of Sanction Effectiveness*, 38 *Asian Perspective* 311, 312 (2014). *See e.g.*, Navin A Bapat & Clifton Morgan, *Multilateral Versus Unilateral Sanctions Reconsidered: A Test Using New Data*, 53 *INTERNATIONAL STUDIES QUARTERLY* 1075, 1085 (2009); Susan H. Allen, *The Determinants of Economic Sanctions Success and Failure*, 31 *International Interaction* 117, 133 (2005).

7. Baran Han, *The Role and Welfare Rationale of Secondary Sanctions: A Theory and a Case Study of the US Sanctions Targeting Iran*, 35 *CONFLICT MANAGEMENT AND PEACE SCIENCE* 474, 475 (2016).

Iran,⁸ and bringing a claim to the World Trade Organizations (WTO), such as EU's submission of a request for the establishment of a WTO panel with respect to US sanctions against Cuba, amongst others.⁹

The design of "smart sanctions" and "secondary sanctions" considerably improved the functionality of economic sanctions against target states. In recent decades, sender states have moved forward and combined these two types of sanctions by imposing both secondary and smart sanctions at the same time, which embraces the issues of extraterritoriality, in addition to violating due process standards; the exercise of extraterritorial jurisdiction by sender states in a sanctions regime and the effect of their national legislation targeting actors who are abroad violates certain principles of United Nations (UN) Charter, including but not limited to the equality of states, national sovereignty, and nonintervention, when it extends the reach of the sanctions beyond its borders without proper connection with the target of sanctions.¹⁰ The violation of due process standards can arise through a sender state's denial of blacklisted persons' rights, for example, to property through asset freezes, to the freedom of movement through travel bans, to a fair hearing through lack of rule and procedure of law, to an effective judicial review through lack of appellate body, and to an immediate and effective remedy, i.e., delisting from sanctions lists.¹¹ One of the remarkable examples of a "secondary smart sanctions" episode is the Paris-headquartered French Bank BNP Paribas's guilty plea and agreement to pay \$8.9 billion fine to the United States for the violation of U.S. sanctions against Cuba, Sudan, and Iran.¹²

Besides states that can initiate a sanctions episode, trading blocs (e.g., the European Union) as well as the UN, may also decide to design and deploy economic sanctions. The decision of trading blocs to impose sanctions is only binding over their member states, while the decision of the UN Security Council to impose sanctions is binding over all member states of the UN and constitutes "universal sanctions."¹³ After reaching the desired outcomes, trading blocs, as well as the UN Security Council, may decide to lift the sanctions, a decision which correspondingly has binding effects over their member states.

8. Commission Delegated Regulation 2018/1100, Amending the Annex to Council Regulation (EC) No 2271/96 Protecting against the Effects of Extraterritorial Application of Legislation Adopted by a Third Country, and Actions Based Thereon or Resulting Therefrom, 2018 O.J. (L 199I/1), <https://perma.cc/B2NN-BFUJ>.

9. Kinka Gerke, *The Transatlantic Rift Over Cuba. the Damage Is Done*, 32 THE INTERNATIONAL SPECTATOR 27, 40 (1997).

10. Rahmat Mohamad, *Unilateral Sanctions in International Law: A Quest for Legality, in ECONOMIC SANCTIONS UNDER INTERNATIONAL LAW: UNILATERALISM, MULTILATERALISM, LEGITIMACY, AND CONSEQUENCES* 71, 71–73, 79–80 (Ali Z. Marossi & Marisa R. Bassett, eds., 2015).

11. Thomas J. Biersteker, *Targeted sanctions and individual human rights*, 65 INT'L. L. 99, 104 (2009); Monika Heupel, *UN Sanctions Policy and the Protection of Due Process Rights: Making Use of Global Legal Pluralism*, in PROTECTING THE INDIVIDUAL FROM INTERNATIONAL AUTHORITY: HUMAN RIGHTS IN INTERNATIONAL ORGANIZATIONS 95 (Monika Heupel & Michael Zürn eds., 2017).

12. *Capital Punishment*, THE ECONOMIST (July 5, 2014), <https://perma.cc/BJP2-59MB>.

13. Galtung, *supra* note 5.

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

The expanded role of TNPAs in the global economy attracts attention to the “compliance theory” of international law in which states’ compliance with or defiance of the norms of international law is detailed, but it extends the discussion beyond just state-centric perspective of this theory. According to this theory, states are deemed to be the addressees of international norms who comply with these norms according to their self-interest and reputational costs.¹⁴ Nevertheless, new scholarly studies suggest that states are not the only targets of these norms. In fact, having an actor-focused approach may not be sufficient to understand the critical role of other international actors, e.g., TNPAs, in compliance with international law. For example, in economic sanctions regimes that are the subjects of this paper, one can see that although TNPAs’ most rational choice would be to comply with international law, surprisingly, TNPAs defy international law because they act according to risks that exist in a sanctioned market rather than strict compliance with international law, so the legal and institutional origin of sanctions (universal, multilateral, or unilateral) inevitably must be folded into risk calculation and risk mitigation made by TNPAs.

A remarkable example of TNPAs’ risk calculation and risk mitigation approach can be found in the 2018 U.S. unilateral sanctions against Iran’s nuclear program.¹⁵ In May 2018, the U.S. decided to pull out of the Iran nuclear deal of 2015, known as the Joint Comprehensive Plan of Action (JCPOA). Subsequently, TNPAs exited from Iran’s market to protect their businesses from U.S. sanctions, even though the legality and legitimacy of the imposed sanctions with respect to the binding effects of the JCPOA were under question by the international community. One of those TNPAs is the Society for Worldwide Interbank Financial Telecommunication (SWIFT). As a private network of interbank communications and successful example of bottom-up lawmaking, SWIFT transfers financial messages throughout the world.¹⁶ The private nature of SWIFT, which over time

14. Robert Howse & Ruti Teitel, *Beyond compliance: Rethinking Why International Law Really Matters*, 1 Global Policy 127, 131 (2010). 154 Tanja Börzel, *Private Actors on the Rise? The Role of Non-State Actors in Compliance with International Institutions*, 2000/14 Otto Suhr Institute for Political Science 1, 1–2 (2001).

15. Rick Gladstone, *Iran Sanctions Explained: U.S. Goals, and the View from Tehran*, N.Y. TIMES (Nov. 5, 2018), <https://perma.cc/LR29-GCNC>.

16. Susan V. Scott & Markos Zachariadis, *Origins and Development of Swift, 1973-2009*, 54 Business History 462, 466, 474 (2012).

gained a critical mass of users on a worldwide basis, provided a situation in which the United States considered SWIFT to be a means of sanctions pressure; although SWIFT is headquartered in Belgium and is incorporated under EU law, it complied with U.S. sanctions by disconnecting Iranian banks from its network and subsequently from the global banking system.¹⁷

To go into more detail about the preceding problems, this article is divided into four parts. The first part investigates the expanded role of TNPAs in the contemporary world and their influence on global wealth, the creation of bottom-up *lex mercatoria*, and the unification and harmonization of divergent laws and regulations. This significant role expands into the second part, which performs a behavioral analysis of TNPAs' decision-making process in sanctioned markets via conducting interdisciplinary research in the field of business risk management. The result indicates that in a sanctions regime, "legal risks" (business liability arising out of stakeholders' negligence and misconduct in a sanctioned market or violating sanctions of sanctioning states), "country risk," "industry risk," and "institutional risk," can affect TNPAs' decisions to stay in or withdraw from a sanctioned market. TNPAs' exit from a sanctioned market not only has a negative impact on that states' economy but also considerably reinforces the effectiveness of sender states' sanctions.

The third part examines TNPAs' risk calculation in the case of Iran's nuclear program as a result of the most recent sanctions episode and so-called "toughest ever" sanctions. This part investigates the mandates of public international law by assessing the binding effects of the JCPOA, UN Security Council Resolution 2231, and the dispute resolution mechanism of the JCPOA to cast light on the lack of legality and legitimacy of U.S. withdrawal from this agreement. The results indicate that although the legality and illegitimacy of U.S. sanctions were under question by the international community and TNPAs were not expected to comply with this round of sanctions, TNPAs doing business in Iran exited the market because they acted according to their own rational choice assessments and risk mitigation concerns rather than strict compliance with international law.

The fourth and last part verges on journalistic (because of several contemporary news sources employed to explain the complex sequence of the Ukrainian plane crash) clarifies that not only did TNPAs' decision to withdraw from Iran's market after May 2018 deprive Iran's economy of millions of dollars, it also reinforced U.S. sanctions and empowered the United States to use economic sanctions as a lever to renegotiate a better deal with Iran. Iran's refusal to comply with the demands of a new agreement led to further U.S. economic sanctions on several Iranian industries, such as its banking system, central bank, and oil and gas sectors. As a result, TNPAs residing inside Iran withdrew from this sanctioned

17. Commission Regulation 267/2012, Concerning Restrictive Measures Against Iran and Repealing Regulation (EU), 2012 O.J. (L 88/1), <https://perma.cc/ANE4-ZWYJ>; Consolidated Version of the Treaty on the Functioning of the European Union, 2008 O.J. (C 326/47) art 288, <https://perma.cc/RQJ4-RR4K>.

market, and TNPAs positioned out of Iran, such as the SWIFT, also discontinued providing their services to a considerable number of Iranian individuals and entities operating inside Iran. Consequently, the Iranian government activated its sanctions-busting schemes, which mainly relied on the Iranian Revolutionary Guard Corps (IRGC) to generate revenue for the government in the absence of TNPAs. By imposing additional sanctions on the IRGC by the United States, Iran's ability to circumvent sanctions drastically restricted, whereby a chain of events was triggered that led to the Ukrainian plane crash in Iran.

I. THE EXPANDED SCOPE OF TRANSNATIONALISM IN RECENT DECADES

The proliferation of transnationalism and internationalization of private practices has played a major role in the unification and harmonization of divergent rules in addition to affecting global wealth and welfare. On this basis, one can see that transnational banks (TNBs) and transnational corporations (TNCs), as key players of transnationalism, have a significant influence on the economic development of countries and possess an important role in the expansion of international business and trade. Because of that influence, it will be shown that TNPAs' exit from a sanctioned market not only has a negative impact on that states' economy but also considerably reinforces the effectiveness of sender states' sanctions.

TNCs, as the key players of the globalization process, initially expanded their activities in neighboring territories and then took advantage of colonial links to promote their international trade and transaction by creating internal trade networks.¹⁸ This network of parent-subsidiaries spread throughout the world, which resulted in the creation of business-related services in the form of banks to respond to demands for internationalization of capital transfers.¹⁹

TNCs contribute to global development by making foreign direct investments (FDI) in host countries, thereby boosting economic activity and providing more economic opportunities for low-income states.²⁰ According to the United Nations Conference on Trade and Development (UNCTAD), in 1995, the number of foreign subsidiaries of parent companies was estimated at around 250,000, while this number increased to 890,000 in 2010.²¹ In 2017, the total sales of the top 100 most valuable companies reached approximately ten percent of the world's gross domestic products (GDP).²² Today, TNCs control more than half of international trade and help to increase the global wealth, access to modern technology, and

18. GRAZIA IETTO-GILLIES, *TRANSNATIONAL CORPORATIONS: FRAGMENTATION AMIDST INTEGRATION* 3–4 (Routledge, 2002).

19. John Langdale, *Electronic Funds Transfer and the Internationalisation of the Banking and Finance Industry*, 16 GEOFORUM 1, 1–2 (1985).

20. U.N. CONF. ON TRADE & DEV., *TRANSNATIONAL CORPORATIONS INVESTMENT AND DEVELOPMENT*, at 1–2, Sales No. ETN251 (2018), <https://perma.cc/C9KE-2GJD>.

21. Małgorzata Jaworek & Marcin Kuzel, *Transnational Corporations in the World Economy: Formation, Development and Present Position*, 4 COPERNICAN J. FIN. & ACAD. 55, 57–58 (2015).

22. U.N. CONF. ON TRADE AND DEV., *WORLD INVESTMENT REPORT 2018*, at 26 (2018), <https://perma.cc/72PV-MJRX>.

rate of employment.²³ By virtue of comparative advantage, TNCs make higher quality products at a lower cost.²⁴

As an inevitable outcome of TNCs' expansion, TNBs also expanded internationally in response to their customers abroad in order to provide them financial services.²⁵ According to the United Nations Centre on Transnational Corporations (UNCTC), a bank is considered transnational when it has branches and majority-owned subsidiaries in five or more different countries.²⁶ Historically, modern cross-border banking started with the growth of British banks prior to World War I and continued through the expansion of U.S. banks in the 1960s;²⁷ the number of U.S. foreign affiliates increased from 124 banks in 1960 to 532 in 1970.²⁸

One of the major activities of these financial institutions pertains to the attraction of money deposits and lending them at higher interest rates for profit maximization and growth.²⁹ In 1975, the TNBs possessed total assets of \$442 million U.S. dollars with 84 parent companies and a total of 3,941 subsidiaries around the world.³⁰ In 2015, the total assets of only the 100 biggest banks in the world reached \$78 trillion U.S. dollars, and the foreign subsidiaries of the top ten of them reached 13,174.³¹ This rapid expansion of overseas branches and subsidiaries of TNBs has played a major role in the mobility of capital and production around the globe.

In addition to the economic role of TNPAs, they have had a significant influence on the development of new bodies of law. Over time, the daily cross-border practices and behavior of businesses and financial institutions have developed an informal, technical, specific, and non-state oriented rulemaking process.³² This bottom-up *lex mercatoria* or merchant law distinguished itself from traditional top-down international lawmaking processes where states supplied treaty-based rules, and public authorities enacted, interpreted, and enforced national laws.³³

23. Marcel Kordos & Sergej Vojtovic, *Transnational Corporations in the Global World Economic Environment*, 230 *PROCEDIA - SOC. & BEHAV. SCI.* 150, 152–53 (2016).

24. *Id.* at 152. See also SIMON NICHOLAS LESTER, BRYAN MERCURIO, AND ARWEL DAVIES, *WORLD TRADE LAW: TEXT, MATERIALS, AND COMMENTARY* 23 (Hart Publishing, 3rd ed. 2018).

25. Greg Crough, *Transnational Banks and the World Economy*, 51 *THE AUSTRALIAN QUARTERLY* 66, 66 (1979).

26. Richard Bernal, *Transnational Banks, the International Monetary Fund and External Debt of Developing Countries*, 31 *SOC. & ECON. STUD.* 71, 72 (1982).

27. Barry Williams, *Multinational Banking and Global Capital Markets*, in 2 *INTERNATIONAL ECONOMIES, FINANCE, AND TRADE* 1, 2 (Pasquale Michael Sgro ed., EOLSS Publications, 2009).

28. Langdale, *supra* note 19, at 2.

29. Crough, *supra* note 25, at 67.

30. Crough, *supra* note 25, at 67.

31. James R. Barth & Clas Wihlborg, *Too Big to Fail and Too Big to Save: Dilemmas for Banking Reform*, 235 *NAT'L INST. ECON. REV.* 27, 59–60 (2016).

32. Roger Cotterrell, *What Is Transnational Law?*, 37 *L. & SOC. INQUIRY* 500, 513, 520 (2012); Janet K. Levit, *A Bottom-Up Approach to International Lawmaking: The Tale of Three Trade Finance Instruments*, 30 *YALE J. INT'L L.* 125, 180 (2018).

33. Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 *YALE L. J.* 2599, 2646 (1997); Ralf Michaels, *The True Lex Mercatoria: Law Beyond the State*, 14 *IND. J. GLOB. LEGAL STUD.* 447, 457 (2008). See also Levit, *supra* note 32, at 126, 182; Cotterrell, *supra* note 32, at 509.

A common feature of this bottom-up lawmaking process is their creation of a soft international law that lacks a coercive power to implement and enforce self-regulated industry norms.³⁴ Instead, the voluntary participation in community networks creates strong peer pressure as a means of sanctioning a member's misbehavior.³⁵ As Roger Cotterrell explains:

Among specific sanctions are reduction in reputation among peers and business partners; loss of opportunities for productive dealing with other members of the communal network; denial of access to knowledge available to other members; blacklisting; less favourable terms and conditions of trade; less availability of co-operation from other members; and ultimately exclusion from the communal network.³⁶

Over time, this growing interest in the harmonization of *lex mercatoria* constituted a global law that was independent from national laws and state-made international commercial laws yet adequate for international commerce. To exemplify, in the late 20th century, the Uniform Customs and Practice for Documentary Credits (UCP) determined uniform standards for issuing letters of credit via commercial banks.³⁷

This bottom-up lawmaking evolved into a new form of *lex mercatoria* by establishing a system of harmonized law by the re-publicization of private regulations through international institutions, such as UNIDROIT, UNCITRAL, and international arbitration forums.³⁸ The soft law generated by these institutions gains more legal weight and concretizes into hard law if and when states ratify it, embed it in international treaties,³⁹ or apply it through domestic courts.⁴⁰ For example, the UNIDROIT Principles of International Commercial Contracts (PICC) were drafted as a restatement of global commercial contract law which was later employed in legislative reforms, like the Civil Code of Quebec and the

34. Levit, *supra* note 32, at 172.

35. Marie-Laure Djelic & Sigrid Quack, *Transnational Communities and Their Impact on the Governance of Business and Economic Activity*, in *TRANSNATIONAL COMMUNITIES: SHAPING GLOBAL ECONOMIC GOVERNANCE* 377, 389 (Marie-Laure Djelic & Sigrid Quack eds., Cambridge University Press, 2010). For examples of these powerful sanctions see e.g., Lisa Bernstein, *Private Commercial Law in the Cotton Industry: Creating Cooperation through Rules, Norms, and Institutions*, 99 MICH. L. REV. 1724, 1737–38 (2001) (“[b]ecause membership in a shippers’ association strongly affects the profitability of a merchant’s domestic business and is essential to participation in the international cotton trade, these association and exchange imposed penalties, together with their attendant social and reputational sanctions, are usually sufficient to induce merchants to promptly comply with arbitration decisions unless they are bankrupt or in severe financial distress.”).

36. Cotterrell, *supra* note 32, at 521.

37. Levit, *supra* note 32, at 129; Michaels, *supra* note 33, at 457.

38. José A. E. Faria, *Future Directions of Legal Harmonisation and Law Reform: Stormy Seas or Prosperous Voyage?*, 14 UNIFORM L. REV. 5, 5–7 (2009); Michaels, *supra* note 33, at 448.

39. Levit, *supra* note 32, at 173; Michaels, *supra* note 33, at 448 (It is also said that for example, the PICC is not a *lex mercatoria* because it is derived from various municipal laws of states rather than private practices of merchants. However, in the literature, it is called a “new new *lex mercatoria*”, which constitutes a new source of global commercial law.).

40. Levit *supra* note 32, at 142.

Uniform Act of Organization for the Harmonization of Business Law in Africa (OHADA).⁴¹

II. BEHAVIORAL ANALYSIS OF TNPAs IN FOREIGN MARKETS: RATIONAL CHOICE AND RISK MITIGATION

In transacting business abroad, TNBs and TNCs act in their own best interest and evaluate international opportunities to establish their affiliates in less risky and more stable environments.⁴² Detecting and managing potential risk, hence, become strategically important so that TNPAs must continuously observe threats and hazards that would negatively impact their business's operation and objectives. If a business fails, not only its business managers lose, but also investors, employees, suppliers, and consumers will be significantly affected in much the same way.⁴³ In environments full of uncertainty and unpredictability, therefore, managing risk is inevitably necessary. This risk averse behavior extends to taking into account the presence of economic sanctions as well because sanctioned markets carry variety of risks which manifest themselves at the time of imposition as well as during and even after lifting sanctions.

A. Business Risks in Foreign Markets

A risk is defined as “the chance that an undesirable event will occur and the consequences of all its possible outcomes.”⁴⁴ For some scholars, a risk is a performance variance that may encompass positive or negative outcomes such as when a war puts countries' infrastructure at risk but brings more profit for arms manufacturers. For others, a risk is the likelihood of negative impacts on expected profits.⁴⁵ According to the International Organization for Standardization (ISO), risk management is needed when “[r]isks affecting organizations can have consequences in terms of economic performance and professional reputation, as well as environmental, safety, and societal outcomes. Therefore, managing risk effectively helps organizations to perform well in an environment full of uncertainty.”⁴⁶

Given that performing risk management forecasts financial loss and market failure, TNPAs who develop risk strategies can effectively control and manage

41. Sarah Lake, *An Empirical Study of the UNIDROIT Principles - International and British Responses*, 16 UNIFORM L. REV. 669, 669, 696–97 (2011). See generally MICHAEL J. BONELL, *THE UNIDROIT PRINCIPLES IN PRACTICE: CASE LAW AND BIBLIOGRAPHY ON THE UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS* (Transnational Publishers, 2nd ed. 2006). See also *Preparation by UNIDROIT of a Draft OHADA Uniform Act on Contract Law*, UNIDROIT, <https://perma.cc/U5LX-QDYY>.

42. TONY MERNA & FAISAL F AL-THANI, *CORPORATE RISK MANAGEMENT* 8–9 (Chichester, England: Wiley, 2nd ed., 2008).

43. Rahul Patil, Katie Grantham & David Steele, *Business Risk in Early Design: A Business Risk Assessment Approach*, 24 ENGINEERING MGMT J. 35, 35 (2012).

44. *Id.*

45. MICHEL H. BOUCHET, EPHRAIM CLARK & BERTRAND GROSLAMBERT, *COUNTRY RISK ASSESSMENT: A GUIDE TO GLOBAL INVESTMENT STRATEGY* 9–11 (2003).

46. *Risk Management*, ISO, <https://perma.cc/X2DN-AC5B>.

uncertainty in doing business, compare and rank opportunities, and help stakeholders in decision-making processes.⁴⁷ This performance requires analyzing different risk indicators existing in foreign markets; scholars have analyzed and categorized these indicators and created major categories of risk, including country risk, industry risk, institution risk, and legal risk.⁴⁸ These categories of risks will be incorporated in TNPAs' risk calculation in sanctioned markets in the following subsections.

1. Country Risk

In general, two mainstream sources of business risk can be either governments' interference or environmental instability.⁴⁹ The interaction between these sources creates different types of risk (political risk, sovereign risk, credit risk, foreign exchange risk, cross-border risk, financial risk, country risk, and the like),⁵⁰ in which the more inclusive one is the "country risk." Country risk is any additional risk in capricious foreign markets which is not present in domestic environments, including national differences in economic, social, and political circumstances.⁵¹ From the point of view of Bouchet, Clark, and Gros Lambert, country risk is a broader category consisting of natural risk, economic risk, and socio-political risk.⁵²

In their study, "natural risk" concerns natural phenomena such as an earthquake that negatively impacts the business objectives directly (the destruction of buildings, headquarters, and equipment) and indirectly (blocking the access to businesses' facilities).⁵³ More challenging concepts are "economic risk," which splits into macroeconomic and microeconomic, as well as "socio-political risk," which divides into three subcategories of social movements, political incidences, and government policy.

47. GLENN R. KOLLER, *RISK ASSESSMENT AND DECISION MAKING IN BUSINESS AND INDUSTRY: A PRACTICAL GUIDE* 13 (Chapman & Hall/CRC, 2nd ed., 2005).

48. Susan K. Schroeder, *The Underpinnings of Country Risk Assessment*, 22 J. ECON. SURV. 498, 504 (2008).

49. BOUCHET ET AL., *supra* note 45, at 13.

50. Schroeder, *supra* note 48, at 498, 504 ("[S]overeign risk is the risk that a country cannot generate the earnings to keep up with debt service payments (credit risk) and/or that it does not have enough foreign exchange on hand to transmit earnings to foreign creditors (transfer or foreign exchange risk)."). Foreign exchange risk is thought to depend on a country's nondebt payments such as reparations or assistance to allies and on economic imbalances that could lead to an expansion of the money supply."'). See also BOUCHET ET AL., *supra* note 45, at 45 ("Financial risk analysis involves an assessment of the country's foreign financial obligations compared to its ongoing and prospective economic situation."').

51. Duncan H. Meldrum, *Country Risk and Foreign Direct Investment: Customized, Systematic Country Risk Assessment Is Critical For Companies That Contemplate Activity Abroad*, 35 BUSINESS ECON. 33, 33 (2000).

52. BOUCHET ET AL., *supra* note 45, at 13, 16.

53. *Id.* at 16.

Socio-political risk			Economic risk		Natural risk
Political	Government policy	Social	Macroeconomic	Microeconomic	
Democratic or non-democratic change in the government	Change in the policy of the local authorities	Social movement intending to influence foreign business or host country policy	Any macroeconomic risk specific to the host country	Any microeconomic risk specific to the host country	Earthquake and other natural disaster

Source: MICHEL H. BOUCHET ET AL., COUNTRY RISK ASSESSMENT: A GUIDE TO GLOBAL INVESTMENT STRATEGY 16 (J. Wiley, 2003).

Macroeconomic risk occurs when all TNPAs are affected in the same way due to economic fluctuations, such as constant increase and decrease in banks’ interest rates, foreign exchange rates, inflation rates, and goods and services prices.⁵⁴ A remarkable example of macroeconomic risk for businesses is Venezuela where the inflation rates reached 1,700,000% in December 2018, and national currency plummeted at least 30 times from 2014 to the end of 2018 compared to the U.S. dollar.⁵⁵ At the same time, if economic risk is directed towards a specific sector or at the firm level, it constitutes a microeconomic risk. This risk affects “production, marketing, finance, supply and logistics, human resources, technology, [and] organizational structure” as well as business resources such as labor, capital, and raw materials.⁵⁶

The sub-category of social movements risk generally comprises informal people’s actions or non-governmental organizations’ movements against the influence of TNPAs in foreign markets.⁵⁷ Specifically, social risk is embedded in collective social movements like social unrest, disagreements, boycott, demonstrations, and even small-scale terroristic attacks. If such social reactions develop aggressively, they may lead to violence, such as when the U.S.-based Occidental Petroleum Corp. was facing terroristic attacks from rebel groups in Colombia while it was extracting oil from a newly found oil field.⁵⁸ This risk distinguishes itself from political risk, which will be discussed below, by questioning the legitimacy of foreign businesses’ operation in a home country rather than laying out political demands to incumbent governments.⁵⁹

A prevalent example of socio-political risk is political incident risk.⁶⁰ This sub-category of risk threatens TNPAs when political changes, political instabilities,

54. *Id.* at 22–24.
55. *Venezuela Inflation Rate*, TRADING ECON., <https://perma.cc/NG8L-7K3W>; *4 Reasons why Venezuela became the World’s Worst Economy*, CNN BUS. (Oct. 25, 2016), <https://perma.cc/TAB6-ZEKC>; Prableen Bajpai, *The Impact of Venezuela’s Bolivar Exchange Rates*, INVESTOPEDIA (Oct. 25, 2018), <https://perma.cc/8FQB-2A93>.
56. BOUCHET ET AL., *supra* note 45, at 22–24.
57. *Id.* at 17.
58. *Id.* at 18.
59. Kent D. Miller, *A Framework for Integrated Risk Management in International Business*, 23 J. INT’L BUS. STUD. 311, 315–16 (1992).
60. *Id.* at 311.

political violence, wars, or democratic evolutions occur in a host country.⁶¹ These incidences may lead to nationalization, expropriation, or confiscation of TNPAs assets as well as discriminatory behaviors such as tax and operation limitations.⁶²

The last subcategory of socio-political risk is government-policy risk, which differs from policy risk by covering authorities' unanticipated and harmful actions against TNPAs. Examples include "expropriation/nationalization, breach of contract including loan repudiation, foreign exchange controls, trade restrictions or trade agreements that could favor some foreign competitors at the expense of others."⁶³ If the breach of a contract arises out of parties' failure to fulfill their obligations, it does not constitute a government-policy risk; rather, it is a legal risk that will be discussed shortly.

2. Industry Risk

Industry risk is a broad category of risks which is associated with production process, demand for products, and competition between rivals. The more TNPAs expand, the more they need to examine the quantities and qualities of inputs needed for their production process that are available in foreign markets. This examination is important because other domestic and foreign businesses may require the same input while the number of input suppliers is limited. In this situation, competition is reduced, and prices may be manipulated more easily. In addition to these input-related concerns, industry risk increases when demand for final products varies based on changes in customers' taste or the existence of substitute products.⁶⁴ More serious industry risks emerge when TNPAs fail to consider existing competitors' outputs or when new entrants come up with new technologies and innovations.⁶⁵

3. Institutional Risk

Risk on a smaller scale than country risk and industry risk may come from businesses' internal affairs in the forms of operational issues, research and development projects (R&D) disruption, and debt collection problems. The operational issue arises from different situations. Mainly, it relates to labor unrest and unproductivity as well as managerial self-interest behaviors.⁶⁶ These issues reduce TNPAs' productivity and in the worst-case scenarios may create legal risk against stakeholders. Operation-related issues also concern the risk of raw material shortage and supply restrictions that make product input scarce.⁶⁷ Input deficit can be evaluated within the framework of microeconomic risk when negotiations

61. See BOUCHET ET AL., *supra* note 45, at 18.

62. Charles Pahud de Mortanges & Vivian Allers, *Political Risk Assessment: Theory and the Experience of Dutch Firms*, 5 INT'L BUS. REV. 303, 304 (1996); BOUCHET ET AL., *supra* note 45, at 19.

63. Pahud de Mortanges & Allers, *supra* note 62, at 304; BOUCHET ET AL., *supra* note 45, at 19.

64. Miller, *supra* note 59, at 317.

65. *Id.*

66. *Id.* at 318-20.

67. *Id.*

between a purchaser and supplier fail or within the framework of macroeconomic risk when, for example, economic sanctions limit import and export of raw materials, product-related materials, and spare parts.⁶⁸ Operational risk may also arise out of machine failure or cyber-attacks, which may create body injury, data breach, or monetary damage to a business.⁶⁹

Research and development (R&D) disruption and debt collection problems also increase the risk of an institution. Investing in R&D requires predictability of businesses' outcome, timeline building, business budget planning, and product innovation in order to meet long term goals.⁷⁰ Correspondingly, a lack of long-term plans with respect to the collection of debt from customers and clients would affect an institution's income. This issue has much more impact on transnational banks and financial sectors who rely on financial stability in the form of money deposits and loans.⁷¹

4. Legal Risk

After briefly exploring the aforementioned risk categories, what matters to the discussion flow of this paper is legal risk because prior types of risks, i.e., country, industry, and institution risks, can result in legal uncertainty among transnational actors. At first glimpse, legal risk refers to business liability arising out of stakeholders' negligence or misconduct. However, legal risk also encompasses the situations in which legal provisions themselves unexpectedly impact different components of societies, businesses, and individuals who apply them in their daily routine.

The literature pays attention to both aspects; first, legal fear makes TNPAs exercise caution to avoid lawsuit abuse by stakeholders involved in TNPAs' business such as governments, owners, suppliers, and individual customers, and subsequent reputation damage.⁷² This form of legal risk may arise out of customers' complaints; breach of a statute, regulation, mandate, or contract; infringement of intellectual property rights; ignorance of precedents; or non-compliance with bylaws, articles of incorporations, and operating procedures.⁷³ The existence of such potential legal risks for every business, therefore, creates more responsibility for TNPAs to seek higher protection levels (e.g., putting warning labels on products) to prevent legal actions.⁷⁴

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. RICHARD MOORHEAD & STEVEN VAUGHAN, *LEGAL RISK: DEFINITION, MANAGEMENT AND ETHICS* 5 (2015).

73. Katja Julie Würtz, *The Definition of Legal Risk and Its Management by Central Banks*, 1 INT'L IN-HOUSE COUNS. J. 43, 45 (2007).

74. See generally Luc Thévenoz, *Intermediated Securities, Legal Risk, and the International Harmonisation of Commercial Law*, 13 STAN. J. L. BUS. & FIN. 384 (2008); Phillip K. Howard, *The Dynamics of Legal Risk*, 56 DRAKE L. REV. 505, 511 (2008); J.R. Terblanché, *Legal Risk and Compliance for Banks Operating in a Common Law Legal System*, 7 J. OPERATIONAL RISK 67, 74–76 (2012).

Second, rights and obligations determined by laws and regulations may create legal risk when TNPAs find them unclear and uncertain, and their lack of legal knowledge makes interpretation difficult. The situation can be worse if TNPAs simultaneously encounter domestic laws, regional agreements, and international laws governing their activities.⁷⁵ For example, as will be shown in part three, the reinstatement of 2018 U.S. sanctions against Iran's nuclear program resulted in European corporations' and banks' uncertainty with respect to the applicable laws when they simultaneously encountered U.S. unilateral sanctions, EU Blocking Statutes against this set of U.S. sanctions, and UN Security Council Resolution 2231 that endorsed Iran's restricted nuclear activities.

Despite a lack of standard definition of legal risk in the literature,⁷⁶ the International Bar Association (IBA) and the Operational Risk Exchange Organization (ORX) have attempted to describe it. According to IBA, legal risk is

[t]he risk of loss to an institution which is primarily caused by:

- (a) a defective transaction; or
- (b) a claim (including a defense to a claim or a counterclaim) being made or some other event occurring which results in a liability for the institution or other loss (for example, as a result of the termination of a contract) or;
- (c) failing to take appropriate measures to protect assets (for example, intellectual property) owned by the institution; or
- (d) change in law.⁷⁷

According to ORX, legal risk is defined as:

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

These definitions include both aforementioned situations where business operations result in legal responsibility and where legal provisions are considered the source of risk but excludes the potential risks that exist in uncoded rules and precedents in a common law legal system.⁷⁸

75. See Darinka Piqani, *Legal Risks in the Relationship between National Constitutional Law and EU Law*, in *LEGAL RISKS IN EU LAW: INTERDISCIPLINARY STUDIES ON LEGAL RISK MANAGEMENT AND BETTER REGULATION IN EUROPE* 24 (Emilia Mišćenić & Aurélien Raccach, eds., 2016); Thévenoz, *supra* note 74, at 417 (highlighting complexities of interlocking legal regimes).

76. MOORHEAD & VAUGHAN, *supra* note 72, at 2; Aurélien Raccach, *Reframing Legal Risk in EU Law*, in *LEGAL RISKS IN EU LAW*, *supra* note 75, at 5.

77. INT'L BAR ASS'N WORKING PARTY ON LEGAL RISK, *THE MANAGEMENT OF LEGAL RISK BY FINANCIAL INSTITUTIONS* 13 (2003); ORX ASS'N, *OPERATIONAL RISK REPORTING STANDARDS (ORRS)* 11 (2012).

78. Terblanché, *supra* note 74, at 70 ("[T]he IBA and ORX definitions of legal risk and compliance focus on statutory compliance as well as contract management . . . these definitions are also inadequate, because they disregard the rest of the legal system in so far as it is uncoded.").

B. Business Risks in Foreign Sanctioned Markets

Incorporating the aforementioned categories of business risks into economic sanctions analysis sheds light on the importance of undertaken risk management processes by TNPAs. In author's point of view, the following scenario is predictable in a sanctioned market. At the time of imposition, sanctions are considered a macroeconomic risk that affects the entire country and its operating industries. The country-wide effects of sanctions render import-related raw materials, spare parts, and financial services scarce and, subsequently, negatively affect goods and services inputs. Input deficit results in industry risk where a few suppliers can manipulate the quality and price in the market. The supply manipulation and market monopoly consequently increase costs of TNPAs so that they consider either (1) staying in that market and tolerating hardships or (2) leaving despite investments made.

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

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

There is also a nexus between economic sanctions and political risk. According to Hufbauer et al., who observed 204 sanctions episodes from the end of World War II to 2007, the purposes of imposing economic sanctions were to cause changes in regime and policy (modest and major), disrupt military adventures, and impair military potential.⁷⁹ If a sanctions episode successfully reaches

79. HUFBAUER ET AL., *supra* note 2 at 65–72.

one of these goals, political uncertainty widely affects businesses' operations and objectives.

To put it in a nutshell, economic sanctions regimes inherently possess varying risks, which manifest themselves at the time of imposition as well as during their pendency and even after lifting them. The expansion of business into foreign markets suffering from economic sanctions or having a history of sanctions can thus cause harm, from reputational damage to monetary fines. In parts three and four, this article shows how risk calculation made by TNPAs and their subsequent departure from Iran's sanctioned market are considered the first tile in the Ukrainian plane crash domino.

III. BEHAVIORAL ANALYSIS OF TNPAs IN SANCTIONED MARKETS: THE CASE OF IRAN NUCLEAR PROGRAM

A. *Background of Sanctions Against Iran Nuclear Program*

Nuclear-related sanctions against Iran can be divided into three main periods. The first stage covers the period from 1959 to 2005 with insignificant unilateral U.S. sanctions directed at Iran's nuclear program. The second stage runs from 2006 to 2016, during which universal sanctions were deployed by the whole international community. The third and last stage begins with unilateral U.S. sanctions against mainly Iran's nuclear program in 2018 and continues to date.

Iran's early nuclear efforts can be traced back in the 1950s. Under the Shah's regime, Iran's nuclear program began with the help of the United States as part of the U.S. Atom for Peace Program.⁸⁰ In 1959, the United States supplied the University of Tehran with a small reactor for research and cooperation on peaceful nuclear energy.⁸¹ In 1967, Tehran Research Reactor (a United States supplied 5-megawatt reactor) and a set of research laboratories constituted Iran's first research centre, known as the Tehran Nuclear Research Centre.⁸²

In 1974, Iran signed the Safeguard Agreement of the Nonproliferation Treaty (NPT) to allow the International Atomic Energy Agency (IAEA) to monitor and verify its nuclear activities for peaceful uses.⁸³ In the same year, the Shah launched an extensive nuclear program by constructing Iran's first nuclear site, the Bushehr Nuclear Power Plant, with the help of the German Kraftwerk Union.⁸⁴ The Shah aimed to build 23 nuclear power reactors to generate 23,000 megawatts of electricity within 20 years, a plan which was supported by U.S.

80. Alvite S. Ningthoujam, *Iranian Nuclear Program: A Chronology*, 3 CONTEM. REV. MIDDLE E. 111, 111 (2016).

81. Antonella Vicini, *Iran and Nuclear Power Before the Revolution*, RESET DOC (Dec. 9, 2011), <https://perma.cc/9XR6-REUG>; see also Mohammad Javad Zarif, *Tackling The Iran-U.S. Crisis: The Need For A Paradigm Shift*, 60 J. INT'L AFF. 73, 81 (2007).

82. *Iran's Nuclear Program Timeline and History*, NTI (June 2020), <https://perma.cc/4VLZ-46L7> [hereinafter *Timeline*]. See also Semira N. Nikou, *Timeline of Iran's Nuclear Activities*, IRAN PRIMER 1 (June 9, 2018), <https://perma.cc/JS4M-QBNW>.

83. Nikou, *supra* note 82, at 1.

84. ROBERT REARDON, CONTAINING IRAN: STRATEGIES FOR ADDRESSING THE IRANIAN NUCLEAR CHALLENGE 11 (2012).

President Gerald Ford.⁸⁵ These efforts, however, were halted because of the 1979 Iranian revolution, the U.S. hostage crisis, and the subsequent Iran-Iraq war.

Since the 1979 revolution, which affected the Iran-U.S. relationship, Iran's nuclear program has faced constant turbulence. Until 1996, Iran's nuclear program was not a major concern for the international community because the NPT acknowledged the rights of state parties, including Iran, to have nuclear energy as long as they stayed in line with the regulations of the NPT and Safeguard Agreements.⁸⁶ However, in the last years of the twentieth century, the Clinton administration expressed its uncertainty with respect to Iran's motives behind its nuclear program.⁸⁷

In 2002, an Iranian opposition group, the National Council of Resistance of Iran, revealed Iran's two secret nuclear sites.⁸⁸ The existence of these sites, a uranium enrichment plant at Natanz and a heavy water production plant in Arak, was acknowledged by then Iranian President Khatami, and this raised serious concerns about Iran's secret nuclear program.⁸⁹ In 2003, Iran, thus, voluntarily implemented the Additional Protocol's Article III.1. to permit more and sudden access to inspectors' visits of nuclear sites, which led to the conclusion of the Tehran Agreement.⁹⁰ These efforts provided a context to the signing of the Paris Accord in the following year in 2004 to recognize Tehran's rights to have nuclear energy for peaceful uses in return for full suspension of tests and production of uranium enrichment.⁹¹

Nonetheless, in 2005, pursuant to Iran's policy of resumption of its nuclear activities, the IAEA adopted Resolution GOV/200577 to express its concern about Iran's breach of the Safeguard Agreement and Additional Protocol.⁹² This Resolution found that Iran's behavior had to be reported to the United Nations Security Council (UNSC) and General Assembly according to the Statute of IAEA Article XII.C, which indicates:

85. Nikou, *supra* note 82, at 1.

86. Treaty on the Non-Proliferation of Nuclear Weapons art. IV, Mar. 5, 1970, 729 U.N.T.S. 161 ("Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty.").

87. Iran and Libya Sanctions Act, Pub. L. No. 104-172, 110 Stat. 1541 (1996) (version prior to 2006 amendment).

88. Alireza Jafarzadeh, Remarks on New Information on Top Secret Projects of the Iranian Regime's Nuclear Program (Aug. 14, 2002).

89. *Timeline*, *supra* note 82, at 4.

90. Int'l Atomic Energy Agency [IAEA], *Model Protocol Additional to the Agreement(s) between State(s) and the International Atomic Energy Agency for the Application of Safeguards*, IAEA Doc. INFCIRC/540 (Sep. 1, 1997); TAJIA CRONBERG, NUCLEAR MULTILATERALISM AND IRAN: INSIDE EU NEGOTIATIONS 18 (2017).

91. Najmeh Bozorgmehr and Gareth Symth, *Iran Agrees Under Deal with Europe*, FIN. TIMES (Nov. 29, 2004), <https://perma.cc/S82U-BRQE>.

92. Int'l Atomic Energy Agency [IAEA], *Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran* (2005), IAEA Doc. GOV/2005/67 (Sep. 24, 2005).

The inspectors shall report any non-compliance to the Director General who shall thereupon transmit the report to the Board of Governors. The Board shall call upon the recipient State or States to remedy forthwith any non-compliance which it finds to have occurred. The Board shall report the non-compliance to all members and to the Security Council and General Assembly of the United Nations.⁹³

From 2006 to 2012, Iran faced ad hoc unilateral U.S. sanctions as well as six UNSC Resolutions that accompanied the EU's sanctions incorporating these UNSC Resolutions under the mandates of UN Charter Article 41.⁹⁴ In 2013, upon reaching an interim nuclear agreement known as the Joint Plan of Action (JPOA), the participants agreed to implement voluntary measures in order to reach a long-term comprehensive solution for Iran's nuclear program. In the preamble of the JPOA, the goal of these negotiations was "to reach a mutually agreed long-term comprehensive solution that would ensure Iran's nuclear program will remain exclusively for peaceful uses."⁹⁵ Therefore, Iran and the P5+1 (United States, China, Russia, France, United Kingdom, and Germany) began to draft the final version of the nuclear agreement, which was concluded two and a half years later, on June 14, 2015.⁹⁶ The JCPOA lifted Iran's sanctions while restricting Iran's nuclear capability under the surveillance of the IAEA.⁹⁷

Consequently, the UNSC unanimously endorsed the JCPOA by adopting Resolution 2231,⁹⁸ U.S. President Obama issued Executive Order 13716,⁹⁹ and the E.U. Council adopted Decision (CFSP) 2015/1863 to revoke sanctions related to Iran's nuclear program.¹⁰⁰ Parties to the JCPOA marked October 18th, 2015, as the Adoption Date of the JCPOA to bring this agreement into effect and prepared themselves for the implementation of the JCPOA's commitments.¹⁰¹ On January 16, 2016, the nuclear deal became fully implemented after IAEA's verification of Iran's initial nuclear commitments under the JCPOA.¹⁰²

93. Statute of the International Atomic Energy Agency art. 12, Oct. 26, 1956, 276 U.N.T.S. 3.

94. S.C. Res. 2231 (July 20, 2015); S.C. Res. 1696 (July 31, 2006); S.C. Res. 1737 (Dec. 27, 2006); S.C. Res. 1747 (Mar. 24, 2007); C. Res. 1803 (Mar. 3, 2008); S.C. Res. 1835 (Sep. 27, 2008); S.S.C. Res. 1929 (June 9, 2010).

95. Joint Plan of Action Agreement on Iran's Nuclear Program, U.S. DEP'T OF TREASURY, Nov. 24, 2013, <https://perma.cc/7YHB-WJX8>.

96. Joint Comprehensive Plan of Action, U.S. DEP'T OF STATE, July 14, 2015, <https://perma.cc/2KNK-ZHR5> [hereinafter JCPOA].

97. *Id.* arts. 13-33.

98. S.C. Res. 2231 (July 20, 2015).

99. Exec. Order No. 13716, 81 Fed. Reg. 3,693 (Jan. 16, 2016), <https://perma.cc/JW9Y-7JTD>.

100. Commission Decision 2015/1863, Amending Decision 2010/413/CFSP Concerning Restrictive Measures Against Iran, 2016 O.J. (L 274) 174, <https://perma.cc/SVR6-N792>.

101. *Statement Relating to the Joint Comprehensive Plan of Action "Implementation Day" of January 16*, U.S. DEP'T OF THE TREASURY (Jan. 16, 2016), <https://perma.cc/6G3M-R9JU>.

102. Int'l Atomic Energy Agency [IAEA], *Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)* Board of Governors Res. GOV/INF/2016/1 (Jan. 16, 2016), <https://perma.cc/U6FU-7CBH>.

From the implementation day of the JCPOA in 2016 until May 2019, the IAEA confirmed Iran's compliance with the stipulations of the JCPOA in 15 reports in accordance with UNSC Resolution 2231 and verified Iran's restricted nuclear activities.¹⁰³ Nonetheless, this deal faced challenges in implementation as early as May 2018.

Although the newly elected President of the United States, Donald Trump, certified Iran's compliance with its commitments under the nuclear deal every 90 days, he warned that he would pull out of this "one-sided" deal.¹⁰⁴ Thus, on May 8, 2018, the United States withdrew from the JCPOA, because the Trump administration was concerned with the lack of a sufficient mechanism in the JCPOA to deter Iran from developing its weaponization program, to control Iran's missile development, and to restrict its support of militant groups in the Middle East.¹⁰⁵

Subsequently, the United States reinstated previous economic measures that had been lifted or waived under the JCPOA in two main stages. *First*, sanctions imposed after the 90-day wind-down period targeted mainly trading in gold, transactions with Iranian currency, and purchasing or acquiring U.S. dollar banknotes. *Second*, sanctions imposed after the 180-day wind-down period targeted mainly, according to the Executive Order 13846,¹⁰⁶ Iran's Central Bank, oil, petroleum, insurance, shipping, and energy sectors.¹⁰⁷ As the U.S. Department of the Treasury indicates: "[t]hese are the toughest U.S. sanctions ever imposed on Iran, and will target critical sectors of Iran's economy, such as the energy, shipping and shipbuilding, and financial sectors."¹⁰⁸

As a result, Iran's economy slumped so that according to the International Monetary Fund (IMF), Iran's real GDP growth that was +12.5 in 2017, touched -6.5 in 2019, with an inflation rate of 9.6 in 2017 and 41 in 2019.¹⁰⁹

B. Binding Effect of the JCPOA

The JCPOA, which comprises five annexes and is detailed in 159 pages, was endorsed by UNSC Resolution 2231 with the aim of reducing the number of Iran's centrifuges by two-thirds and removal of 98% of its enriched uranium.¹¹⁰

103. *IAEA and Iran – IAEA's Reports*, IAEA, <https://perma.cc/4L7F-5UPL>.

104. Zaheena Rasheed, *What Sanctions Did Trump Slap on Iran?*, AL JAZEERA (May 13, 2019), <https://perma.cc/9GZH-M2FU>.

Rick Gladstone, *Iran Sanctions Explained: U.S. Goals, and the View from Tehran*, N.Y. TIMES (Nov. 5, 2018), <https://perma.cc/LR29-GCNC>.

106. Exec. Order. No. 13846, 83 Fed. Reg. 38,939 (Aug. 6, 2018), <https://perma.cc/W2Q2-GBNB>.

107. U.S. DEP'T OF THE TREASURY, FREQUENTLY ASKED QUESTIONS REGARDING THE RE-IMPOSITION OF SANCTIONS PURSUANT TO THE MAY 8, 2018 NATIONAL SECURITY PRESIDENTIAL MEMORANDUM RELATING TO THE JOINT COMPREHENSIVE PLAN OF ACTION (JCPOA) 2-3, (Aug. 6, 2018), <https://perma.cc/4244-ZLLD>.

108. *Re-imposition of the sanctions on Iran that had been lifted or waived under the JCPOA*, U.S. DEP'T OF THE TREASURY (Nov. 4, 2018), <https://perma.cc/7T45-P22V>.

109. *Islamic Republic of Iran: Country Data*, INT'L MONETARY FUND, <https://perma.cc/2EN2-87W7>.

110. GARY SAMORE, GRAHAM ALLISON, AARON ARNOLD, MATTHEW BUNN, NICHOLAS BURNS, SHAI FELDMAN, CHUCK FREILICH, OLLI HEINONEN, MARTIN B. MALIN, STEVEN E. MILLER, PAYAM MOHSENI, RICHARD NEPHEW, LAURA ROCKWOOD, JAMES K. SEBENIUS & WILLIAM TOBEY, BELFER, CTR. SCI.

In detail, the restrictions in the JCPOA go beyond the requirements of the IAEA Safeguard Agreement and Iran's application of the Additional Protocol,¹¹¹ and restrain Iran's nuclear capacity for 10 to 25 years, depending on the nature of the activity.¹¹² For example, among a number of voluntary measures, Section A.2 of the JCPOA indicates that for ten years Iran will keep its enrichment capacity at 5060 IR-1 centrifuges at the Natanz nuclear site, compared to 15,500 IR-1 centrifuges before the JCPOA.¹¹³ In addition, according to Section A.7, Iran will keep a maximum of 300 Kg of uranium stockpiled at up to 3.67 percent for 15 years, compared to approximately 7 tons in 2014.¹¹⁴ Likewise, the stipulations of Section C.15 illustrate that the IAEA will monitor Iran's production of uranium ore concentrate plants for 25 years.¹¹⁵ After the expiration of these restrictions, Iran's obligations and nuclear restrictions will continue under the IAEA Safeguard Agreement and Additional Protocol, by which the IAEA ensures monitoring Iran's nuclear activity for peaceful uses.¹¹⁶

Since the conclusion of this agreement, there has been disagreement concerning the binding effects of the JCPOA on its participants as well as third-party states. The JCPOA itself is not a binding international agreement between participants,¹¹⁷ nor is it considered a treaty according to the Vienna Convention on Law of Treaties Article 2(1)(a). The JCPOA is an unsigned agreement that does not contain standard treaty terminology, such as ratification, acceptance, approval, accession, date of entry into force, and reservation, nor does it call the involved state "parties", but rather "participants".¹¹⁸ Nor are there any binding obligations in the JCPOA. As indicated in the title of Sections 1 to 17, "Iran and E3/EU+3 will take the following voluntary measures within the timeframe as detailed in

INT'L AFFAIRS, THE IRAN NUCLEAR DEAL: A DEFINITIVE GUIDE 5 (rev. ed. 2017) [hereinafter the guide], <https://perma.cc/2EV7-CGKR>; Mark Fitzpatrick, *Iran: A Good Deal*, 57 SURVIVAL 47, 47 (2015).

111. Michael D. Rosenthal, *United Nations Security Council Resolution 2231 & Joint Comprehensive Plan of Action*, 55 INT'L LEGAL MATERIALS 98, 100 (2016).

112. The guide, *supra* note 110 at 12.

113. JCPOA, *supra* note 96, art. 2; SAMORE ET AL., *supra* note 110, at 23; *see also* KELSEY DAVENPORT, DARYL G. KIMBALL & GREG THIELMANN, ARMS CONTROL ASSOCIATION, SOLVING THE IRANIAN NUCLEAR PUZZLE THE JOINT COMPREHENSIVE PLAN OF ACTION, 13-26 (2015), <https://perma.cc/44CZ-C3LC>.

114. JCPOA, *supra* note 96, art. 7; SAMORE ET AL., *supra* note 110, at 29.

115. JCPOA, *supra* note 96, art. 15.

116. Arun Vishwanathan, *Iranian Nuclear Agreement: Understanding the Nonproliferation Paradigm*, 3 CONTEM. REV. MIDDLE EAST 3, 15 (2016). *Contra* Bruno Tertrais, *Iran: An Experiment in Strategic Risk-Taking*, 57 SURVIVAL 67-70 (2015) ("The deal's main flaw, even assuming that implementation goes smoothly for more than a decade, is its short duration."); Avis Bohlen, *Iran: An Opening for Diplomacy?*, 57 SURVIVAL 59, 61 (2015) ("The limited duration of the agreement is unquestionably its biggest shortcoming, although many of the allegations about how quickly Iran could break out and develop a nuclear weapon after 15 years are overblown.")

117. Dirk Roland Haupt, *Legal Aspects of the Nuclear Accord with Iran and its Implementation: International Law Analysis of Security Council Resolution 2231 (2015)*, in 3 NUCLEAR NON-PROLIFERATION IN INTERNATIONAL LAW 403, 435 (Jonathan L. Black-Branch and Dieter Fleck eds., 2016).

118. STEPHEN P. MULLIGAN, CONG. RSCH. SERV., R44761, WITHDRAWAL FROM INTERNATIONAL AGREEMENTS: LEGAL FRAMEWORK, THE PARIS AGREEMENT, AND THE IRAN NUCLEAR AGREEMENT 21 (2018).

this JCPOA and its Annexes...,” which emphasizes the “voluntary” nature of this agreement.

While participants in the JCPOA treated this agreement as a nonbinding political commitment, the endorsement of it by UNSC Resolution 2133 arguably converted several of its provisions into binding obligations.¹¹⁹ This endorsement, therefore, raised a controversy over the exact nature of the JCPOA, including its binding effects on its participants and third-party countries. For example, the Resolution “calls upon” all Members to take actions as may be appropriate to support the implementation of the JCPOA.¹²⁰ In some scholarly studies, the interpretation of the phrase “calls upon” refers to the hortatory and nonbinding effects of the Resolution, but from others’ point of view, this phrase reemphasizes its binding nature.¹²¹ Regardless of this kind of scholarly disagreement about word-meaning and legal interpretation, it seems that other provisions of this Resolution support the binding nature of the nuclear deal, as will be discussed here in three points.

First, according to UN Charter Articles 25 and 48, the Members of the UN agree to accept and carry out the decisions of the Security Council.¹²² The Preamble and Operative Paragraph (OP) 1 of Resolution 2231 explicitly underscore the Members’ duty under Article 25 and urge the full implementation of the JCPOA according to the timetable established in it.¹²³

Second, 10 out of 30 paragraphs of Resolution 2231 invoke UN Charter Article 41 (“[t]he Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures”) as their starting sentence to emphasize the binding effects of the Security Council’s decisions.¹²⁴ Specifically, OP 7(b) determines that acting under Article 41, all states “shall” comply with a number of provisions in JCPOA Annex B, which in Haupt’s words “results in requalification of the JCPOA as legally binding . . . also for States that have not participated in its conclusion.”¹²⁵

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

119. Haupt, *supra* note 117, at 437.

120. S.C. Res. 2231, ¶ 2 (July 20, 2015).

121. Haupt, *supra* note 117, at 437. *Contra* Kaveh L. Afrasiabi, *Trump and the Iran Nuclear Accord: The Legal Hardles*, Columbia, J. OF INT’L AFFAIRS (Feb. 28, 2018), <https://perma.cc/8AEE-Q8PT>. See generally Colum Lynch & John Hudson, *Obama Turns to U.N. to Outmaneuver Congress*, FOREIGN POLICY (July 15, 2015), <https://perma.cc/F6XQ-P48M>;

122. U.N. Charter arts. 25, 48.

123. JCPOA, *supra* note 96, pmbl. art. 1; S.C. Res. 2231, ¶ OPI (July 20, 2015).

124. S.C. Res. 2231, ¶ 7, 8, 9, 11, 12, 13, 16, 21, 22, 23 (July 20, 2015).

125. Haupt, *supra* note 117, at 438. See generally STEPHEN P MULLIGAN, CONG. RSCH. SERV., LSB10134, WITHDRAWAL FROM THE IRAN NUCLEAR DEAL: LEGAL AUTHORITIES AND IMPLICATIONS (2018).

The third point provides a further hint for dealing with the binding effects of the JCPOA. All states, trading blocs, and international organizations that incorporate the UN sanctions as a basis for imposing the sanctions of their own against Iran shall terminate their sanctions. Termination of sanctions shall occur from the implementation date of January 16, 2016, when the IAEA verifies Iran's compliance with the nuclear deal, according to JCPOA paragraph 34(iii).¹²⁶ Hence, a sanctions-imposer, such as the EU, whose sanctions were in accordance with UN sanctions, has to halt its sanctions and implicitly not reimpose further sanctions unless the UN decides otherwise (Table 1). However, a sanctions-imposer, e.g., the United States, whose unilateral sanctions are imposed unilaterally and in addition to the UN sanctions, might decide not to halt its sanctions or even impose further sanctions. In this situation, two points need to be highlighted.

First, although the majority of U.S. sanctions are imposed unilaterally and in addition to the UN sanctions, some sanctions provisions in U.S. Congressional Acts still have incorporated UNSC Resolutions as a basis to form its sanctions against Iran. Thus, they must be terminated in line with UNSC Resolution 2231 OP 7(a), which required the termination of all the previous UN sanctions against Iran. Out of eight Congressional sanctions against Iran from 1996 to 2012, three partially recognized and incorporated the UN sanctions (Table 2).

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

In addition to any other authority of the President with respect to implementing resolutions of the United Nations Security Council, the President may prescribe such regulations as may be necessary to implement a resolution that is agreed to by the United Nations Security Council and imposes sanctions with respect to Iran.¹²⁷

Second, those parts of the U.S. sanctions against Iran imposed unilaterally and in addition to the UN sanctions, which are considered "secondary smart sanctions", must be restricted because their imposition unilaterally would be beyond the permissible limits of public international law; the secondary smart sanctions would cause the issue of extraterritoriality, and simultaneously, violate due process rights of blacklisted persons.

Briefly, the exercise of extraterritorial jurisdiction by sender states and inevitable effect of their national legislation targeting actors who are abroad violates certain principles of UN Charter, including but not limited to the equality of states, national sovereignty, and nonintervention,¹²⁸ when it extends the reach of the sanctions beyond national jurisdiction, territorial jurisdiction, or goods-territoriality jurisdiction.¹²⁹ The violation of due process standards can arise through a

126. See *supra* text accompanying note 102.

127. Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA) of 2010 § 108, 22 U.S.C. § 8501.

128. Mohamad, *supra* note 10.

129. Jeffrey A. Meyer, *Second Thoughts on Secondary Sanctions*, 30 U. PA. J. INT'L ECON. L. 905, 908, 937 (2009). Under nationality jurisdiction a sender prohibits its nationals wherever they are located from conducting business with third parties. Under territorial jurisdiction a sender may prohibit

Table 1: EU’s compliance with UN sanctions

UNSC Sanctions	EU’s Sanctions that Incorporated UN Sanctions
Resolution 1737	2007/140/CFSP
Resolution 1747	2007/246/CFSP
Resolution 1803	2008/652/CFSP
Resolution 1929	2010/413/CFSP

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

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

individuals and entities within its borders from conducting business with third parties, regardless of their nationality. Under goods-territoriality jurisdiction a sender may prohibit re-exportation of goods originated fully or in part on its territory from anywhere in the world to a target.).

sender state's denying blacklisted persons' rights, for example, to property through asset freezes, to the freedom of movement through travel bans, to a fair hearing through lack of rule and procedure of law, to an effective judicial review through lack of appellate body,¹³⁰ and to an immediate and effective remedy, i.e., delisting from sanctions lists.¹³¹

Besides the provisions of Resolution 2231 that emphasizes the binding nature of the Iran nuclear agreement, other evidence in support of the binding effects of the JCPOA can be traced back to the negative reaction of all P5+1 countries, former U.S. President Barack Obama as well as Secretary of State John Kerry, and other world leaders to U.S. withdrawal from the JCPOA in 2018.¹³² The reactions of all these leaders not only emphasized the significance of the JCPOA's nuclear restrictions for the entire world, but also manifested a clear protest against U.S. reliance on economic sanctions.¹³³ In exploring these manifestations, one sees that the EU's position moved one step forward by challenging the U.S. sanctions through the adaptation of Blocking Statute to hinder the application of U.S. jurisdiction within its territory, which also deserves further investigation in another research.¹³⁴ In addition, the EU set up the Instrument in Support of Trade Exchanges (INSTEX) as a payment channel, Euro-dominated clearing house, and a trade facilitator with Iran.¹³⁵ INSTEX's mechanisms were supposed to be finalized at the end of 2019 to be used as an alternative to SWIFT.¹³⁶

C. *Dispute Resolution Mechanisms of the JCPOA*

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

To elaborate the dispute procedure mechanism of Resolution 2231 in detail, OP 10 refers disputes over the implementation of participants' commitments to JCPOA Articles 36 and 37. These articles provide the following multistage dispute resolution procedures when participants are not "meeting their commitments."¹³⁷

130. Biersteker, *supra* note 11.

131. Heupel, *supra* note 11.

132. Hassan Rouhani, *World Leaders React to US Withdrawal from Iranian Nuclear Deal*, AL JAZEERA (May 9, 2018), <https://perma.cc/F4H7-34ML>; *EU Rejects Iran Nuclear Deal 'Ultimatum'*, *Regrets US Sanctions*, AL JAZEERA (May 9, 2019), <https://perma.cc/ZLK8-QRBR>.

133. MALCOLM N. SHAW, *INTERNATIONAL LAW* 63 (7th ed. 2014).

134. Commission Regulation 2018/1100, Amending the Annex to Council Regulation (EC) No 2271/96 protecting against the effects of extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, 2018 O.J. (L 199) 1.

135. *What is the EU-Iran Payment Vehicle INSTEX?*, DEUTSCHE WELLE (Jan. 31, 2019), <https://perma.cc/E8XZ-FTD4>.

136. *Id.*

137. S.C. Res. 2231, ¶¶ 10, 26 (July 20, 2015); Haupt, *supra* note 117, at 432.

First, only participants in the JCPOA can refer disputes to a Joint Commission (including Germany, China, France, the Russian Federation, the United Kingdom, and the United States, with the EU's High Representative for Foreign Affairs and Security Policy). *Second*, the Commission's failure to reach a resolution within 15 days allows the participants to refer an issue either to ministers of foreign affairs (to resolve the issue in 15 days) or an Advisory Board (to resolve the issue in 15 days in a three-member group, two appointed by each participant and one by a third independent member), or both. *Third*, only the Advisory Board's decision will return to the Joint Committee to be reviewed within five days, while the ministers' decisions seem to be final. Fourth, the complaining participant can cease performing its commitments if it believed the unsolved issue constituted "significant non-performance" and/or notified the UNSC as the fifth stage.¹³⁸

Upon the receipt of this notification, the Security Council must vote to continue lifting of sanctions, the stage known as the "snapback" procedure.¹³⁹ The snapback procedure refers to the effects of JCPOA Article 37, which requires that all Members of the Security Council vote affirmatively within 30 days to "withhold" previous UN sanctions imposed on Iran from 2006 to 2015. Otherwise, Resolution 2231 Article 12 stipulates that sanctions shall apply in the same manner as they applied before the adoption of this resolution.¹⁴⁰ The permanent members of the Security Council with veto power, specifically the United States therefore would be able to reimpose sanctions by vetoing continuation of the lifting of sanctions.¹⁴¹ This snap-back mechanism will expire on the termination day of the JCPOA, which is October 18, 2025, ten years after the Adoption Date of the JCPOA.¹⁴²

Despite this detailed procedure, one can see that two years after the 2018 U.S. withdrawal from the JCPOA, the participants to this agreement were not able to address the disputes between Iran and the United States concerning Iran's nuclear program through the above dispute resolution mechanism. In this situation, the binding effects of Resolution 2231 explained earlier within the framework of public international law would be able to determine the rights and obligations of the JCPOA participants more accurately.¹⁴³ To explain, Resolution 2231 lifted all the nuclear-related sanctions against Iran, and states were expected to refrain from imposing further sanctions on Iran for nuclear-related reasons unless the

138. S.C. Res. 2231, ¶ 36 (July 20, 2015).

139. Kristina Daugirdas & Julian D. Mortenson, *Contemporary Practice of the United States Relating To International Law*, 110 AM. J. INT'L L. No. 2 346, 347 (2016); Eric B. Lorber & Peter Feaver, *Do the Iran Deal's 'Snapback' Sanctions Have Teeth?*, FOREIGN POL'Y (July 21, 2015, 5:34 PM), [HTTPS://PERMA.CC/JN3R-429X](https://perma.cc/JN3R-429X).

140. S.C. Res. 2231, ¶ 12 (July 20, 2015).

141. MULLIGAN, *supra* note 118, at 28.

142. JCPOA, *supra* note 96, art. 34 (v).

143. See *supra* text accompanying notes 122–126.

relevant international organization, i.e., the IAEA, determined otherwise.¹⁴⁴ Given that the IAEA had been confirming Iran's compliance with the JCPOA from the adaptation date of the JCPOA to months after the date the United States withdrew from the JCPOA, this U.S. withdrawal was not aligned with the stipulations of Resolution 2231, and so the United States reinstated sanctions were required to be complied by other international actors.

Despite this conclusion, one can see that TNPAs doing business in Iran exited the market in compliance, or in some cases over-compliance, with the U.S. sanctions because they acted according to their rational choice and risk mitigation rather than strict compliance with the norms and standards of international law stipulated in Resolution 2231. In the next part, this TNPA's action will be discussed in detail to shed light on the important role of TNPAs' decision-making in economic sanctions regimes.

D. TNPAs' Rational Choice and Risk Mitigation in Dealing with Iran

In order to investigate the role of TNPAs in Iran, several indicators can be evaluated, such as the number of active TNPAs in a market, the sectors in which they invested, the amount of transferred capital, and the like. For the purpose of this article, the research project employs the rates of foreign direct investment (FDI)¹⁴⁵ because the FDI rate is an inclusive indicator for TNPAs' willingness to expand in foreign markets and also both international and national sets of data are available for FDI. By using the FDI rate, it is expected to understand and estimate the participation rate of TNPAs in sanctioned markets as well as the reasons behind their decisions to stay in or withdraw from these markets.

According to the Central Bank of Iran, from 1963 to the 1979 revolution, the rate of FDI had been increasing,¹⁴⁶ so that in 1978, Iran's net inflow stood at above 900 USD million.¹⁴⁷ After 1979, the political instability resulting from the revolution, economic sanctions, the Iran-Iraq war, and the misbehavior of the Iranian government towards foreign firms led to the departure of TNPAs and their

144. JCPOA, *supra* note 96, arts. 3-6. See e.g., Int'l Atomic Energy Agency [IAEA], *Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231* (2015) Board of Governors Res. GOV/INF/2021/6 (Feb. 23, 2021), <https://perma.cc/BLX5-J7K9>.

145. According to the World Bank, ("Foreign direct investment refers to direct investment equity flows in the reporting economy. It is the sum of equity capital, reinvestment of earnings, and other capital. Direct investment is a category of cross-border investment associated with a resident in one economy having control or a significant degree of influence on the management of an enterprise that is resident in another economy. Ownership of 10 percent or more of the ordinary shares of voting stock is the criterion for determining the existence of a direct investment relationship."); *Foreign Direct Investment, Net Inflows (BOP, Current US\$)*, THE WORLD BANK DATA, <https://perma.cc/8FPQ-MC24>.

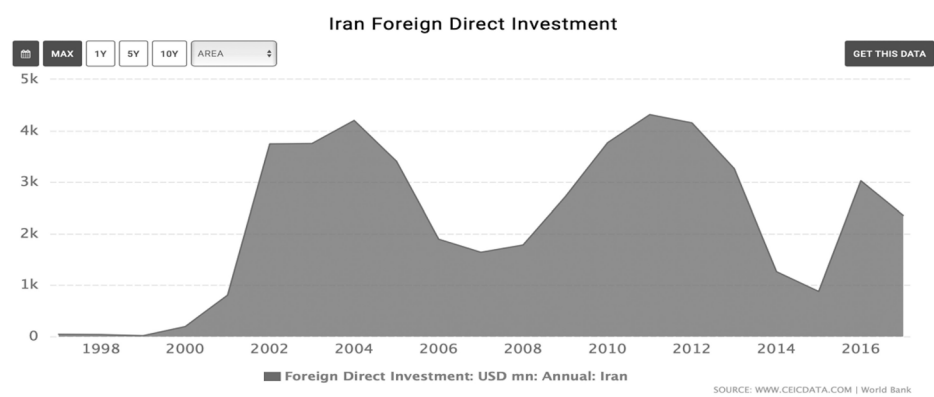
146. MOHAMMAD REZA SODAGAR, THE DEVELOPMENT OF CAPITALISM IN IRAN: EXPANSION LEVEL (1344-1357) [ROSHDE SARMA YE DARI DAR IRAN: MARHALEYE GOSTARESH: 1344-1357] 507 (Andishe Shole) (1990) (Ir.); see Mohsen Bahmani-Oskooee, *The Decline of the Iranian Rial During the Post-Revolutionary Period: The Monetary Approach and Johansen's Cointegration Analysis*, 16 CANADIAN J. DEV. STUD. 277, 278 (1995).

147. MEHDI GHODSI, VASILY ASTROV, RICHARD GRIEVESON & ROBERT STEHRER, IRANIAN ECONOMY: CHALLENGES AND OPPORTUNITIES 52 (2018).

capital.¹⁴⁸ According to the UNCTAD, the annual average of inward FDI dropped from 1985 to 1995 to -47 million USD,¹⁴⁹ indicating reverse investment or disinvestment.¹⁵⁰

From the beginning of the 21st century, TNPAs’ investment in Iran’s market positively changed, yet they reacted to the sanctions related to Iran’s nuclear program quite strongly. According to the World Bank, the rate of FDI plunged one time when the universal nuclear-related sanctions were deployed from 2006 to 2008 by the UN (Resolutions 1696, 1737, 1747, 1803) and again when sanctions were intensified from 2012 to 2015.¹⁵¹ Unsurprisingly, after signing the nuclear deal, the rate of FDI reached an all-time high of 5 billion USD in 2017 but dropped to 3.4 billion USD in 2018 pursuant to U.S. withdrawal from the JCPOA and reinstatement of sanctions related to Iran’s nuclear program (Figure 1).

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



To elaborate more on the above statistics, despite ongoing economic pressures and downward shifts in the FDI rate from 2006 to 2008, one can see that the rate of FDI suddenly increased after 2008 to 2012 and again declined from 2012 to 2015. To explain this sudden shift, it should be recalled that Iran’s nuclear program were initiated in 2006 and were intensified in two stages, in 2010 with respect to Iran’s energy sector and banking system,¹⁵² and again in 2012 with respect to its oil industry and Central Bank.¹⁵³ The second stage after 2012, as

148. Jahangir Amuzegar, *The Iranian Economy Before and After the Revolution*, 46 MIDDLE EAST J. 413, 419 (1992).

149. U.N. CONF. ON TRADE & DEV., WORLD INVESTMENT REPORT 2003 FDI POLICIES FOR DEVELOPMENT: NATIONAL AND INTERNATIONAL PERSPECTIVES, U.N. Sales No. E.03.II.D.8 (2003).

150. U.N. CONF. ON TRADE & DEV., WORLD INVESTMENT REPORT FDI FROM DEVELOPING AND TRANSITION ECONOMIES: IMPLICATIONS FOR DEVELOPMENT, at 296, U.N. Sales No. E.06.II.D.11 (2006).

151. *Iran Foreign Direct Investment*, CEIC DATA, <https://perma.cc/9H9F-PLKS>.

152. Specifically, by adapting Resolution 1929, Non-Proliferation, S.C. Res. 1929 (June 9, 2010).

153. *Fact Sheet: Sanctions Related to Iran*, THE WHITE HOUSE (July 31, 2012), <https://perma.cc/FC55-MZWA>.

could be expected, had a major effect on TNPAs' disinvestment, considering the comprehensive nature of the sanctions universally imposed on Iran. The first stage from 2010 to 2012, however, not only had minimal impact on TNPAs' investment in Iran's market but even attracted more investment.

Two explanations may cast light on this TNPA behavior. First, the group of companies that continued conducting business in Iran should be considered. Major TNPAs in the world with direct or indirect business ties with the United States and the EU had left Iran since 2010, including Siemens, Thyssen-Krupp, Mercedes-Benz, Porsche, Toyota, BNP Paribas, NYK Line Ltd (Hong-Kong shipping business), and many other firms in energy sectors.¹⁵⁴ In addition, since 2010, energy firms have been subject to intense U.S. sanctions so that no TNPAs have developed Iran's oil and gas sites since then, considering the fact that these sites attract the highest amount of Iran's FDI annually.¹⁵⁵ Therefore, the increase in the rate of FDI can be associated with the activity of small and medium-sized TNPAs that are neither in the energy sector nor have business exposure to U.S. and EU markets, so that they cannot be sanctioned by them.

Second, according to the studies of Dizaji, Bergeijk, and Allen, sanctions have the largest amount of impact on target states within the first two years of imposition.¹⁵⁶ Subsequent sanctions pressure declines after this initial impact, and somewhere between five and ten years, the rate of sanctions failure drastically increases.¹⁵⁷ The pressure of sanctions on Iran initiated in 2006 therefore reached its summit in 2008, when the FDI rate was at its lowest level, but it lessened afterward until the start of the second stage of sanctions in 2012. After five years, in 2011, TNPAs' investment in Iran's market reached 4.3 USD billion, the highest ever FDI before the conclusion of the nuclear deal in 2015.

After the nuclear deal, in 2016, TNPAs rushed back into Iran's \$400 billion economy, which had suffered from sanctions for a decade but was now reopened to investors.¹⁵⁸ During this period, major transnational actors found Iran's investment climate improved. For example, the French oil company Total partnered with the Chinese CNPC energy company to sign a deal worth \$5 billion to develop the world's largest gas field, alongside Airbus (selling 100 aircraft worth more than \$19 billion),¹⁵⁹ the PSA carmaker group (\$400

154. KENNETH KATZMAN, CONG. RESEARCH SERV., RS20871, IRAN SANCTIONS 45 (2016).

155. *Id.* at 51.

156. Sajjad Faraji Dizaji & Peter A. G. van Bergeijk, *Potential Early Phase Success and Ultimate Failure of Economic Sanctions: A VAR Approach with an Application to Iran*, 50 J. PEACE RES. 721, 721 (2013).

157. Susan H. Allen, *The Determinants of Economic Sanctions Success and Failure*, 31 INT'L INTERACTIONS 117, 130 (2005).

158. *Factbox: Companies rush to Iran as sanctions are lifted*, REUTERS (Jan. 19, 2016, 5:34 AM), <https://perma.cc/26YP-86MH>; *European Businesses Abuzz with Preparations to Rush Back into Iran*, HAARETZ (Jan. 23, 2014), <https://perma.cc/92PM-CJ54>.

159. Chris Reiter, Oliver Sachgau & Carol Matlack, *Companies that Rushed into Iran Now Prepare to Rush Back Out*, BLOOMBERG QUINT (May 9, 2018, 7:44 EDT), <https://perma.cc/48MM-QDTH>; NADER HABIBI, CROWN CTR. FOR MIDDLE EAST STUD., THE IRANIAN ECONOMY TWO YEARS AFTER THE NUCLEAR AGREEMENT 4 (2018).

million),¹⁶⁰ Danske Bank Denmark (\$500 million),¹⁶¹ Renault, Siemens, ATR, and many others.¹⁶²

In 2018 and pursuant to U.S. withdrawal from the JCPOA, TNPAs wondered about staying in Iran's market given the extraterritorial effects of U.S. sanctions or exiting. According to a report prepared by the Foundation for Defense for Democracies, out of 232 major TNPAs operating in Iran at the end of 2018, 71 decided to withdraw, 19 planned to stay, and 142 remained with no decision or no broadcasted decision.¹⁶³

Among the major TNPAs that withdrew were "France's Total, Airbus, and PSA/Peugeot; Denmark's Maersk, Germany's Allianz, and Siemens; Italy's Eni; Japan's Mazda and Mitsubishi UFJ, Financial Group; and the UK's BP."¹⁶⁴ The reason behind these TNPAs' decisions not to evade U.S. sanctions came from mainly the seriousness of U.S. punishments against sanctions-busters, which caused the TNPAs to conduct a more precise business risk analysis. For example, in 2019, the British Bank Standard Chartered was penalized 1 billion USD for circumventing U.S. sanctions on Iran from 2007 to 2010.¹⁶⁵ Similarly, in 2015, the United States charged BNP Paribas around 9 billion USD for evading the U.S. sanctions against Sudan, Iran, and Cuba from 2004 to 2012.¹⁶⁶ German UniCredit SPA Bank, Huawei Technology Company, and German Deutsche Bank, are among several other penalized TNPAs.¹⁶⁷

The risk of being sanctioned by the United States was extremely high. Four months after the reimposition of sanctions against Iran, 31 European and Asian TNPAs, which were among the Fortune Global 500 list of largest firms in terms of highest revenues in the world, left Iran's market.¹⁶⁸ These TNPAs as well as other TNPAs that withdrew from the market over time, in fact, ignored particular aspects of public international law. For example, they ignored the political

160. *Peugeot-Citroen Back on the Road in Iran with Deal to Build Cars*, THE GUARDIAN (Jan. 21, 2016, 22:17 EDT), <https://perma.cc/K2AA-TAX4>.

161. *Iran Signs €500 Million Finance Deal with Denmark*, FINANCIAL TRIBUNE (Sep. 20, 2017, 22:19), <https://perma.cc/R2EE-8GGR>.

162. *Iran Nuclear Deal: The EU's Billion-Dollar Deals at Risk*, BBC NEWS (May 17, 2018), <https://perma.cc/3H2N-R6GJ>.

163. DAVID ADESNIK & SAEED GHASSEMINEJAD, FOUND. FOR DEF. OF DEMOCRACIES, FOREIGN INVESTMENT IN IRAN: MULTINATIONAL FIRMS' COMPLIANCE WITH U.S. SANCTIONS 2 (2018).

164. *Id.*

165. *US Penalizes British Bank \$1B in Iranian Trade Sanctions Case*, VOICE OF AMERICA (Apr. 9, 2019, 4:30 PM), <https://perma.cc/HF4M-ADT4>.

166. *Capital Punishment*, THE ECONOMIST (July 5, 2014), <https://perma.cc/BJP2-59MB>; Nate Raymond, *BNP Paribas Sentenced in \$8.9 Billion Accord Over Sanctions Violations*, REUTERS (May 1, 2015, 11:32 AM), <https://perma.cc/E2WN-R3TY>.

167. Sonia Sirletti & Greg Farrell, *UniCredit to Pay \$1.3 Billion in Biggest Iran Sanctions Fine*, BLOOMBERG (Apr 15, 2019, 1:00 PM EDT), <https://perma.cc/3H74-H3VL>; *US Charges China's Huawei with Bank and Wire Fraud for Violating Iran Sanctions*, THE IRISH TIMES (Jan. 28, 2019, 23:16), <https://perma.cc/8L9U-7HLP>; *Deutsche Bank Fined \$258m for Violating US Sanctions*, THE GUARDIAN (Nov. 4, 2015, 13:51 EST), <https://perma.cc/UP77-S6Y3>.

168. ADESNIK & GHASSEMINEJAD, *supra* note 163; *Global 500*, FORTUNE, <https://perma.cc/5D8H-5SE3>.

statements of world leaders in support of the JCPOA, the binding effects of Resolution 2231 which endorsed the JCPOA, the installment of EU-Iran INSTEX transaction channel to mitigate U.S. sanctions pressure, and even the EU Blocking Statute that was enacted to support TNPAs' business with Iran.

In the next part, the unintended consequences of TNPAs' departure from Iran's sanctioned market – the Ukrainian flight crash – will be discussed. This part will reemphasize the expanded role of transnationalism in recent decades and will shed light on the importance of TNPAs' rational choice to pursue risk mitigation (recalling the country, industry, institutional, and legal risks) instead of strict compliance with the mandates of public international law.

IV. PART FOUR: UNINTENDED CONSEQUENCES OF TNPAs' DECISIONS IN SANCTIONED MARKETS: THE UKRAINE INTERNATIONAL AIRLINES PS 752 CRASH

The impact of TNPAs' withdrawal from a foreign sanctioned market is not limited to profit loss and monetary damage to host countries' economies but also substantially reinforces the effectiveness of sender states' sanctions. In the case of Iran's nuclear program, TNPAs' decision to withdraw from Iran's market after May 2018 deprived Iran's economy of millions of dollars in trade and foreign investment and reinforced the U.S. sanctions so that the United States renegotiated a better deal with Iran.¹⁶⁹ In terms of monetary damage, almost one year after U.S. reinstatement of secondary smart sanctions on Iranian domestic business as well as TNBs and TNCs, Iran's crude oil exports declined from 2.5 million barrels per day to 400,000 as a result of withdrawal of transnational energy companies, such as CNPC, Total, BP and their subsidiaries, as well as asset freezes and the ban on financial transaction between Iranian banks, foreign financial institutions, and messaging platforms such as the SWIFT.¹⁷⁰ In terms of sanctions reinforcement, the United States could move one step forward to make 12 demands as part of a new nuclear agreement with Iran, such as stopping uranium enrichment, ending the proliferation of ballistic missiles, ceasing to threaten Israel's existence, and withdrawing forces under Iran's command from Syria.¹⁷¹ Iran's refusal to comply with these demands led to further U.S. economic sanctions on a variety of its industries, individuals, and entities, whereby a chain of events was triggered that led to the Ukrainian plane crash in Iran.

To detail, TNPAs departure from Iran's sanctioned market – including both TNPAs headquartered in Iran and TNPAs operating from other countries – resulted in Iranian banks and corporations lack of access to the global trade system. Consequently, in the absence of these transnational competitors, which

169. Nahal Toosi, *Iran Tests Trump's Desire to Actually Strike a New Deal*, POLITICO (June 17, 2019, 06:15 PM EDT), <https://perma.cc/2BKK-9X27>.

170. Chen Aizhu, *China's CNPC Ready to Take Over Iran Project if Total Leaves: Sources*, REUTERS (May 11, 2018, 5:01 AM), <https://perma.cc/3R7B-5H27>; *US Hits Iranian bank, Companies with New Sanctions*, AL JAZEERA (Mar. 26, 2019), <https://perma.cc/9TDC-79Q2>.

171. Joseph Trevithick, *Pompeo's 12 Demands for Iran Read More Like A Declaration of War Than A Path to Peace*, THE DRIVE (May 21, 2018), <https://perma.cc/V3AK-JLZL>.

left Iran's sanctioned market according to their rational choice and risk mitigation rather than strict compliance with public international law, the Iranian government activated its sanctions-busting schemes. These schemes mainly relied on the Iranian Revolutionary Guard Corps (IRGC). The IRGC played the role of TNPAs to ensure that Iran kept its trade-mechanism, in spite of sanctions, and Iran's budget deficit was offset.¹⁷² Among various sanction-busting plans, the IRGC employed, for example, bartering; exporting oil through neighboring countries, in black markets, and registered vessels under the flags of convenience; transferring in and out oil money by moving bags full of cash or gold, and transferring money through shell companies established in other countries.¹⁷³

On April 8, 2019, the United States designated the IRGC as a foreign terrorist organization, whereby it imposed a wide-range of economic sanctions on its corporations and on the economic sectors in which the IRGC participated. These sanctions escalated the tension between the United States and Iran and incited retaliation by Iran, given that in the absence of TNPAs, the sanctions constrained Iran's ability to sell oil and evade U.S. sanctions by means of the IRGC.¹⁷⁴

As a result, the Iranian government, which had repeatedly threatened that "If one day they [the U.S. officials] want to prevent the export of Iran's oil, then no oil will be exported from the Persian Gulf," began countering the U.S. economic pressure, initially by announcing that it would increase uranium enrichment.¹⁷⁵ In return, the United States imposed more sanctions with respect to Iran's steel, aluminum, copper, and iron¹⁷⁶ and simultaneously, a series of attacks initiated in the waterways of the Middle East. For example, four commercial ships were sabotaged in the Persian Gulf, a major oil pipeline in Saudi Arabia was attacked by a drone,¹⁷⁷ and Japanese and Norwegian tankers were attacked in the Gulf of Oman, which resulted in the deployment of one thousand U.S. troops in the region.¹⁷⁸

172. Azar Mahmoudi, *The Proliferation of Corruption in Sanctions Regimes: The Case of Iran*, 79–81 (Dec. 2018) (unpublished LLM thesis, McGill University) (on file with McGill Libraries, McGill University).

173. *Id.* at 88.

174. Edward Wong and Eric Schmitt, *Trump Designates Iran's Revolutionary Guards a Foreign Terrorist Group*, THE NEW YORK TIMES (Apr. 8, 2019), <https://perma.cc/V5TF-GCRD>.

175. *If Iran Can't Export Oil from Gulf, No Other Country Can*, IRAN'S PRESIDENT SAYS, REUTERS (Dec. 4, 2018, 2:33 AM), <https://perma.cc/Y5D2-4ANN>.

176. *Iran-US Tensions Escalate as Trump Imposes New Sanctions*, AL JAZEERA (May 8, 2019), <https://perma.cc/3M3Y-YQ4X>.

177. *UAE Says Four Ships Subjected to 'Sabotage' Off East Coast*, AL JAZEERA (May 13, 2019), <https://perma.cc/Z7FE-UTNW>; *US-Iran Standoff: A Timeline of Key Events*, AL JAZEERA (Sep. 25, 2019), <https://perma.cc/VQU4-8MN5>.

178. *US-Iran Standoff*, *supra* note 177.

Sequentially and within the next months until the end of September 2019, the IRGC shot down a U.S. military surveillance drone in the Strait of Hormuz,¹⁷⁹ the United States sanctioned Iran's supreme leader,¹⁸⁰ the United Kingdom seized an Iranian oil tanker in Gibraltar,¹⁸¹ Iran seized a British oil tanker in the Strait of Hormuz,¹⁸² the United States sanctioned Iran's Minister of Foreign Affairs and Iran's space agencies,¹⁸³ and Iran activated advanced centrifuges.¹⁸⁴

The increased tension outside Iran's borders came along with domestic unrest driven by the same cause, the economic sanctions and TNPAs withdrawal from Iran. As U.S. sanctions hit Iran's oil revenue, the Iranian government cut off energy subsidies and the price of gas fuel abruptly increased by 200 percent, so that in November 2019¹⁸⁵ Iran faced one of its worst periods of domestic unrest since the 1979 revolution, which led to hundreds of deaths and the arrest of thousands of protestors.¹⁸⁶ At the same time, the United States sanctioned the Minister of Information and Communications Technology of Iran because of his role in cutting off the internet during the protests.¹⁸⁷

The increased conflict between the United States and Iran intensified in December 2019 when a U.S. contractor was killed because of a rocket attack in Iraq.¹⁸⁸ The United States condemned Kataib Hezbollah, an Iran-backed militia group, and in retaliation, the United States attacked Kataib Hezbollah's sites in Iraq and Syria.¹⁸⁹ Consequently, a group of protestors turned around and eventually broke into the U.S. embassy in Baghdad, which later responded by killing the IRGC's General Soleimani by a drone strike at Baghdad.¹⁹⁰

Before proceeding with the last tile of the domino that led to the Ukrainian plane crash, it is important to mention that according to McDonald and Reitano,

179. Joshua Berlinger, Mohammed Tawfeeq, Barbara Starr, Shirzad Bozorgmehr & Frederik Pleitgen, *Iran Shoots Down US Drone Aircraft, Raising Tensions Further in Strait of Hormuz*, CNN (June 20, 2019, 8:39 PM EDT), <https://perma.cc/VC36-9WCU>.

180. *Iran: New US Sanctions Target Supreme Leader Khamenei*, BBC NEWS (June 24, 2019), <https://perma.cc/P6VC-E5BL>.

181. *Iran Condemns UK's Seizure of Oil Tanker as 'Threatening Act'*, AL JAZEERA (July 8, 2019), <https://perma.cc/BS3Z-R3DU>.

182. *Iran Seizes British Oil Tanker in Strait of Hormuz*, AL JAZEERA (July 19, 2019), <https://perma.cc/SD29-6XS4>.

183. *US-Iran Standoff*, *supra* note 177.

184. *Id.*

185. *Iran Protests Spike Over Fuel Price Rise*, AL JAZEERA (Nov. 16, 2019), <https://perma.cc/N6RQ-ZABU>.

186. Najmeh Bozorgmehr, *Iran to Raise Taxes as US Sanctions Hit Oil Revenues*, FIN. TIMES (Dec. 8, 2019), <https://perma.cc/QRK8-YAEV>; *Iran Protest Death Toll May Exceed 1,000, US Says as it Applies New Pressure on Tehran*, SOUTH CHINA MORNING POST (Dec. 6, 2019, 11:31 PM), <https://perma.cc/N29Q-2ZPV>.

187. *Treasury Designates Iran's Minister of Information and Communications Technology in View of the Regime's Repressive Internet Censorship*, U.S. DEPARTMENT OF THE TREASURE PRESS RELEASES (Nov. 22, 2019), <https://perma.cc/YQ6E-G5PK>; *US-Iran Tensions: Timeline of Events Leading to Soleimani Killing*, AL JAZEERA (Jan. 8, 2019), <https://perma.cc/P29U-D7BC>.

188. *US-Iran Tensions*, *supra* note 187.

189. *Id.*

190. *Id.*

countries with a history of warfare and invasions rely on military capabilities more than others in dealing with social, political, and economic uncertainties.¹⁹¹ These nations respond to economic sanctions by increasing the defense industry's expenditures because a strong defense industry positively influences economic performance and offsets the economic loss.¹⁹² With respect to Iran, and bearing in mind a long history of warfare, invasion, and economic sanctions, one can see that despite severe economic sanctions in the last decade and budget deficit, the percentage of Iran's military expenditures of its GDP have been constantly and relatively high,¹⁹³ and its missile system has become one of its key military arsenals.¹⁹⁴

Therefore, on January 8, 2020, in retaliation for killing General Soleimani, Iran launched dozens of its missiles, which had been developed by the IRGC, and targeted two U.S. bases in Iraq.¹⁹⁵ Hours following this attack, Ukraine International Airlines Flight 752 took off from Tehran Imam Khomeini International Airport and shortly thereafter was shot down by two Iran's surface-to-face missiles, killing all 176 passengers and crew on board. The released Iranian military's statement declared at that time that the plane was hit as a result of "human error" as the plane had turned towards an IRGC-operated "sensitive military center" which was at its highest level of readiness against U.S. retaliation.¹⁹⁶ The case is still under investigation.

The causal relationship between U.S. sanctions and the Ukrainian plane crash is not that of a kind that can be understood clearly without taking into consideration the background detailed in this article. Although the author of this article does not disregard four decades of conflict between Iran and the United States, the recent set of sanctions reinstated in 2018 against Iran, which its legality and legitimacy was questioned by the international community, and subsequent TNPAs' exit from Iran's market, according to their strategic calculation to avoid risk, created this chain of events. In the absence of TNPAs as transnational competitors, the IRGC took advantage of Iran's isolation and won no-bid government contracts, controlled the oil and gas sectors, and became a long arm of the government crucial to circumventing sanctions abroad.¹⁹⁷ It is not surprising that

191. Bruce D. McDonald III & Vincent Reitano, *Sanction Failure: Economic Growth, Defense Expenditures, and the Islamic Republic of Iran*, 42 ARMED FORCES & SOC. 635, 635, 647, 649 (2016).

192. *Id.*

193. *Compare Iran Military Expenditure*, TRADING ECON. <https://perma.cc/4R2Y-59YM> (last visited Feb. 3, 2020) with *Iran GDP*, TRADING ECON., <https://perma.cc/8MWL-QTXW>.

194. Reality Check Team, *Iran Attack: How Strong Is Iran's Military?*, BBC NEWS (Jan. 9, 2020), <https://perma.cc/5JML-674W>.

195. Michael Safi, Oliver Holmes, and Ghaith Abdul-Ahad, *Iran Launches Missiles at Iraq Airbases Hosting US and Coalition Troops*, GUARDIAN (Jan. 8, 2020, 11:09 AM EST), <https://perma.cc/M3MH-8B4Z>; Ryan Pickrell, *Iran Fired Missiles at US Forces in Iraq, Revenge for Soleimani Death*, BUS. INSIDER (Jan. 7, 2020, 6:56 PM), <https://perma.cc/YXJ6-QVFL>.

196. Natasha Turak, *Iran Admits to 'Unintentionally' Shooting Down Ukrainian Airliner, Blames 'Human Error'*, CNBC (Jan. 13, 2020, 3:38 AM EST), <https://perma.cc/9Q8W-QLD2>; *Iran plane crash: Ukrainian jet was 'unintentionally' shot down*, BBC NEWS (Jan. 11, 2020), <https://perma.cc/9MZG-JVTF>.

197. Mahmoudi, *supra* note 172.

imposition of further sanctions, specifically target the IRGC, Islamic Republic's Supreme Leader, Ministers, and their dependent enterprises, limited Iran's ability to circumvent the sanctions. Increasing tension between both parties became inevitable. This pursuit of political goals was undertaken at the cost of 176 victims of the Ukraine International Airlines Flight 752.

CONCLUSION

The goal of economic sanctions regimes is in opposition to the goal TNPAs in expanding abroad; while the purpose of sanctions-imposers is the limitation of economic relations, TNPAs' objective is the liberalization of economies so that they can achieve greater participation in host countries. As a result, the public goal of imposing sanctions can end up trumping the private goal of maintaining economic relations.

In the case of U.S. sanctions against Iran after the U.S. withdrawal from the nuclear agreement in 2018, one could see that although the legality and legitimacy of this set of sanctions were questioned by the international community, TNPAs departed from Iran's sanctioned market because they acted according to their rational choice and risk mitigation, rather than strict compliance with public international law. In exploring public international law, this article investigated the dispute settlement mechanism of the JCPOA, the binding effects of the JCPOA and UNSC Resolution 2231, and the reactions of opponents to U.S. withdrawal from the JCPOA in the forms of explicit contestation, the enactment of EU Blocking Statute, and the establishment of EU-Iran INSTEX.

TNPAs' decision to withdraw from Iran's market after May 2018 deprived Iran's economy of millions of dollars and empowered the United States to use economic sanctions as a lever to renegotiate a better deal with Iran. Iran's refusal to comply with the demands of a new agreement led to further U.S. economic sanctions on several Iranian industries, such as its banking system, central bank, and oil and gas sectors. As a result, TNPAs residing inside Iran withdrew from this sanctioned market, and TNPAs positioned out of Iran such as the SWIFT, also discontinued providing their services to Iranian individuals and entities operating in Iran. Consequently, the Iranian government activated its sanctions-busting schemes, which mainly relied on the IRGC to generate revenue for the government in the absence of TNPAs. By imposing additional sanctions on the IRGC, the United States drastically restricted Iran's ability to circumvent sanctions, triggering a chain of events that led to the Ukrainian plane crash in Iran.