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# United Nations' Doublethink Economic Sanctions and Human Rights Protection

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ERMA, European Regional Master's Programme in  
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DRAGANA STEFANOVSKA

UNITED NATIONS' DOUBLETHINK:  
ECONOMIC SANCTIONS AND HUMAN RIGHTS  
PROTECTION

## FOREWORD

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#### ABSTRACT

The most common understanding of 'use of force' is associated with military coercion. Examinations in the political and public spheres as well as legal inquiries are extensively provided to most armed conflicts, also in regard to regular counting of the number of victims – considering that unjustified death caused by a military action is an obvious, blatant violation of the right to life. Accordingly, responsible actors are often subjected to moral and legal scrutiny. Nearly all of the deadliest conflicts fought since the end of the Second World War, by the number of victims – the Vietnam War, the wars in the DRC, in Iraq and in Syria – have been, to a large part, caused by unilateral interventions outside of UN's framework. The harshest criticism towards the UN in these cases, therefore, has taken the form of accusations of inaction on its part. Nonetheless, several cases of economic coercion enacted precisely by the UN – the global guardian of human rights – as this study will show, have caused repercussions comparable – both by causing human rights violations and by increasing the level of threat against international peace and security – to repercussions of armed conflicts. A problem arises due to the fact that since the UN Charter provides the SC with the authority to introduce economic sanctions under Article 41, the legality and legitimacy of economic coercion enacted by the UN is rarely disputed. This study will argue that the SC's usage of economic force needs to be re-examined – not only because it causes legal and practical discrepancies within the working of the UN as a single body – in light of

UN's dedication to human rights protection; but also because a thorough examination shows that there is no coherent evidence for sanctions' successful contribution towards international peace and security – the legal premise cited when sanctions are enacted. A guiding principle in this research has been the recognition that victims of starvation and/or lack of basic medical supplies also need to be counted as fatalities of a grave crime, as the half a million dead Iraqi children or the possible millions of dead Yemeni children – victims of the coercive use of economic force – deserve the same condemnation as direct victims of military campaigns.

*Keywords: UN, SC, Economic sanctions, International peace and security, Human rights*

TABLE OF ABBREVIATIONS

Afghanistan	Islamic Republic of Afghanistan
AP	Additional Protocol to the Geneva Conventions
BH	Bosnia and Herzegovina
CAR	Central African Republic
CESCR	United Nations Committee on Economic, Social and Cultural Rights
Charter	Charter of the United Nations
CIA	United States Central Intelligence Agency
China	People's Republic of China
CoE	Council of Europe
Covenant	Covenant of the League of Nations
CTC	United Nations Counterterrorism Committee
DPRK	Democratic People's Republic of Korea
DRC	Democratic Republic of the Congo
ECOSOC	Economic and Social Council of the United Nations
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FBI	United States Federal Bureau of Investigation
FDLR	Democratic Forces for the Liberation of Rwanda [French: Forces démocratiques de libération du Rwanda]
FRY	Federal Republic of Yugoslavia
GA	General Assembly of the United Nations

GDP	Gross Domestic Product
(O)HCHR	United Nations (Office of the) High Commissioner for Human Rights
IAEA	International Atomic Energy Agency
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
ILC	International Law Commission
IRA	Irish Republican Army
Iran	Islamic Republic of Iran
Iraq	Republic of Iraq
JCPOA	Joint Comprehensive Plan of Action (international agreement between Iran on one side and the United States, Russia, China, the United Kingdom, France, Germany and the European Union on the other)
KLA	Kosovo Liberation Army
League	League of Nations
Libya	State of Libya
M23	March 23 Movement [French: Mouvement du 23 mars], also known as the Congolese Revolutionary Army [Armée révolutionnaire du Congo]
NATO	Northern Atlantic Treaty Organization
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
P5	Five permanent member-states of the United Nations Security Council (United States, United Kingdom, Russia, China and France)
R2P	Responsibility to Protect
ROK	Republic of Korea
RPF	Rwandan Patriotic Front



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Russia	Russian Federation
SC	Security Council of the United Nations
SRFY	Socialist Federal Republic of Yugoslavia
Syria	Syrian Arab Republic
UN	United Nations
UNDP	United Nations Development Programme
United States	United States of America
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNITA	National Union for the Total Independence of Angola [Portuguese: União Nacional para a Independência Total de Angola]
UNODC	United Nations Office on Drugs and Crime
WFP	World Food Programme
WHO	World Health Organization
WTO	World Trade Organization
YPA	Yugoslav People's Army
ZANU	Zimbabwe African National Union
ZAPU	Zimbabwe African People's Union

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## INTRODUCTION

*'A nation that is boycotted is a nation that is in sight of surrender. Apply this economic, peaceful, silent, deadly remedy and there will be no need for force. It is a terrible remedy. It does not cost life outside the nation boycotted, but it brings a pressure upon the nation which, in my judgment, no modern nation could resist.'*  
- Woodrow Wilson [Paris, 1919]

*'I don't want to administer a programme that satisfies the definition of genocide.'*  
- Denis Halliday, UN Humanitarian Coordinator in Iraq, resigning his post after a 34-year career in the UN [Baghdad, 1998]

In December 1996, the then American Secretary of State, Madeleine Albright, was interviewed regarding economic sanctions targeting Iraq which the United States lobbied to have introduced through the SC. The host asked: 'We have heard that a half million children have died. I mean, that's more children than those that died in Hiroshima. And, you know, is the price worth it?' Her response, 'I think this is a very hard choice, but the price – we think the price is worth it' was later widely condemned by the American public; yet neither that nor Albright's other policy-actions have prevented president Obama from awarding her the Presidential Medal of Freedom in 2012.<sup>1</sup> Besides in Iraq, notoriously strict UN embargoes in the 1990s were also introduced against Haiti, as well as the most comprehensive sanctions regime enacted in history – directed against the FRY.

<sup>1</sup> Natalie Jennings, 'Presidential Medal of Freedom: Obama honours Bob Dylan, Madeleine Albright and others' *The Washington Post* (29 May 2012) <[www.washingtonpost.com/blogs/election-2012/post/presidential-medal-of-freedom-obama-to-honor-bob-dylan-john-doar-and-more/2012/05/29/gJQAaczUzU\\_blog.html?utm\\_term=.275fcc3c05ca](http://www.washingtonpost.com/blogs/election-2012/post/presidential-medal-of-freedom-obama-to-honor-bob-dylan-john-doar-and-more/2012/05/29/gJQAaczUzU_blog.html?utm_term=.275fcc3c05ca)> accessed 10 October 2018.

These UN policies have left irrevocable consequences for the targeted states and for the human rights of their citizens, where besides the self-evident deterioration of economic and social rights – as this study will show in continuation – prolonged repercussion on civil and political freedoms, long after sanctions have been lifted, are also apparent – in particular in the case of the only UN sanctions directed against a European state, the FRY. Furthermore, another feature that makes the sanctions enacted in South-East Europe exceptional is the fact that that is the only case when the UN has sanctioned a federation. At the time when the initial arms embargo was enacted with Resolution 713 in September 1991,<sup>2</sup> the SFRY was in the midst of its dissolution, and the future status of its republics was uncertain. In that regard, but also considering the political and economic interconnectedness and interdependence of all of the republics of the former federation throughout the 1990s, the consequences of the sanctions against the FRY unquestionably overflowed the borders of the target state, as their “domino effect” on the entire region – this study will show – is still felt today.

With the aim to distance itself from the scandals and criticism arising from sanctions enacted in the 1990s, the UN gradually shifted towards usage of targeted sanctions regimes, yet, as it will be argued, bypassing sanctions’ negative externalities remains challenging. At the same time, unilateral sanctions outside of UN’s framework are on the rise – increasingly taking the form of so-called “trade wars”. All considering, some analysts argue that in today’s world of interconnected and mutually-dependent economies, the effects of economic coercion are comparable to the effects of military interventions. Nonetheless, even with that in mind and in consideration of the fact that the employments of economic and military force share the same legal basis under Chapter 7 of the UN Charter, economic sanctions are, conversely, subjected to less legal, public, academic and political scrutiny in comparison to military interventions.

In such state of affairs, the manifold debate on the use of sanctions is currently in a state of paradox. In the literature, almost a consensus is presented showing sanctions’ general (not only UN’s regimes) low efficiency; while additionally, in the public discourse, sanctions’ toll on

<sup>2</sup> UN SC Res 713 (25 September 1991) UN Doc S/RES/713.

human rights is seldom denied – as Albright’s answer shows that she never tried to dispute the staggering number of dead Iraqi children. At the same time, several UN bodies – excluding the SC – are increasingly raising their voice against what they perceive is sanctions’ interference with their work in the field of human rights. Still, an appropriate regression in the SC’s employment of sanctions is lagging. There are currently 15 active UN sanctions regimes in place, all introduced under Chapter 7 of the Charter, meaning – due to their contribution towards international peace and security.

With that in mind, while there is enough literature showing sanctions’ low levels of success and there is extensive research pointing to UN sanctions’ breaches of human rights, what is still needed is examination of UN-introduced sanctions’ efficiency from the point of view of their contribution towards the goals cited when those regimes are enacted – international peace and security – as compared to those sanctions’ externalities in regard to UN’s purposes that the SC, arguably, overlooks – ‘respect for human rights’ [Charter Article 1.3].<sup>3</sup> This study aims to bridge that gap and its main purpose, therefore, is to argue that UN-enacted economic sanctions have been and are failing to positively influence international peace and security, while additionally, they leave behind irrevocable consequences on human rights. The situation as is, by opening the “Pandora’s box” of the working of the SC, puts into perspective several sets of problems: the first one, as mentioned is the “conflict of laws” and legal principles (or legal inconsistencies) within the UN system – embodying ‘international peace and security’ and ‘respect for human rights’ under the same roof. Additionally, three arguably overlooked – both in the literature and in political discourses – questions, will be presented here in the form of rhetorical themes: the problem of evidentiary standards within the decision-making process of the SC and two other issues related to UN’s enforceability capacities – the first problem are grave breaches of UN’s sanctions regimes, while the second is the legal “grey area” of unilateral sanctions (enacted outside of UN’s framework). All in all, this study will aim to prove that the institution of economic sanctions in its current form inflicts irreparable damages to UN’s authority, credibility (in particular of the SC) and legal coherence.

<sup>3</sup> Charter of the UN (signed 26 June 1945, entered into force 24 October 1945) 193.

The second purpose of this study is to shed a light on the usage of sanctions – enacted both through the UN and unilaterally by states – and their prolonged influence on the wider political situation in South-East Europe. Examining this region, as the-most-subjected-to-economic-coercion part of Europe, might offer new indications about employment of economic pressures – considering that those pressures appeared in different shapes and targeted several states, and all of that took place simultaneously to ethnic conflicts and international military interventions in the 1990s.

*Methodology, Structure, Literature Review and Limitations*

The attempt to measure sanctions' legal foundations, political, economic and practical effects and weight their positive against their negative externalities – is complex and requires an interdisciplinary approach – including legal, political and economic sciences. As this study essentially falls under the area of international law, the methodology used here mostly involves qualitative research and is a combination of legal references – including the UN Charter and SC resolutions; as well as numerous UN, governmental and non-governmental reports – including the ICRC; and secondary references – which point to different interpretations of the same legal sources, bring about theoretical questions on the usage of sanctions and finally, point to factual information regarding sanctions' manifold results. Additionally, stakeholders' statements – the majority of them UN officials – are widely employed with the aim to present a rationale behind certain political decisions and legal peculiarities.

Legal references produced by the UN and academic literature are used in order to establish the legal and theoretical framework of this study in the First Chapter. The first section [Subchapter 1.1] offers a theoretical and historical background on the institution of economic sanctions; the second [Subchapter 2.2] – their legal foundation within the UN system; while the third and the fourth sections are independent segments in their own right. The Third Subchapter [1.3] presents the issue of limitation of the unilateral use of economic coercion; while the fourth [Subchapter 1.4] discusses limitations on the use of sanctions from the point of view of IHL and human rights law. Many

of the arguments used in this Chapter are based on findings by Segall,<sup>4</sup> O’Connell,<sup>5</sup> and Owen,<sup>6</sup> and on conclusions made during a conference organized by *Istituto Affari Internazionali* – ‘Coercive Diplomacy, Sanctions and International Law’.<sup>7</sup>

In order to be able to safely reach the conclusions presented in continuation – in particular in the Third Chapter – this study tried to avoid the problem of selectivity in doing a research on sanctions, considering that the vast majority of the literature on measuring sanctions’ effectiveness bases its findings on the review of a few selected case-studies – often chosen on the grounds that they indeed, confirm the conclusion the authors are trying to assert. While due to limitations on the size of this study, it is indeed conducted in a similar manner (as it tries to prove its hypothesis on the basis of three case-studies within the Fourth Chapter), in order to be able to present the general issues arising from the totality of UN’s usage of Article 41; a review of UN’s 30 sanctions regimes introduced thus far was necessary. The Second Chapter, therefore, is entirely composed of this review. The assertions presented there are crucial for the subsequent analysis of the degree of efficiency of UN-introduced sanctions and – since one of the main guiding principles of this study is the forwarding of conclusions that fulfil the standards of high scientific integrity, accuracy and validity – the vast majority of the essential findings within the Second Chapter are based on official reports by the UN and/or other international organisations, including well respected and credible international NGOs; disclosures of official governmental agencies and courts’ findings.

The following Third Chapter aims to introduce the most relevant issues UN’s usage of sanctions has, thus far, brought about in a practical manner; and to link certain theoretical aspects – fairly well elaborated in the literature – to factual evidence from the ground. Crucial for the

<sup>4</sup> Anna Segall, ‘Economic sanctions: legal and policy constraints’ (31 August 1991) *International Review of the Red Cross* 836 <[www.icrc.org/eng/resources/documents/article/other/57jq73.htm](http://www.icrc.org/eng/resources/documents/article/other/57jq73.htm)> accessed 4 October 2018.

<sup>5</sup> Mary Ellen O’Connell, ‘Debating the Law on Sanctions’ (2002) *European Journal of International Law* 13 (1) 63–79 <<http://ejil.org/pdfs/13/1/473.pdf>> accessed 4 October 2018.

<sup>6</sup> Mallory Owen, ‘The Limits of Economic Sanctions Under International Humanitarian Law: The Case of the Congo’ (2013) *Texas International Law Journal* 48 (1) 103–23.

<sup>7</sup> Chiara Franco, ‘Coercive Diplomacy, Sanctions and International Law’ (*Istituto Affari Internazionali*, international conference on ‘Coercive Diplomacy, Sanctions and International Law’, 13 February 2015) <[www.iai.it/sites/default/files/iai1505.pdf](http://www.iai.it/sites/default/files/iai1505.pdf)> accessed 4 October 2018.



argumentation in this section was data presented by Carisch et al,<sup>8</sup> Nossal,<sup>9</sup> and Hufbauer et al.<sup>10</sup>

The Fourth Chapter – as mentioned – includes case-studies on five sanctions regimes: two targeting the FRY, one targeting the DPRK and two targeting Libya; the premises on which they were selected as case-studies are thoroughly explained within the chapter.

The already mentioned length constraints are a major limitation when trying to objectively assess such a complex problem as is UN's usage of economic sanctions, with their timeframe starting in 1966 and still on-going today. Additionally, as explained, selecting examples to be reviewed as case-studies is itself a subjective decision – particularly considering that each UN sanctions regime is unique in its own right and most of them can be combined as per the argumentative goal of a particular research. This study, however, did try to address this problem by purposely selecting some of the most highly regarded UN sanctions regimes – those targeting Libya and the FRY. Finally, choosing which variables to use in order to assess sanctions' effectiveness is also challenging – as the academic community is far from reaching a consensus regarding the relevance of each implication. Nonetheless, keeping in mind that this study's focus is indeed on UN's usage of sanctions, the aspects considered when examining the positive against the negative externalities of sanctions regimes are chosen on the basis of their relevance in connection to UN's fundamental purposes – international peace and security and respect for human rights.

<sup>8</sup> Enrico Carisch, Loraine Rickard-Martin and Shawna R. Meister, *The Evolution of UN Sanctions* (Springer, 2017).

<sup>9</sup> Kim Richard Nossal, 'International Sanctions as International Punishment' (1989) *International Organization* 43 (2) 301–22.

<sup>10</sup> Gary Clide Hufbauer et al *Economic Sanctions Reconsidered* (3<sup>rd</sup> edn, Peterson Institute for International Economics 2007).

## 1.

HISTORICAL, THEORETICAL AND LEGAL FOUNDATIONS  
OF ECONOMIC SANCTIONS

## 1.1 INTRODUCTION TO ECONOMIC SANCTIONS

*1.1.1 Etymology and definition*

The English term ‘sanction’ is derived from Latin. Under Roman law, *sanctio* was used to denote ‘an establishing, ordaining, or decreeing as inviolable under penalty of a curse; a decree, ordinance’.<sup>11</sup> The concept of ‘sanction’ today – as a single term in its broadest sense – can be said to convey ‘any measure taken in support of a social order regulating human behaviour’.<sup>12</sup> In international relations, however, there is no consensus among scholars and decision-makers on a single definition of ‘international sanctions’.<sup>13</sup>

The *Dictionnaire de droit public international* entry for international sanctions is ‘a broad range of reactions adopted unilaterally or collectively by the states against the perpetrator of an internationally unlawful act in order to ensure respect for and performance of a right or obligation’.<sup>14</sup> Doxey defines them as ‘international penalties’, used as a ‘modality for defending standards of behaviour’.<sup>15</sup> In a similar manner, Nossal argues ‘Sanctions constitute a form of “international punishment”, despite the

<sup>11</sup> Lewis Charlton and Charles Short, *A Latin Dictionary* (Clarendon Press 1879) <[www.perseus.tufts.edu/hopper/text?doc=Perseus:text:1999.04.0059;entry=sanctio](http://www.perseus.tufts.edu/hopper/text?doc=Perseus:text:1999.04.0059;entry=sanctio)> accessed 10 October 2018.

<sup>12</sup> Hans Kelsen *Collective Security under International Law* (Government Printing Office 1957) 101.

<sup>13</sup> Iain Cameron, ‘International Sanctions’ (2012) Oxford Bibliographies in international Law <[www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0032.xml](http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0032.xml)> accessed 4 October 2018

<sup>14</sup> Laura Formatti Picchio, *Dictionnaire de droit public international* (Bruylant/AUF 2001) 124.

<sup>15</sup> Margaret P. Doxey, *International Sanctions in Contemporary Perspective* (Macmillan 1987) 5.

obvious problems of using the notion of punishment in circumstances in which there is no legitimate superordinate authority'.<sup>16</sup> Partial cause for the contested interpretation of sanctions is the lack of a legal definition.

### *1.1.2 Legal basis for use of international sanctions*

A widely recognized legal basis for the usage of sanctions in international relations today is Chapter 7 of the Charter.<sup>17</sup> Article 41 specifies the usage of 'measures not involving the use of armed force...to be employed to give effect to [decisions of the SC, which] may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.' Nevertheless, a source of controversy is the fact that the term 'sanction' itself is never mentioned in the Charter.

While sanctions are widely recognized to fall under the described categories of Article 41, it can also be argued that the wording makes it 'clear that the list [of measures] is not exhaustive'.<sup>18</sup> Most cited types of international sanctions – implemented through the UN – are therefore: economic sanctions, trade sanctions and diplomatic sanctions; but the space left by Article 41 can also be interpreted to include numerous other measures, such as compensation funds and creation of international tribunals.<sup>19</sup> While most analysts cite Article 41 as a basis for UN-enacted sanctions, some, however, argue that Article 42<sup>20</sup> – which describes the usage of armed forces – to also fall under what we understand as international sanctions, considering that military action is another form

<sup>16</sup> Nossal (n 9) 303.

<sup>17</sup> Charter of the UN (n 3). Art 39 provides the SC with the authority to 'determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.'

<sup>18</sup> UN SC 'UN Sanctions' Special Research Report, no. 3 (2013) p2 <[www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special\\_research\\_report\\_sanctions\\_2013.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf)> accessed 10 October 2018.

<sup>19</sup> *ibid.*

<sup>20</sup> Charter of the UN (n 3). Art 42 states that 'Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.'

of international punishment.<sup>21</sup> Looking in particular at the ‘blockade’ clause described under Article 42, as well as considering cases of invoking Chapter 7 in SC resolutions, it becomes evident, however, that the lines of distinction between measures taken under Article 41 and Article 42 – and therefore actions which include use of military force and those that include usage of economic coercion – become somewhat blurred.<sup>22</sup>

On the other hand, sanctions used by other international organizations or unilaterally by states can take various other forms – such as suspension of voting rights (Russia at the CoE);<sup>23</sup> or Greece’s repetitive vetoing of Macedonia’s applications for NATO and EU membership.<sup>24</sup> This paper, however, will largely focus on international economic sanctions, and in continuation – for the sake of pragmatism – they will be referred to either as economic sanctions or solely sanctions. When another type of the above-described kinds of sanctions is being analysed, it will be specifically referred to as such, for example – diplomatic sanctions.

### 1.1.3 *Defining economic sanctions*

Hufbauer et al define economic sanctions as the ‘deliberate, government-inspired withdrawal or threat of withdrawal of customary trade or financial relations’.<sup>25</sup> As such, they can be used by the UN, but have also been enacted by other international and regional organizations; by groups of states; or by individual states – by far most widely employed by the United States.<sup>26</sup> The instruments used by the UN thus far have consisted of:

<sup>21</sup> Gary Wilson, ‘The Concept of Collective Security’ and ‘The UN’s Charter System of Collective Security’ Chap. 1 and Chap. 2 in *The United Nations and Collective Security*, 5–42 (Routledge 2014).

<sup>22</sup> Jared Schott, ‘Chapter VII as Exception: Security Council Action and the Regulative Ideal of Emergency’ (2008) *Northwestern Journal of Human Rights* 6 (1) 23–80.

<sup>23</sup> Neil Buckley, ‘Russia tests Council of Europe in push to regain vote’ *Financial Times* (26 November 2017) <[www.ft.com/content/3ccaf92-d12c-11e7-b781-794ce08b24dc](http://www.ft.com/content/3ccaf92-d12c-11e7-b781-794ce08b24dc)> accessed 12 October 2018.

<sup>24</sup> Kerin Hope, ‘Greece agrees to recognise neighbour as North Macedonia’ *Financial Times* (13 June 2018) <[www.ft.com/content/5d1ff2d0-6e85-11e8-852d-d8b934ff5ffa](http://www.ft.com/content/5d1ff2d0-6e85-11e8-852d-d8b934ff5ffa)> accessed 12 October 2018.

<sup>25</sup> Hufbauer (n 10) 3.

<sup>26</sup> Jonathan Maters, ‘What Are Economic Sanctions?’ (7 August 2017) Council on Foreign Relations <[www.cfr.org/backgroundunder/what-are-economic-sanctions](http://www.cfr.org/backgroundunder/what-are-economic-sanctions)> accessed 10 October 2018.

- trade embargoes – either comprehensive (Southern Rhodesia, Iraq) or a restriction in specific commodities: oil, natural gas, coal (DPRK); iron, uranium, lead, diamonds (Liberia, DRC, Sierra Leone); arms embargoes (most often used tool at UN’s disposal); ‘luxury goods’ (DPRK);
- financial embargoes or ban on financial transactions (Iran, DPRK);
- asset freeze – of state funds or individuals’ funds – currently 12 regimes in place (Somalia/Eritrea, Al-Qaeda, Sudan, Lebanon etc);
- travel ban, also increasingly used form of targeted sanctions (current examples: Guinea-Bissau, the Taliban, Lebanon).<sup>27</sup>

Depending on each case, these mechanisms have been directed against states; against parts of states overtaken by conflict (East DRC); but are becoming increasingly more often directed against government officials, business or other kinds of stakeholders; terrorist groups (UNITA, Al-Qaeda, the Taliban, Daesh); and individuals – in particular those included on the SC’s Consolidated List of terrorism supporters.<sup>28</sup> Considering that sanctions fall under Chapter 7 of the Charter, their broadest goal can be said to be contribution towards international peace and security. The UN states ‘[The SC] has applied sanctions to support peaceful transitions, deter non-constitutional changes, constrain terrorism, protect human rights and promote non-proliferation.’<sup>29</sup>

Nevertheless, even though the current authorization for usage of economic sanctions as well as their legal basis are inseparably linked to the UN, economic sanctions have a long history in international relations – by far predating the world order as we know it today.

#### *1.1.4 Historical development of the institution of economic sanctions*

The first recorded use of sanctions comes from ancient Greece, when Athenian general Pericles in 432 BC issued the so-called

<sup>27</sup> UNSC ‘UN Sanctions’ Special Research Report, no. 3 (2013) <[www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special\\_research\\_report\\_sanctions\\_2013.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf)> accessed 10 October 2018.

<sup>28</sup> *ibid.*

<sup>29</sup> UNSC ‘Sanctions Committee Information’ (2018) <[www.un.org/sc/suborg/en/sanctions/information](http://www.un.org/sc/suborg/en/sanctions/information)> accessed 4 October 2018.

‘Megarian decree’, thus authorizing a trade embargo on neighbouring polis Megara in response to the abduction of three Aspaisan women. However, the embargo did not force Megara to obey – as Aristophanes concludes it was a major cause of the Peloponnesian War.<sup>30</sup> Examples from the Middle Ages are obscurely recorded.<sup>31</sup> Selected cases from later on include: sanctions within the context of the American War for Independence; the Napoleonic Wars; the Crimean War; the Franco-Prussian War; the Indochina War; the Spanish-American War; the Boer Wars and the Russo-Japanese War. On the employment of sanctions prior to the First World War, Hufbauer et al argue ‘Most of these episodes foreshadowed or accompanied warfare. Only after World War I was extensive attention given to the notion that economic sanctions might substitute for armed hostilities as a stand-alone policy.’<sup>32</sup>

Accordingly, only two out of the 11 cases of economic sanctions used between 1914 and 1940 are associated with military action: Britain’s embargo on Germany during the First World War and the Allied Powers’ embargoes on Germany and Japan during the Second World War.<sup>33</sup> Four sanctions regimes were implemented through League.<sup>34</sup> The role of sanctions in the outbreak of the Second World War, nonetheless, goes far beyond the activities of the League, as it is undisputable that United States trade sanctions against Japan contributed to Tokyo’s crucial military decisions – with Japanese Foreign Minister, Teijiro Toyoda, denouncing ‘this ever-strengthening chain of encirclement’ months before the Pearl Harbor attack.<sup>35</sup>

The League was, therefore, the first international organization to define and regulate the use of sanctions – seen as a method for resolving international disputes. Accordingly, Article 16 of its Covenant contains

<sup>30</sup> Hufbauer (n 10) 9. An excellent chronological summary of historical use of economic sanctions is offered 20-41.

<sup>31</sup> *ibid.*

<sup>32</sup> *ibid* 10.

<sup>33</sup> *ibid* 20.

<sup>34</sup> *ibid.* Sanctions attempting to bring about political solutions to international disputes include: sanctions against Yugoslavia in 1921 in order to prevent seizure of Albanian territory; against Greece in 1925 in a similar attempt to cause withdrawal from Bulgaria; against Paraguay and Bolivia in the context of the Chaco War of 1932-1935; and the famously unfruitful sanctions against Italy of 1935-1936, whose goal was to force Italian troops to withdraw from Abyssinia.

<sup>35</sup> Uri Friedman, ‘Smart Sanctions: A Short History’ (23 April 2012) Foreign Policy <[foreignpolicy.com/2012/04/23/smart-sanctions-a-short-history/](http://foreignpolicy.com/2012/04/23/smart-sanctions-a-short-history/)> accessed 4 October 2018.

the term ‘sanctions’ in its name – ‘Sanctions of Pacific Settlement’.<sup>36</sup> The means within it are only a preface to a wide range of measures to be undertaken through collective action against a member which has resorted to war. The rest of Article 16, therefore, describes the arrangement of a collective armed intervention against the aggressor country. Thus considering, sanctions within the League were recognized as a method which, ideally, would deter collective military actions.<sup>37</sup>

The reason the League did not undertake military actions when sanctions proved to give unsatisfactory results (such as after Italy’s occupation of Abyssinia) is to be found in political disagreements between its members, brought to the fore due to the League’s inefficient structural arrangement – in particular the consensus clause.<sup>38</sup> With the outbreak of the Second World War, that functional paralysis and therefore, the League’s inability to act in order to preserve the peace, became evident and it was widely recognized that the successor of the first global organization necessarily needed structural improvement.<sup>39</sup> The “paralysis” following the working of the League comes to the fore within the UN system as well – this time due to the veto rights of the P5, causing the SC to be blocked every time the P5 do not share a common interest on a dispute. Another point of convergence between the League and the UN are international sanctions.

<sup>36</sup> Covenant of the League of Nations (adopted 28 June 1919 within the Treaty of Versailles, entered into force 10 January 1920). Art 16 states ‘Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall, *ipso facto*, be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the Covenant-breaking State and the nationals of any other State, whether a Member of the League or not.’

<sup>37</sup> *ibid.* If this goal remains unreached, however, subsequent measures are to take the form of methods described in Article 16.

<sup>38</sup> *ibid.* The League’s principal organ responsible to ‘secure international peace and security’ [Preamble] was to be the Executive Council. The utmost respect for the principle of state sovereignty embedded in the League’s foundations made its actions concerning international peace and security heavily dependent on a unanimous vote in the Executive Council. Furthermore, the Executive Council was able to refer any dispute to the Assembly. The Assembly functioned on the principle one country-one vote, but unanimity was required too.

<sup>39</sup> The question on whether the design of the UN delivered this improvement is debatable. Its similarity to the League is striking, considering the SC’s five permanent and ten non-permanent members as well as the composition of the GA. Within the UN’s SC, however, the unanimity clause has taken the form of the right to veto of each of the P5. On the other hand, while the GA still functions on the principle one country-one vote, consensus is not required for GA resolutions to be passed. The responsibility of delivering decisions of imperative importance to international peace and security once again falls with the SC, with the GA having, arguably, even weaker jurisdiction than its predecessor in the League.

## 1.2 ECONOMIC SANCTIONS WITHIN UN'S FRAMEWORK

Comparing the wording of Article 41 of the UN Charter and Article 16 of the League's Covenant – sanctions are described almost identically.<sup>40</sup> As stated earlier, the perception of sanctions within the system of the League was as a measure which would, ideally, deliver implementation of its central purposes – those purposes being identical to the purposes of the UN – without a military intervention.<sup>41</sup> One more similarity between the League and the UN can be said to be the question of considering military action as another type of an international sanction.

Ambiguities are caused by the reluctance of the SC to provide clear explanation and a precise legal basis – from within the Charter – for each measure within its resolutions regarding the usage of its “special powers” – or the mandate to act in order to preserve the peace.<sup>42</sup> While there already is a dilemma on when exactly the SC acts under Chapter 6 and when under Chapter 7 – in the resolutions when the SC has invoked Chapter 7 – it has only seldom provided either Article 41 or 42 as a basis for a specific provision.<sup>43</sup> The UN currently has 15 active sanctions regimes.<sup>44</sup> While their respective resolutions do explicitly cite Chapter 7

<sup>40</sup> In the Covenant they are referred to as the ‘severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the Covenant-breaking State and the nationals of any other State, whether a Member of the League or not’, while in the Charter they are outlined as ‘measures not involving the use of armed force’ that may include ‘complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.’ The difference is in the denomination of the respective articles. While the Covenant’s articles are all specifically labelled, the Charter operates with numbered articles. Consequently, while Covenant Article 16 contains the term ‘sanctions’, Article 41 of the UN Charter is only that, ‘Article 41’. The philosophy and theoretical basis behind the employment of sanctions, nevertheless, remain the same.

<sup>41</sup> ‘To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace’ [Charter Article 1.1]. Measures necessary for maintaining international peace and security, nonetheless, and as voting practice in the SC increasingly shows – can take different, separate or even opposed forms – depending on particular interpretations of individual states. In regards to sanctions, this ambiguity was evident since their early employment, beginning in the 1960s, but the 1990s in particular shed a light on the controversies in the invoking of sanctions, their usage, validity, form, consequences and effectiveness.

<sup>42</sup> Schott (n 22).

<sup>43</sup> UN SC ‘UN Sanctions’ Special Research Report, no. 3 (2013) <[www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special\\_research\\_report\\_sanctions\\_2013.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf)> accessed 10 October 2018.

<sup>44</sup> UN SC ‘Graphs on currently active sanctions regimes and restrictions’ Report Charter Research Branch (30 June 2017) <[www.un.org/en/sc/repertoire/data/sanctions\\_regimes\\_graphs.pdf](http://www.un.org/en/sc/repertoire/data/sanctions_regimes_graphs.pdf)> accessed 4 October 2018.



as an authorization to act, none of the resolutions refers to Article 39. Nevertheless, a UN Report argues those resolutions ‘implicitly reference Article 39’ as they ‘state the situations constitute a threat to international peace and security, or note that the [SC] is mindful of its obligation to maintain international peace and security’.<sup>45</sup> Yet, only four such resolutions on active sanctions regimes categorically cite Article 41: Resolution 1718 on the DPRK;<sup>46</sup> Resolution 1737 on Iran;<sup>47</sup> Resolution 1970 on Libya;<sup>48</sup> and Resolution 2048 on Guinea-Bissau.<sup>49</sup>

The mentioned Report however, admits that ‘Explicit mention of Article 41 was in some cases inserted to avoid any inference that the use of force under Article 42 has been authorised.’<sup>50</sup> Such was the case with the four mentioned resolutions and also additional resolutions whose purpose was not to introduce – but to modify sanctions regimes, mostly due to controversies regarding interpretation of the original resolutions.<sup>51</sup> A recent and one of UN’s most controversial examples illustrating the mentioned ambiguities is Resolution 1973 – addressing the situation in Libya in March 2011.<sup>52</sup> In it, the SC included the measures: Protection of Civilians; No Fly Zone; Arms Embargo; and Ban on Flights and Assets Freeze – all under one roof. The authority of member states ‘to take all necessary measures’ was stipulated within the first two provisions. The wording ‘all necessary measures’ is widely recognized to be specifically invoking Article 42, therefore – the use of armed forces.<sup>53</sup> On the other hand, Arms Embargo and Assets Freeze – according to all legal sources – fall under economic sanctions and

<sup>45</sup> UNSC ‘UN Sanctions’ Special Research Report, no. 3 (2013) 6 <[www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special\\_research\\_report\\_sanctions\\_2013.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf)> accessed 10 October 2018.

<sup>46</sup> UN SC Res 1718 (14 October 2006) UN Doc S/RES/1718.

<sup>47</sup> UN SC Res 1737 (23 December 2006) UN Doc S/RES/1737.

<sup>48</sup> UN SC Res 1970 (26 February 2011) UN Doc S/RES/1970.

<sup>49</sup> UN SC Res 2048 (18 May 2012) UN Doc S/RES/2048.

<sup>50</sup> UNSC ‘UN Sanctions’ Special Research Report, no. 3 (2013) 6 <[www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special\\_research\\_report\\_sanctions\\_2013.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf)> accessed 10 October 2018.

<sup>51</sup> Instances include resolutions 1874, 1928 and 2094 on DPRK; Resolutions 1747, 1803 and 1929 on Iran and Resolution 2009 on Libya.

<sup>52</sup> UN SC Res 1973 (17 March 2011) UN Doc S/RES/1973.

<sup>53</sup> BBC, ‘Libya UN Resolution 1973: Text Analysed’ (18 March 2011) <[www.bbc.com/news/world-africa-12782972](http://www.bbc.com/news/world-africa-12782972)> accessed 4 October 2018.

therefore Article 41.<sup>54</sup> Some of the cases of convergence of economic sanctions with military action are evident from the historical timeline of UN's employment of sanctions.

*Table 1: Preview of UN's employment of economic sanctions; source: Chapter 2*

TARGET	DURATION	FORM
<b>Southern Rhodesia</b>	1966–1979	Comprehensive embargo
<b>South Africa</b>	1977–1994	Arms embargo
<b>Somalia</b>	1992–	Arms embargo, travel ban, asset freeze, embargo on charcoal
<b>Eritrea</b>	2009–	Arms embargo, travel ban, asset freeze, embargo on mining sector
<b>Eritrea-Ethiopia</b>	2000–	Arms embargo
<b>Liberia</b>	1992–2016	Arms embargo into comprehensive sanctions (on whole territory) into sanctions only against rebel groups
<b>Sierra Leone</b>	1997–2010	Arms embargo, blood diamonds embargo, travel ban
<b>Angola</b>	1975–2002	Arms, petroleum and blood diamonds embargoes only on territories controlled by UNITA
<b>Haiti</b>	1993–1994	Comprehensive embargo
<b>Rwanda</b>	1994–2008	Arms embargo – from whole state territory to only against non-state actors
<b>DRC</b>	2003–	Arms embargo – from whole state territory to only against rebel groups
<b>Iraq</b>	1990–2003	Comprehensive embargo

<sup>54</sup> Particularly controversial part of Resolution 1973 has proven to be the establishing of a No Fly Zone. 'All necessary measures' was interpreted by the states – which militarily intervened in Libya in 2011 – to mean using military force for the unilateral removal of Muammar Gaddafi from power, and the instalment of elements they have, again – unilaterally selected – in its place. Those actions were criticized by numerous stakeholders – including Russia and China. See: Robert Booth, 'Libya: Coalition bombing may be in breach of UN resolution's legal limits' *The Guardian* (28 March 2011) <[www.theguardian.com/world/2011/mar/28/libya-bombing-un-resolution-law](http://www.theguardian.com/world/2011/mar/28/libya-bombing-un-resolution-law)> accessed 4 October 2018; The seriousness of implications of disagreements in interpretation of this kind can be said to have been demonstrated not the least by the drastic change in China's voting policy in the SC. China used its veto prerogative only six times in 62 years, from 1949 until the Libyan operation. Since 2011 until today, China has also vetoed six resolutions. See: UN SC, 'Security Council – Veto List in Reverse Chronological Order' (2018) <[research.un.org/en/docs/sc/quick](http://research.un.org/en/docs/sc/quick)> accessed 4 October 2018.

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TARGET	DURATION	FORM
<b>Ivory Coast</b>	2004–2016	Arms embargo, travel ban, asset freeze, diamond embargo
<b>Sudan</b>	2004–	Travel ban and arms embargo only on weapons that could be used in the Darfur region
<b>Guinea-Bissau</b>	2012–	Travel ban on coup organisers
<b>Lebanon</b>	2005–	Travel ban and asset freeze on individuals involved in the Hariri murder
<b>CAR</b>	2012–	Arms embargo (with exceptions for government purchases), travel ban, asset freeze
<b>Yemen</b>	2014–	Arms embargo, travel ban, asset freeze – only against the Houthis
<b>South Sudan</b>	2015–	Travel ban, asset freeze, arms embargo
<b>Mali</b>	2017–	Travel ban and asset freeze
<b>Iran</b>	2006–2016	Embargo on nuclear-related materials + asset freeze on selected individuals and companies + Iranian cargo inspections + restrictions on the financial and banking sectors + boycott on selected petroleum products + arms embargo (gradual expansion since initial resolution)
<b>Taliban</b>	1999–	Travel ban, asset freeze, arms embargo, embargo on acetic anhydride
<b>Al-Qaeda</b>	1999–	Asset freeze, travel ban, arms embargo
<b>Daesh</b>	2015–	Asset freeze, travel ban and arms embargo
<b>Libya</b>	1992–2003 2011–	Air ban, embargo on aircraft and aircraft components, arms embargo, diplomatic sanctions Asset freeze, travel ban and arms embargo
<b>DPRK</b>	2006–	Embargo on nuclear-related materials + asset freeze + arms embargo + cargo ships + selected minerals + sanctions against financial and banking sector + seafood + oil and petroleum products + natural gas + textile + luxury goods (gradual expansion since initial resolution)
<b>FRY</b>	1992–1996 1998–2001	Comprehensive embargo Arms embargo

The evolution of the type of actors – which UN sanctions regimes intend to affect over time – can be explained with the changing structure of our international system. The initial targets of sanctions measures for the architects of UN’s structure were unmistakably sovereign states.<sup>55</sup> Yet, as demonstrated in other areas besides international law,<sup>56</sup> there is a global trend of erosion of state structures – with states’ ability to fully exercise both internal and external sovereignty deteriorating over time. This has resulted in two trends that can be noticed from the historical timeline of UN’s employment of sanctions – the first one is the redefinition of the targets of sanctions.

With regards to sanctions targeting states, a classification of four types can be made to include: single state, multiple states, *de facto* states or unrecognised states and “failed states”.<sup>57</sup> Single state sanctions cover the full territory of the target – which is a state fulfilling the four internationally recognized criteria of statehood. Multiple-state sanctions have been implemented automatically in the course of the dissolution of SFRY, but also in the case of an international conflict – such as the war between Ethiopia and Eritrea. Another example is the adjoining of a long existing sanctions regime with another state – such as when Eritrea was included to the Somalia sanctions regime with Resolution 1907.<sup>58</sup> Sanctions against unrecognised states have targeted: Southern Rhodesia, Serbia and Montenegro, the Taliban, and in the aftermaths of the illegal coups in: Haiti, Sierra Leone and Guinea-Bissau. Most evident examples of sanctions against failed states include Somalia and Liberia.<sup>59</sup>

The non-state actors targeted thus far could be categorised as: sub-state actors (rebel groups); extra-state actors (terrorist groups) and individuals in decision-making positions (government

<sup>55</sup> UN SC ‘UN Sanctions’ Special Research Report, no. 3 (2013) <[www.securitycouncilreport.org/atf/ct/%7B65BF9CF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special\\_research\\_report\\_sanctions\\_2013.pdf](http://www.securitycouncilreport.org/atf/ct/%7B65BF9CF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf)> accessed 10 October 2018.

<sup>56</sup> Such as international trade; finances; security; transnational groups – being terrorist groups, secession movements, advocate networks, criminal networks or others. See: Saskis Sassen, *Losing Control?: Sovereignty in the Age of Globalization* (Columbia University Press 2015).

<sup>57</sup> UN SC ‘UN Sanctions’ Special Research Report, no. 3 (2013) <[www.securitycouncilreport.org/atf/ct/%7B65BF9CF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special\\_research\\_report\\_sanctions\\_2013.pdf](http://www.securitycouncilreport.org/atf/ct/%7B65BF9CF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf)> accessed 10 October 2018.

<sup>58</sup> UN SC Res 1907 (23 December 2009) UN Doc S/RES/1907.

<sup>59</sup> UN SC ‘UN Sanctions’ Special Research Report, no. 3 (2013) <[www.securitycouncilreport.org/atf/ct/%7B65BF9CF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special\\_research\\_report\\_sanctions\\_2013.pdf](http://www.securitycouncilreport.org/atf/ct/%7B65BF9CF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf)> accessed 10 October 2018.

officials, individual arms dealers and private-sector actors, including corporations).<sup>60</sup> Sub-state actors targeted with the current regimes are M23 and FDLR in the DRC; Al-Shabaab in Somalia; Al-Qaeda; the Taliban and Daesh.<sup>61</sup> The first sanctions regime directed against an extra-state actor was the sanctioning of Al-Qaida and the Taliban with Resolution 1267.<sup>62</sup> The exemplar of sanctioning individuals was introduced with the 9/11 restructuring of our international legal order, and – while still being tightly linked to anti-terrorism efforts – it has also been gradually expanding the number of targeted individuals over time.

Finally, corporations and private actors have been subjected to sanctions under eight regimes, the precedent being again, Al-Qaida with Resolution 1267 of 1999; the others are: Resolution 1518 on Iraq;<sup>63</sup> Resolution 1521 on Liberia;<sup>64</sup> Resolution 1533 on the DRC;<sup>65</sup> Resolution 1718 on DPRK;<sup>66</sup> Resolution 1737 on Iran;<sup>67</sup> Resolution 1970 on Libya;<sup>68</sup> and Resolution 1988 on the Taliban.<sup>69</sup> Resolution 1173 on Angola<sup>70</sup> – prohibiting imports of all diamonds from territories not controlled by the Angolan government – was the first time for the SC to acknowledge the link between exploration of natural resources and illegal arms smuggling and soon after, the policy was repeated with: Resolution 1306 on Sierra Leone from 2000;<sup>71</sup> Resolution 1521 on Liberia;<sup>72</sup> and Resolution 1533 on the DRC.<sup>73</sup> While armed groups illegally operating on the territory of a targeted country – in the case of Liberia and the DRC violating a UN arms embargo by using the profit of the trade in mineral resources for arms purchasing – critics claim the UN has not decided to sanction any corporation or an entity that buys the

<sup>60</sup> UN SC (n 59). Among the many international legal precedents former Yugoslavia has provided to the international community, one is also the sanctions regime directed against Bosnian Serbs with Resolution 820 in April 1993, as the first time the UN has targeted a sub-state actor.

<sup>61</sup> *ibid.* The three last mentioned terrorist groups can be defined both as sub-state and extra state actors.

<sup>62</sup> UN SC Res 1267 (15 October 1999) UN Doc S/RES/1267.

<sup>63</sup> UN SC Res 1518 (24 November 2003) UN Doc S/RES/1518.

<sup>64</sup> UN SC Res 1521 (22 December 2003) UN Doc S/RES/1521.

<sup>65</sup> UN SC Res 1533 (12 March 2004) UN Doc S/RES/1533.

<sup>66</sup> UN SC Res 1718 (14 October 2006) UN Doc S/RES/1718.

<sup>67</sup> UN SC Res 1737 (23 December 2006) UN Doc S/RES/1737.

<sup>68</sup> UN SC Res 1970 (26 February 2011) UN Doc S/RES/1970.

<sup>69</sup> UN SC Res 1988 (17 June 2011) UN Doc S/RES/1988. The majority of these resolutions are directed against entities which have been previously identified to violate already established sanctions regimes, mostly due to trade in arms.

<sup>70</sup> UN SC Res 1998 (12 July 2011) UN Doc S/RES/1998.

<sup>71</sup> UN SC Res 1306 (5 July 2000) UN Doc S/RES/1306.

<sup>72</sup> UN SC Res 1521 (22 December 2003) UN Doc S/RES/1521.

<sup>73</sup> UN SC Res 1533 (12 March 2004) UN Doc S/RES/1533.

minerals in the first place, thus *de facto* violating UN sanctions regimes – by financially enabling the operating of a terrorist group.<sup>74</sup>

Yet, ‘while by definition all comprehensive sanctions regimes have been applied to state targets, not all sanctions applied to state targets have been comprehensive’.<sup>75</sup> The process that has been developing in parallel with UN’s redefinition of the targets of sanctions is the shift in targeted commodities – from comprehensive sanctions towards more precisely defined measures – such as parts of states instead of the whole state territory; or embargoing only certain economic areas or goods used to a specific end: arms embargoes or embargoes on products that can be used to develop weapons of mass destruction – or both goals intended to be addressed with a single action, eg the embargo on arms that can be used to target civilians not on the whole territory of Sudan – but only in the Darfur region – introduced with Resolution 1591.<sup>76</sup>

This process is a result of UN’s recognition of civilian suffering under comprehensive sanctions and can be traced back to the 1990s – the Iraqi ordeal and the sanctions against the FRY. Consequently, since the early 2000s, a gradual shift towards measures such as arms embargoes, travel bans and asset freezes – under the theoretical foundation of ‘smart’ or ‘targeted’ sanctions – is evident. Hufbauer and Oegg argue

Targeted sanctions or “smart sanctions”, like “smart bombs”, are meant to focus their impact on leaders, political elites and segments of society believed responsible for objectionable behaviour, while reducing collateral damage to the general population and third countries. Growing emphasis on the individual accountability of those in power for the unlawful acts of states (highlighted by the Pinochet case and the Bosnian war crimes trials), has made the concept of targeted sanctions all the more attractive.<sup>77</sup>

<sup>74</sup> Issues regarding trade in ‘blood diamonds’ and the Western, liberal democracies and their companies involved in it – yet never sanctioned thus far – are also discussed on 84-86.

<sup>75</sup> UNSC ‘UN Sanctions’ Special Research Report, no. 3 (2013) <[www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special\\_research\\_report\\_sanctions\\_2013.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf)> accessed 10 October 2018.

<sup>76</sup> UN SC Res 1591 (29 March 2005) UN Doc S/RES/1591. Such a measure was the result of China’s reluctance to allow for more comprehensive sanctions to be introduced against its Sudanese oil trading partners. See: Phillip Manyok, ‘Oil and Darfur’s Blood: China’s Thirst for Sudan’s Oil’ (2016) *Journal of Political Sciences & Public Affairs* 4 (1); *The Independent*, ‘China fights UN sanctions on Sudan to safeguard oil’ (15 October 2004) <[www.independent.co.uk/news/world/africa/china-fights-un-sanctions-on-sudan-to-safeguard-oil-543801.html](http://www.independent.co.uk/news/world/africa/china-fights-un-sanctions-on-sudan-to-safeguard-oil-543801.html)> accessed 15 October 2018.

<sup>77</sup> Gary Clyde Hufbauer and Barbara Oegg, ‘Targeted Sanctions: A Policy Alternative?’ (Paper for a symposium on ‘Sanctions Reform? Evaluating the Economic Weapon in Asia and the World’ – *Peterson Institute for International Economics*, 23 February 2000) <[piie.com/commentary/speeches-papers/targeted-sanctions-policy-alternative](http://piie.com/commentary/speeches-papers/targeted-sanctions-policy-alternative)> accessed 4 October 2018.

Yet, two exceptions to this rule are: the policies against Iraq's neighbour, Iran – featuring something more of a comprehensive regime due to restrictions in Iran's main trading commodity – oil, and its banking sector; as well as the comprehensive measures introduced against the DPRK in September 2017.<sup>78</sup> In line with the need to ensure that sanctions regimes are precisely directed and to monitor their impact, the SC has begun to employ individual sanctions committees.<sup>79</sup> This policy-reorientation towards targeted or smart sanctions is well established in theoretical and legal sense, yet, criticism points that in practice even such policy-modifications do not sufficiently address human rights violations caused by sanctions.<sup>80</sup>

### 1.3 ECONOMIC SANCTIONS OUTSIDE OF UN'S FRAMEWORK

#### 1.3.1 Introduction

The previous subchapters deduced that sanctions are a form of coercion. Most analysts count at least three types of international coercion – also interpreted as methods of international intervention: military, diplomatic (political) and economic.<sup>81</sup> Keeping in mind the language of the Charter underlining UN's supreme authority over matters relating to international peace and security – as emphasized in Articles: 1.4, 2.1, 2.4, 39, 41 and 42 – a question arises of whether coercive action

<sup>78</sup> UN SC 'Graphs on currently active sanctions regimes and restrictions' Report Charter Research Branch (30 June 2017) <[www.un.org/en/sc/repertoire/data/sanctions\\_regimes\\_graphs.pdf](http://www.un.org/en/sc/repertoire/data/sanctions_regimes_graphs.pdf)> accessed 4 October 2018.

<sup>79</sup> UN SC 'UN Sanctions' Special Research Report, no. 3 (2013) <[www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special\\_research\\_report\\_sanctions\\_2013.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCE9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf)> accessed 10 October 2018. Each of the current sanctions regimes is administered by a sanctions committee chaired by a non-permanent SC member. There are 10 monitoring groups, teams and panels that support the work of 11 of the 15 sanctions committees.

<sup>80</sup> Thomas Biersteker and Sue Eckert, 'Addressing Challenges to Targeted Sanctions' (October 2009) Report of the Watson Institute for International Studies <[openaccess.leidenuniv.nl/bitstream/handle/1887/14606/Watson%20report%20October%202009%20final%20version%20-%20Copy.pdf?sequence=1](http://openaccess.leidenuniv.nl/bitstream/handle/1887/14606/Watson%20report%20October%202009%20final%20version%20-%20Copy.pdf?sequence=1)> accessed 4 October 2018.

<sup>81</sup> Chiara Franco, 'Coercive Diplomacy, Sanctions and International Law' (*Istituto Affari Internazionali*, international conference on 'Coercive Diplomacy, Sanctions and International Law', 13 February 2015) <[www.iai.it/sites/default/files/iai1505.pdf](http://www.iai.it/sites/default/files/iai1505.pdf)> accessed 4 October 2018.

undertaken outside of UN's framework can be in accordance with international law.<sup>82</sup> Also minding that the legal basis for military action within the Charter closely overlaps with the legal foundations of the other types of sanctions – these methods of international intervention can arguably be interpreted either as legal or prohibited outside of the UN framework – by using either common assertions for all types of sanctions or analysing them separately.

Regarding unilateral military interventions, international law in its current form is famously inconclusive due to Charter Article 51 and its various interpretations, as well as due to the issue of formal declaration of war. Yet, employment of economic sanctions is even more controversial. Its legality can be argued from two opposite viewpoints, the first one stating that 'they are in principle not prohibited under international customary law, unless they are dictatorial'.<sup>83</sup> Still, the second interpretation links economic sanctions to the matter of intervention – including military intervention. Ronzitti argues that 'international customary law does prohibit intervention, as stressed by several treaties, GA resolutions and other instruments of soft-law'.<sup>84</sup>

### 1.3.2 *Legal considerations*

Roscini contrasts the principle of non-intervention with the prohibition of the use of force from a practical aspect – stating that the principle of non-intervention must have some application beyond the prohibition of military use of force – keeping in mind today's economic interdependence of states, as 'cases of economic coercion can be even more coercive than certain surgical uses of [military] force'.<sup>85</sup>

In addition, the language of the Charter and Article 41 in particular, stress that the SC is the only international actor which can legally introduce sanctions – and only as a response to a threat or a breach

<sup>82</sup> Charter of the UN (signed 26 June 1945, entered into force 24 October 1945)

<sup>83</sup> Franco (n 81) 3.

<sup>84</sup> *ibid.* Particularly relevant for this line of argumentation is ICJ case law including the *Corfu Channel Case*, *Nicaragua v. United States* and *DRC v. Uganda* decisions. 'In such cases, the Court found that in some instances there is an overlapping of the principle prohibiting the use of force and the principle prohibiting intervention, yet they remain separate principles.'

<sup>85</sup> *ibid.* 7. Supportive evidence for Roscini's line of argumentation can be found in the Iraqi (53–55) and the Haiti (49–50) sanctions cases, described in Chapter 2. Nowadays the Yemeni catastrophe – caused by unilateral actions taken outside of the UN framework – can be used to provide further indications and is reviewed in continuation.



against the peace. Accordingly, apart from the UN, other actors are not entitled with the privilege and responsibility to interpret if an action constitutes a threat or a breach against the peace. This claim is again, controversial, as others maintain that nothing in the Charter should be understood as to prohibit international actors from employing sanctions.<sup>86</sup> Yet, if we continue to follow Ronzitti's line of interpretation, we find that his claim does allow for unilateral actions by states; however, he argues, those should be referred to as 'countermeasures'.<sup>87</sup> In the case that the unilateral action is not a response to an international wrong, Ronzitti argues it amounts to a 'retorsion'.<sup>88</sup> Regarding international organizations besides the UN, endorsement by the SC is not necessary for them to employ sanctions against their own members, yet, if the targets are third states, those actions can, again, be either countermeasures or retorsions.

Roscini argues the issue of evidentiary standards is largely overlooked – as the sanctioning state almost never provides evidence that the sanctioned one has indeed committed a violation.<sup>89</sup> A major concern is that there is no international law of evidence.<sup>90</sup> Consequently, the sanctioning state might argue it has obtained enough evidence under its domestic legal standards, yet, those might not be sufficient for an international action to be undertaken.<sup>91</sup> Regarding examples of this kind, Bothe states that disclosures do 'not follow precise rules of evidence: that is why all that matters is

<sup>86</sup> Michael W. Reisman, 'Sanctions and International Law' (2009) Yale Law School Legal Scholarship Repository 1 (1) 9–20 <[digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=4869&context=fss\\_papers](https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=4869&context=fss_papers)> accessed 5 October 2018; Curtis J. Henderson, 'Legality Of Economic Sanctions under International Law: The Case Of Nicaragua' (1986) Washington and Lee Law Review 43 (1) 167–96 <[scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=2847&context=wlulr](https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=2847&context=wlulr)> accessed 5 October 2018

<sup>87</sup> Franco (n 81) 4. 'Countermeasures differ from sanctions because they can only be resorted to if the targeted State has committed an international wrongful act. It is also possible that states, in implementing sanctions decided by the SC, go beyond the decision and adopt additional measures.'

<sup>88</sup> *ibid* 8. Retorsions are 'unfriendly acts that are not inconsistent with any international obligation of the State engaging in it even though it may be a response to an internationally wrongful act, as affirmed by the International Law Commission in its Commentary 1.'

<sup>89</sup> *ibid*. While in the case of the unilateral EU and United States sanctions against Russia the reason for enacting countermeasures – being the annexation of the Crimea – is self-evident; lack of evidence is notable in many other cases, such as the Iranian nuclear programme.

<sup>90</sup> *ibid* 8–9

<sup>91</sup> *ibid*. Such was the case when the FBI produced a report, which was, nevertheless, kept secret for 'security reasons', and which officials claimed contained evidence of DPRK's involvement in a cyber-attack against Sony.

whether an actor manages to be convincing or not.<sup>92</sup> Decisions on sanctions do not bear the problem of “convincing” only when they are undertaken unilaterally by states. The SC – apart from Colin Powell’s performance on Iraq’s weapons of mass destruction – has heard several other claims of questionable nature, on the basis of which it has delivered on matters crucial for international peace and security.<sup>93</sup>

Considering these arguments, several issues are brought to the fore, including the extent to which economic coercion is permissible. According to Rozitti’s summary, ‘while the unlawfulness of military coercion is not debatable, the admissibility of economic coercion is more nuanced: economic pressures do not necessarily violate international law, and they do not trigger responsibility if they do not infringe customary or conventional norms.’<sup>94</sup> The conclusion is that economic sanctions by actors other than the UN fall within a ‘grey area’ of international law.

Among current international problems arising from this inconclusiveness are the United States sanctions against Iran – closely explained in Section 1.18 of Chapter 2. As stipulated there – the ICJ might offer a legal interpretation considering that Iran has submitted a complaint. One of the most controversial measures enforced by the United States remains to be the sanctioning of companies originating from third states, labelled as ‘seeking multilateralism through unilateral decisions’ and thus opening the problem of extraterritorial legislation, ‘Extraterritoriality intervenes when the sanctioner not only seeks the voluntary participation of third States to implement measures against the sanctionee, but attempts to impose an obligation on the States to abide by the unilateral sanctions it has decided.’<sup>95</sup>

Beaucillon argues the jurisdiction to prescribe is distinct from the jurisdiction to enforce – since the jurisdiction to enforce is impossible to be applied outside of the borders of the enforcing state and without the permission of the third state. One opposing assertion the United States in particular has invoked is, however, the extension of

<sup>92</sup> Franco (n 81).

<sup>93</sup> One such claim was Libya’s involvement in the Lockerby incident, due to which the country was sanctioned for 11 years. The Libyan example has been chosen as one of the case studies in this work precisely due to its relevance from the viewpoint of evidentiary standards.

<sup>94</sup> Franco (n 81) 5.

<sup>95</sup> *ibid* 13.

the personality principle through the ‘control theory’. Under such argumentation, the sanctioning state would be able to enforce its law over companies associated with its nationals or those doing business on its territory, since as such they become subjects of that state’s legislation.<sup>96</sup> The ‘control theory’ has, nonetheless, failed to gain recognition from several legal tribunals.<sup>97</sup> An aftermath of invoking extraterritoriality is the fact that third states suffer the consequences, since their nationals are sanctioned by the enforcing country. The available remedies ‘clearly appear insufficient, since the issue is still left to the balance of power between the leading global economies and the provisions of private international law.’ The outcomes of such cases resemble international law and order to a lesser extent and look more like international bullying, as they depend on international economic might instead of on the strength of the legal argument.<sup>98</sup> Due to such state of affairs, China and Russia have on numerous occasions restated their disapproval of unilateral use of sanctions – in particular since they maintain that such actions constitute a violation of the principle of sovereign equality of UN member states; while additionally, they undermine the monopoly of the SC over decisions pertaining to international peace and security.

### 1.3.3 Case-study on unilateral sanctions: Greek embargo on Macedonia

<sup>96</sup> *ibid* 14–15.

<sup>97</sup> *ibid* (14). Those include the Paris Court of Appeal and the Hague District Court in whose decisions sanctions on foreign companies introduced by the United States were rejected since they held no grounds under French and Dutch law, respectively. One of the arguments presented in the case of the before The Hague District Court came from the United Kingdom and entailed that United States legislation bears no weight under public international law.

<sup>98</sup> Seyed Houssein Mousavian, ‘Commentary: How bullying Iran could backfire for Trump’ *Reuters* (1 May 2018) <[www.reuters.com/article/us-mousavian-iran-commentary/commentary-how-bullying-iran-could-backfire-for-trump-idUSKBN1I23XK](http://www.reuters.com/article/us-mousavian-iran-commentary/commentary-how-bullying-iran-could-backfire-for-trump-idUSKBN1I23XK)> accessed 5 October 2018; Hashem Ahelbarra, ‘Iran president: “United States must stop bullying the world”’ *Al Jazeera* (27 September 2018) <[www.aljazeera.com/news/2018/09/iran-president-us-stop-bullying-world-180927080522366.html](http://www.aljazeera.com/news/2018/09/iran-president-us-stop-bullying-world-180927080522366.html)> accessed 5 October 2018; Pepe Escobar, ‘EU finally stands up to United States ‘bullying’ over Iran sanctions’ *Asia Times* (30 September 2018) <[www.atimes.com/article/eu-finally-stands-up-to-us-bullying-over-iran-sanctions/](http://www.atimes.com/article/eu-finally-stands-up-to-us-bullying-over-iran-sanctions/)> accessed 5 October 2018; UN SC ‘Role of Sanctions Central to Briefings, Debate in Security Council, with Speakers Stressing Need to Build Implementation Capacity, Avoid Unilateral Action’ (25 November 2014) 7323 Meeting of the SC <[www.un.org/press/en/2014/sc11671.doc.htm](http://www.un.org/press/en/2014/sc11671.doc.htm)> accessed 5 October 2018; UN SC ‘Security Council Must Rectify Failure to Prohibit Use of Force, Maintain International Peace, Speakers Stress in Day-long Debate’ (17 May 2018) 8262 Meeting of the SC <[www.un.org/press/en/2018/sc13344.doc.htm](http://www.un.org/press/en/2018/sc13344.doc.htm)> accessed 5 October 2018.

1994-1995

Unilateral economic pressures can be employed for a variety of reasons, yet Greece's trade embargo against Macedonia is the only recorded case of economic coercion aimed at modifying a state's affinity towards its constitutional name, cultural identity and the appearance of its flag<sup>99</sup> – thus effectively introduced on the basis of a denial of a county's national identity.<sup>100</sup> Experts from the domestic Macedonian public, therefore, consider the trade embargo as an economic pressure *de facto* founded upon a violation of Macedonia's right to self-determination.<sup>101</sup>

The still on-going name dispute showed signs of appearance upon Macedonia's first steps towards independence in 1991. It is hardly deniable Greece has obstructed every step on Macedonia's road towards statehood, at times with EU's backing.<sup>102</sup> Upon recommendation of Badinter's Commission, Macedonia agreed to produce two amendments to its Constitution – the first one disregarding the possibility of modifications of the state's borders and the second one assuring neighboring Greece that Macedonia will not safeguard the rights of the Macedonian minority in Greece, with a special clause stating 'Macedonia will not get involved in the internal affairs of Greece.'<sup>103</sup> That did not

<sup>99</sup> A.D., 'Samaras dosleden za Makedonija, najsrerken ke bide da ja nema' [Samaras Consistent regarding Macedonia, What Would Make Him Happiest Is if It Was Gone] Mkd. mk (23 April 2012) <[www.mkd.mk/27594/makedonija/samaras-makedonija-grcija-ime-premier](http://www.mkd.mk/27594/makedonija/samaras-makedonija-grcija-ime-premier)> accessed 12 October 2018; Christopher S. Wren, 'Greece to Lift Embargo Against Macedonia if It Scraps Its Flag' *The New York Times* (14 September 1995) <[www.nytimes.com/1995/09/14/world/greece-to-lift-embargo-against-macedonia-if-it-scraps-its-flag.html](http://www.nytimes.com/1995/09/14/world/greece-to-lift-embargo-against-macedonia-if-it-scraps-its-flag.html)> accessed 5 October 2018.

<sup>100</sup> Macedonian President Gorge Ivanov has reiterated this stance on numerous occasions, among them several speeches before the UN GA. See: UN 'President of former Yugoslav Republic of Macedonia denounces move to change country's name' (27 September 2018) UN News <[news.un.org/en/story/2018/09/1021162](http://news.un.org/en/story/2018/09/1021162)> accessed 4 October 2018; President of the Republic of Macedonia, 'Media Centre: Speeches' *Pretsedatel.mk* <[pretsedatel.mk/en/media-centre/speeches.html](http://pretsedatel.mk/en/media-centre/speeches.html)> accessed 4 October 2018.

<sup>101</sup> The right to self-determination is both a founding principle of international law and a basic human right, as confirmed by its recognition in essential sources of international law:

UN Charter (n 3) art 1.2, 55; ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 1.1; ICESCR (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 169 art 1.1.

<sup>102</sup> Considering cases such as the Lisbon Summit of the EU Council of June 1992 which resulted in declaration stating EU member states will only recognize Macedonia if the name of the country did not contain the word 'Macedonia'. See: Todor Cepreganov, '*Samostojna Republika Makedonija*' [Independent Republic of Macedonia], Chap. 11 in *Istorija na Makedonskiot Narod* [History of the Macedonian People] (Macedonian Institute of National History 2008).

<sup>103</sup> Cepreganov (n 102).

seem to suffice, as Macedonia's southern neighbor did interfere in its domestic affairs, asking the state not to call itself Macedonia and to stop using the 16-rayed sun as its flag, since it bore resemblance to the flag used by Ancient Macedonians – with Greece claiming exclusive rights to their history and legacy.<sup>104</sup>

International recognition lagged after Macedonia's declaration of independence from 8 September 1991 and throughout most of 1992, as the EU only decided to support Slovenia and Croatia.<sup>105</sup> Macedonia applied to become a full UN member state in early 1993, still, Greece set up yet another international precedent – this time by sending a Memorandum to the SC in which it asked Macedonia's membership bid to be denied, claiming that would cause new threats to the peace in the Balkans – even though at the time Macedonia was the only former Yugoslav republic not involved in any of the wars.<sup>106</sup> The SC decided to make what it thought was a compromise, by recommending the GA to accept Macedonian membership with Resolution 817 – in it calling Macedonia 'a state which for the purposes of the Organization will be referred to as Former Yugoslav Republic of Macedonia until differences regarding its name are overcome'.<sup>107</sup>

Apparently dissatisfied with Macedonia's UN membership, in the winter of 1993 Greece blocked oil deliveries to Macedonia through the Thessaloniki port. On 16 February 1994 the Greek prime minister Papandreu stated Greece will completely cut trade relations with Macedonia.<sup>108</sup> The consequences Macedonia suffered due to the embargo must be seen in conjunction with the wider regional

<sup>104</sup> *ibid.*

<sup>105</sup> *ibid.* On 5 August 1992 the crucial Russian recognition of Macedonia's independence under its constitutional name came, being the first by one of the P5. With such a decision Russia revoked its long-term strategic support for Greece and Serbia – both of them engaged, to various degrees, in international lobbying aimed at preventing Macedonian independence, amidst both states' several types of claims for their neighbor's attributes (including its name, history, national language, national church, state symbols and its territory or parts of it). Soon after recognition from China followed.

<sup>106</sup> *ibid* 355

<sup>107</sup> UN SC Res 817 (7 April 1993) UN Doc S/RES/817. The lengths to which Greece went to deny Macedonia's national identity could be illustrated with its extensive lobbying campaign which eventually resulted with the Macedonian flag not being placed among UN members' flags in East River, New York.

<sup>108</sup> Greece's actions were strongly condemned by the United Kingdom, France, Italy, the Netherlands, Germany and Denmark; while the EU Commissioner for External Relations stated the Commission will file a complaint against Greece before the European Court of Justice. UN officials chose to remain silent on the issue. See Cepreganov (n 102).

situation. During the 18-months Greek blockade, Macedonia was also unable to conduct any trade with its northern neighbor from the former common trade block – amid UN’s heavy sanctions regime against the FRY.<sup>109</sup> The damage inflicted upon the small Macedonian economy is estimated at relative value of \$2 billion in the 1990s.<sup>110</sup>

International pressure on Greece did not result in a change of heart, as the embargo was halted only upon the signing of the so-called Temporary Agreement in September 1995 – brokered by the UN and strongly supported by the United States.<sup>111</sup> The Temporary Agreement – praised in diplomatic circles as a “pearl of diplomacy” – referred to the two states as the ‘first party’ and the ‘second party’ and obliged Macedonia to change its flag and indulge in negotiations about its constitutional name with Greece.<sup>112</sup> In return, Greece agreed to recognize Macedonia as a sovereign state and to not block its integration in international organizations. This Agreement undeniably had a crucial impact on Macedonia’s fate and its effects are still felt today. While the Macedonian public, officials and analysts recognize the concessions their country made with it and many of them criticize the then government for signing off on Macedonia’s flag, abandoning its centuries-long persecuted minority and agreeing to negotiate for something they consider nonnegotiable – the compelling effect of the trade embargo is, arguably, not analyzed enough.

Keeping in mind Macedonia was already a UN member state at the time of the signing, even though its security situation was critical amidst the ongoing Yugoslav Wars and the FRY’s refusal to demarcate its border with Macedonia – what actually forced the Macedonian government to sign this Agreement and risk

<sup>109</sup> Previously in-existent economic relations with the other two neighbors, Bulgaria and Albania, were impossible to be established at that time period, considering lack of basic transport connections.

<sup>110</sup> Ruzica Fotinavska, ‘Podemi I padovi vo ekonomskite relaciji Makedonija-Grcija’ [Ups and Downs in Greece-Macedonia economic relations] 24 *Vesti* (17 June 2018) <[www.24.mk/podemi-i-padovi-vo-ekonomskite-relaciji-makedonija-i-grcija?quicktabs\\_popularna\\_sodrzina=2](http://www.24.mk/podemi-i-padovi-vo-ekonomskite-relaciji-makedonija-i-grcija?quicktabs_popularna_sodrzina=2)> accessed 4 October 2018.

<sup>111</sup> Cepreganov (n 102).

<sup>112</sup> Interim Accord (13 September 1995). UN Depository 32193 <[peacemaker.un.org/sites/peacemaker.un.org/files/MK\\_950913\\_Interim%20Accord%20between%20the%20Hellenic%20Republic%20and%20the%20FYROM.pdf](http://peacemaker.un.org/sites/peacemaker.un.org/files/MK_950913_Interim%20Accord%20between%20the%20Hellenic%20Republic%20and%20the%20FYROM.pdf)> accessed 4 October 2018.

impeachment was precisely the economic coercion. Nevertheless, despite Macedonia's compliance with the agreed provisions, Greece has – until this very day – repeatedly vetoed Macedonian integration in NATO and the EU – actions the ICJ deemed illegal with its 2011 judgment,<sup>113</sup> yet, to no avail, as that was not enough to compel Greece to change its policies. Taking all into consideration, it becomes evident that the Greek embargo resulted with Macedonia being forced to make severe concessions without getting anything in return.

These facts bring about the question of international legal structures' ability to regulate international order and thus prevent states such as Macedonia – with no international legal transgressions to speak of – from suffering from unilateral economic coercion, whose damage was multiplied by the UN embargo against the FRY – with Macedonia, again, bearing no responsibility but paying a high price for developments outside of its prerogatives. The problem of violation of international legal principles – in this case the right to self-determination – is a common consequence of the employment of unilateral sanctions. Disproportionate effects of economic pressures for states with lesser international influence compared to the leverage of the sanctioning state – in this regard Macedonia being a newly-emerged country and at risk of insecurity – are evident and their effects are manifold. In the case of Yemen, however, they have resulted with the world's greatest humanitarian disaster.

#### *1.3.4 Examples of economic isolation being used as a weapon of war*

The policies pursued by the SC in regard to the Yemeni Civil War are analyzed in Section 1.15 of Chapter 2; yet the lion's share of the civilian suffering in Yemen is being caused not by UN's sanctions – but by the unilateral Saudi intervention. The Yemeni famine is one of the largest man-made humanitarian catastrophes

<sup>113</sup> *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)* (decision) [2011] ICJ <[www.icj-cij.org/files/case-related/142/142-20111205-JUD-01-00-EN.pdf](http://www.icj-cij.org/files/case-related/142/142-20111205-JUD-01-00-EN.pdf)> accessed 10 October 2018.

recorded in history.<sup>114</sup> Information from numerous sources points that the Saudi-led coalition bears the greatest responsibility for it, as it has been committing infamously indiscriminate attacks and has purposely targeted civilian infrastructure – most notably water-supply systems and hospitals.<sup>115</sup> One of the main methods of warfare has been the closure of Yemeni ports accompanied with air and land blockade, thus deliberately halting essential life supplies to civilians living in territories under Houthi control.<sup>116</sup> This policy has been interpreted by analysts as a ‘return of starvation as a weapon of war’ – a method most commonly used in Antiquity and the Middle Ages, yet, less expected in the 21<sup>st</sup> century.<sup>117</sup>

In light of these facts, several stakeholders have raised their voice against the international community’s inaction and thus compliance with the Yemeni tragedy. *Human Rights Watch* called the UN to sanction those obstructing aid deliveries in Yemen<sup>118</sup> – on the basis of SC Resolution

<sup>114</sup> It affects unprecedented 17 million people, with as much as 3,3 million children and pregnant women suffering from severe malnutrition. Statistics shows that a Yemeni child under the age of five dies every ten minutes from preventable causes. The UN has warned ten million people are expected to starve to death by the end of this year. The famine is aggravated by the outbreak of cholera, generating about 5,000 new cases per day. See: UNICEF, ‘Yemen conflict: A devastating toll for children’ (September 2018) <[www.unicef.org/infobycountry/yemen\\_85651.html](http://www.unicef.org/infobycountry/yemen_85651.html)> accessed 10 October 2018; UN, ‘Yemen on brink of famine, warns UN food relief agency chief, appealing for resources and access’ (13 March 2017) UN News <[news.un.org/en/story/2017/03/553212-yemen-brink-famine-warns-un-food-relief-agency-chief-appealing-resources-and](http://news.un.org/en/story/2017/03/553212-yemen-brink-famine-warns-un-food-relief-agency-chief-appealing-resources-and)> accessed 10 October 2018; UN OCHA, ‘Yemen: A child under the age of five dies every 10 minutes of preventable causes - UN Humanitarian Chief’ (December 2017) <[www.unocha.org/es/story/yemen-child-under-age-five-dies-every-10-minutes-preventable-causes-un-humanitarian-chief](http://www.unocha.org/es/story/yemen-child-under-age-five-dies-every-10-minutes-preventable-causes-un-humanitarian-chief)> accessed 10 October 2018; BBC, ‘Yemen faces world’s worst cholera outbreak – UN’ (25 June 2017) <[www.bbc.com/news/world-middle-east-40395522](http://www.bbc.com/news/world-middle-east-40395522)> accessed 10 October 2018

<sup>115</sup> Including hospitals, farms, schools, water supply systems, markets and several crucial ports. See: UNICEF, ‘Access to water continues to be jeopardized for millions of children in war-torn Yemen’ (24 July 2018) Press Release <[www.unicef.org/press-releases/access-water-continues-be-jeopardized-millions-children-war-torn-yemen](http://www.unicef.org/press-releases/access-water-continues-be-jeopardized-millions-children-war-torn-yemen)> accessed 10 October 2018; Jonathan Kennedy, ‘Blame the Saudis for Yemen’s cholera outbreak – they are targeting the people’ *The Guardian* (2 August 2017) <[www.theguardian.com/global-development/2017/aug/02/blame-saudi-coalition-for-yemen-cholera-outbreak](http://www.theguardian.com/global-development/2017/aug/02/blame-saudi-coalition-for-yemen-cholera-outbreak)> accessed 10 October 2018; Andrew Buncombe, ‘Saudi coalition killed hundreds of children in Yemen, confidential UN report claims’ *The Independent* (18 August 2017) <[www.independent.co.uk/news/world/middle-east/un-saudi-arabia-military-operations-yemen-children-civilian-deaths-report-uk-us-unacceptable-a7900966.html](http://www.independent.co.uk/news/world/middle-east/un-saudi-arabia-military-operations-yemen-children-civilian-deaths-report-uk-us-unacceptable-a7900966.html)> accessed 10 October 2018

<sup>116</sup> Kennedy (n 115); Sophie McNeill, ‘Red Cross medicine and UN flights blocked after Saudi Arabia closes all of Yemen’s borders’ *ABC News* (8 November 2017) <[www.abc.net.au/news/2017-11-08/yemen-crisis-grows-as-port-closure-blocks-aid/9128598](http://www.abc.net.au/news/2017-11-08/yemen-crisis-grows-as-port-closure-blocks-aid/9128598)> accessed 10 October 2018.

<sup>117</sup> Mathew Williams, ‘Yemen’s Starvation: The return of famine as a weapon of war’ *The Conflict Archives* (3 December 2017) <[theconflictarchives.com/insights/2017/11/27/yemens-starvation](http://theconflictarchives.com/insights/2017/11/27/yemens-starvation)> accessed 10 October 2018

<sup>118</sup> Akshaya Kumar, ‘UN Should Consider Sanctions for Yemen Aid Obstruction’ (8 November 2017) Human Rights Watch <[www.hrw.org/news/2017/11/08/un-should-consider-sanctions-yemen-aid-obstruction](http://www.hrw.org/news/2017/11/08/un-should-consider-sanctions-yemen-aid-obstruction)> accessed 10 October 2018.



2216.<sup>119</sup> While UN agencies have been actively producing reports on the situation – which also include accusations against the Saudi-led coalition and have called for stakeholders to relieve grave civilian suffering – the SC has not taken effective action to support them.<sup>120</sup>

Nonetheless, this case is not the only such event currently implicating international political order, as the 11-year Israeli-Egyptian siege of Gaza – unquestionably illegal under international law<sup>121</sup> – has brought the strip's economy to the edge of total collapse and has all but compelled Gazans to risk their lives and die by the hundreds in the so-called Great March of Return.<sup>122</sup> Usage of territorial sieges as a weapon of war (can be argued to legally fall in between IHL and international economic order) and their economic consequences, can be argued to be almost identical to the effects of comprehensive economic embargoes, such as the one against Iraq.<sup>123</sup>

<sup>119</sup> UN SC Res 2216 (14 April 2015) UN Doc S/RES/2216 'Recalling that arbitrary denial of humanitarian access and depriving civilians of objects indispensable to their survival, including wilfully impeding relief supply and access, may constitute a violation of international humanitarian law' and thus allows for sanctions against those who 'obstruct the delivery of humanitarian assistance to Yemen.'

<sup>120</sup> UNICEF, 'Access to water continues to be jeopardized for millions of children in war-torn Yemen' (24 July 2018) Press Release <[www.unicef.org/press-releases/access-water-continues-be-jeopardized-millions-children-war-torn-yemen](http://www.unicef.org/press-releases/access-water-continues-be-jeopardized-millions-children-war-torn-yemen)> accessed 10 October 2018; UN OCHA, 'Yemen: A child under the age of five dies every 10 minutes of preventable causes - UN Humanitarian Chief' (December 2017) <[www.unocha.org/es/story/yemen-child-under-age-five-dies-every-10-minutes-preventable-causes-un-humanitarian-chief](http://www.unocha.org/es/story/yemen-child-under-age-five-dies-every-10-minutes-preventable-causes-un-humanitarian-chief)> accessed 10 October 2018; UN 'Yemen on brink of famine, warns UN food relief agency chief, appealing for resources and access' (13 March 2017) UN News <[news.un.org/en/story/2017/03/553212-yemen-brink-famine-warns-un-food-relief-agency-chief-appealing-resources-and](http://news.un.org/en/story/2017/03/553212-yemen-brink-famine-warns-un-food-relief-agency-chief-appealing-resources-and)> accessed 10 October 2018; Stephanie Nebehay, 'UN urges Saudi-led coalition to speed Yemen imports, avoid starvation' *Reuters* (25 May 2018) <[www.reuters.com/article/us-yemen-security-un/un-urges-saudi-led-coalition-to-speed-yemen-imports-avoid-starvation-idUSKCN1IQ19C](http://www.reuters.com/article/us-yemen-security-un/un-urges-saudi-led-coalition-to-speed-yemen-imports-avoid-starvation-idUSKCN1IQ19C)> accessed 10 October 2018.

<sup>121</sup> UN GA 'General Assembly Adopts Resolution on Protecting Palestinian Civilians Following Rejection of United States Amendment to Condemn Hamas Rocket Fire' (13 June 2018) 10<sup>th</sup> Emergency Special Session, 38th Meeting <[www.un.org/press/en/2018/ga12028.doc.htm](http://www.un.org/press/en/2018/ga12028.doc.htm)> accessed 10 October 2018.

<sup>122</sup> UN GA Committee on the Inalienable Rights of the Palestinian People, 'United Nations Palestinian Rights Committee Condemns Excessive, Disproportionate Use of Force by Israeli Security Forces against Demonstrators at Gaza Fence' (14 May 2018) Press Release <[www.un.org/press/en/2018/gapal1406.doc.htm](http://www.un.org/press/en/2018/gapal1406.doc.htm)> accessed 10 October 2018;

UN OCHA, 'Gaza Blockade'. Press releases and statistical databases <[www.ochaopt.org/theme/gaza-blockade](http://www.ochaopt.org/theme/gaza-blockade)> accessed 10 October 2018.

<sup>123</sup> Abd ElRahman J AlFar et al, 'The Reflections of Israeli Siege over Economic and Social Indices on Gaza Strip' (2017) *Journal of Global Economics* 5 (3) <[www.omicsonline.org/open-access/the-reflections-of-israeli-siege-over-economic-and-social-indices-on-gaza-strip-2375-4389-1000252-94069.html](http://www.omicsonline.org/open-access/the-reflections-of-israeli-siege-over-economic-and-social-indices-on-gaza-strip-2375-4389-1000252-94069.html)> accessed 10 October 2018; Justus Reid Weiner, 'Israel and the Gaza Strip: Why Economic Sanctions Are Not Collective Punishment' (2015) Jerusalem Center for Public Affairs <[jcpa.org/gaza-economic-sanctions/](http://jcpa.org/gaza-economic-sanctions/)> accessed 10 October 2018.

In light of the fact that since the beginning of the Yemeni Civil War in 2015, estimates vary between 10,000 and 14,000 victims of military operations,<sup>124</sup> yet, more than 50,000 children (only in 2017) have died because of starvation<sup>125</sup> – in a direct aftermath of the Saudi blockade – and that is not counting victims of cholera and related phenomena; the above-mentioned argument stating that in selected situations economic coercion might have graver effects than military use of force – can be confirmed as credible.

### 1.3.5 Conclusion

The legal dilemma on whether or not the use of economic coercion outside of UN's framework is permissible depends on several factors. The central premise arguing that only the SC can undertake actions described in Article 41 is its authority under Chapter 7. Given that no other international actor is provided such an authorization, the SC, therefore, holds a monopoly over the employment of sanctions. A similar interpretation is provided by using the principle of non-intervention – which, in this case would have the same connotation in regard to both military use of force and economic use of force. The conjoint consideration of both economic and military coercion further rests upon the argument of their comparable effects – since, as demonstrated in the case of Yemen, but also with the controversial Iraqi sanctions regime described in Section 1.9 of the Second Chapter – in certain cases economic coercion can have even more serious repercussions than military use of force.

An opposite argumentation states that retorsions are permissible to be employed unilaterally by states. Such actions, however, bring about further issues – the most controversial of which is the principle of evidentiary standards. The question on extraterritoriality, besides being viciously argued by the United States, has, thus far, failed to gain international support by other relevant actors; yet, the ICJ will surely get an opportunity to offer an interpretation – considering the upcoming

<sup>124</sup> Global Conflict Tracker, 'War in Yemen' (2018) Council on Foreign Relations <[www.cfr.org/interactives/global-conflict-tracker#!/conflict/war-in-yemen](http://www.cfr.org/interactives/global-conflict-tracker#!/conflict/war-in-yemen)> accessed 10 October 2018.

<sup>125</sup> AFP, 'Yemen war: 5,000 children dead or hurt and 400,000 malnourished, UN says' *The Guardian* (16 January 2018) <[www.theguardian.com/world/2018/jan/16/yemen-war-children-dead-injured-malnourished](http://www.theguardian.com/world/2018/jan/16/yemen-war-children-dead-injured-malnourished)> accessed 10 October 2018.

judgment on the unilateral American re-introduction of sanctions targeting Iran.

Finally, the short case-study on the Greek embargo against Macedonia brings about the problem of proportionality, since, in this case – a newly established member of the international community and with an economy several times smaller than its neighbor's, was coerced into accepting conditions which violate Macedonia's right to self-determination and its sovereignty – in a direct contradiction to the principle of non-intervention. The problem of larger economies' leverage over smaller states emerges frequently, and it puts into perspective the question of UN's authority and ability to exercise its jurisdiction over international affairs and protect its subjects when they are unable to do so themselves – due to unequal distribution of power in our international community.

#### 1.4 LEGAL LIMITATIONS ON UN'S EMPLOYMENT OF ECONOMIC SANCTIONS

##### *1.4.1 Introduction*

Certain analysts and policy-makers have retained the argument that when the SC acts under Chapter 7, it acts towards its central purpose and the “general wellbeing” of the whole international community – thus its actions are not bound by any limitations outside of the decision-making processes within the SC.<sup>126</sup> This line of argumentation depends on the interpretation of Article 41, since some understand ‘The [SC] may decide what measures not involving the use of armed force are to be employed to give effect to its decisions’ to mean giving the SC ‘unfettered power in relation to the imposition of economic sanctions’.<sup>127</sup> Yet, these types of arguments are increasingly seen as out-dated and inadequate for modern international relations, in particular due to the notion that no authority – not even that of the SC – is absolute and unlimited. Critics, therefore, argue that following the logic of unlimited authority of the SC would mean that ‘[The SC] is not bound by principles of

<sup>126</sup> O'Connell (n 5).

<sup>127</sup> Segall (n 4).

justice and international law in its application of collective economic sanctions under Article 41.<sup>128</sup> An opposing logic – making the case for limitation on the usage of coercion both under Articles 41 and 42 – is based on an approach calling for a broader reading and interpretation – not solely of Chapter 7, but on the UN Charter as a whole, which also contains ‘respect for human rights’ [Article 1.3] and ‘respect for the obligations arising from treaties and other sources of international law’ [Preamble].<sup>129</sup>

Yet another aspect of this debate is the question on whether international peace and security and human rights should even be analysed as separate UN goals – or if they need to be considered as inter-related and therefore mutually-dependent. While peace and security are recognized as crucial for the implementation of human rights; respect for human rights as necessary for the accomplishment of international peace is a more recent notion. This argument gained ground with pleas of various stakeholders asking for consideration of human rights in all of UN’s deliberations – including decision-making by the SC. In 2001, former Secretary-General Kofi Annan argued that ‘[UN] must place people at the centre of everything it does’.<sup>130</sup> Former HCHR, Ramcharan, described the importance of human rights for realization of international peace and security as follows

The link between security and human rights is important [and] is reinforced if we consider that human rights define human security. Individual, international, and national development requires the protection of human rights; therefore you cannot have security without the protection of human rights. Development requires respect for human rights, and respect for human rights prevents conflicts. Peace-making must be built on human rights foundations and peacekeeping and peace-building must likewise give a central place to human rights considerations as indeed must incorporate human rights strategies.<sup>131</sup>

Current Secretary-General, Guterres, in 2017 argued that ‘Given their intrinsic link to peace and security, [the SC] must take human rights

<sup>128</sup> Segall (n 4).

<sup>129</sup> Charter of the UN (n 82).

<sup>130</sup> UN Secretary General Kofi Annan Speech ‘Nobel Lecture delivered by Kofi Annan’ (10 December 2001) <[www.un.org/sg/en/content/sg/speeches/2001-12-10/nobel-lecture-delivered-kofi-annan](http://www.un.org/sg/en/content/sg/speeches/2001-12-10/nobel-lecture-delivered-kofi-annan)> accessed 10 October 2018.

<sup>131</sup> UN HCHR Bertrand Ramcharan, ‘Security and Human Rights’ (2013) <[www.un.org/ruleoflaw/files/Ramcharan.pdf](http://www.un.org/ruleoflaw/files/Ramcharan.pdf)> accessed 10 October 2018.

into account in all its deliberations...under Article 24 of the Charter, the [SC] had a major role to play in upholding human rights so as to prevent armed conflict.<sup>132</sup>

Nonetheless, criticism points that those appeals of other UN bodies are seldom taken into account by the SC, in particular when it acts under Chapter 7. Yet, even though the SC – as it will be argued within the case-study on the DPRK – has discarded demands by UN’s human rights agencies and continues to enforce sanctions under Article 41; on several occasions, the SC has used human rights violations and lack of respect for principles of IHL – as a basis for actions taken under Article 42. Those occasions refer to what was cited, as ‘humanitarian interventions’ or ‘R2P’ missions, and include the SC’s actions in Afghanistan, Iraq and Libya.<sup>133</sup>

In consideration of all of the above-mentioned arguments, more and more legal experts argue that the SC’s adjudicating under Chapter 7 must pay regard to certain universal principles of international law. Segall and O’Connell write that in peacetime – provisions of human rights law are applicable and need to be considered when invoking Article 41; while, in times of armed conflict, limitations on the use of economic coercion are to be determined on the basis of IHL and non-derogable provisions of human rights law.<sup>134</sup>

#### 1.4.2 *Limitations under human rights law*

The legal basis for the claims that ‘there are limits to the extent of suffering which sanctions may legitimately cause’,<sup>135</sup> is provided

<sup>132</sup> UN SC, ‘Security Council Must Take Human Rights into Account in All Deliberations, Secretary-General Stresses during Thematic Debate’ (18 April 2017) SC 7926<sup>th</sup> Meeting <[www.un.org/press/en/2017/sc12797.doc.htm](http://www.un.org/press/en/2017/sc12797.doc.htm)> accessed 10 October 2018.

<sup>133</sup> Such examples include: UN SC Res 1386 (20 December 2001) UN Doc S/Res/1386 – which established the International Security Assistance Force in Afghanistan ‘Stressing that all Afghan forces must adhere strictly to their obligations under human rights law, including respect for the rights of women, and under international humanitarian law’ [Preamble]; UN SC Res 1973 (17 March 2011) UN Doc S/RES/1973 – (Libya ‘R2P’ intervention); UN SC Res 688 (5 April 1991) UN Doc S/Res/688 – which condemned Saddam’s repression on Kurds: ‘Demands that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end this repression, and in the same context expresses the hope that an open dialogue will take place to ensure that the human and political rights of all Iraqi citizens are respected’ [art 2].

<sup>134</sup> O’Connell (n 5); Segall (n 4).

<sup>135</sup> Segall (n 4).

through assertions and resolutions adopted by the CESR, the Statement of the Inter-Agency Standing Committee on the humanitarian impact of sanctions,<sup>136</sup> and resolutions on sanctions adopted by ICRC.<sup>137</sup> Particular regard is given to so-called “core” human rights,<sup>138</sup> which include non-derogable rights stated in Article 4 (2) of the ICCPR (rights contained in Articles 6, 7, 8, 11, 15, 16 and 18)<sup>139</sup> and rights contained in Articles 11, 12, 13 (a) of the ICESCR, as explained in Comment 3 of CESCR.<sup>140</sup> In that regard,

From a legal and humanitarian perspective [the SC] should take those rights into consideration when developing a sanctions regime and should not create sanctions regimes which would deprive people of them... a sanctions regime should not bring the standard of living of a significant segment of the population below subsistence level [nor] deprive people of the basic human right to life and survival.<sup>141</sup>

Joyner claims there are at least three types of limitations on the imposition of sanctions – one of which is human rights law. Secondly, the general international legal principle of non-intervention – which can be argued to represent a *jus cogens* norm due to numerous GA resolutions and ICJ decisions – prohibits a country or an international organization from engaging in actions aimed at modifying another state’s behaviour – if the policy-making area the actions aim to change falls under the domain of sovereignty of the state targeted with sanctions.<sup>142</sup>

<sup>136</sup> UN ECOSOC, ‘Triennial review of the implementation of the recommendations made by the Committee for Programme and Coordination at its thirty-seventh session on the in-depth evaluation of the Department of Humanitarian Affairs’ (5–30 June 2000) E/AC.51/2000/5 <[www.un.org/resources/reports/eac51\\_2000\\_5.htm](http://www.un.org/resources/reports/eac51_2000_5.htm)> accessed 10 October 2018.

<sup>137</sup> ICRC, ‘26th International Conference of the Red Cross and Red Crescent’ (1995) <[www.icrc.org/eng/resources/documents/article/other/57jmvm.htm](http://www.icrc.org/eng/resources/documents/article/other/57jmvm.htm)> accessed 10 October 2018.

<sup>138</sup> UN OHCHR, ‘Core Human Rights in the Two Covenants’ <[nhri.ohchr.org/EN/IHRS/TreatyBodies/Page%20Documents/Core%20Human%20Rights.pdf](http://nhri.ohchr.org/EN/IHRS/TreatyBodies/Page%20Documents/Core%20Human%20Rights.pdf)> accessed 10 October 2018.

<sup>139</sup> ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 172.

<sup>140</sup> Committee on Economic, Social and Cultural Rights, ‘General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)’ (adopted 14 December 1990) UN Doc E/1991/23) <[www.refworld.org/pdfid/4538838e10.pdf](http://www.refworld.org/pdfid/4538838e10.pdf)> accessed 10 October 2018.

<sup>141</sup> Segall (n 4).

<sup>142</sup> Chiara Franco, ‘Coercive Diplomacy, Sanctions and International Law’ (*Istituto Affari Internazionali*, international conference on ‘Coercive Diplomacy, Sanctions and International Law’, 13 February 2015) <[www.iai.it/sites/default/files/iai1505.pdf](http://www.iai.it/sites/default/files/iai1505.pdf)> accessed 4 October 2018. This norm is particularly relevant for sanctions employed with regard to non-proliferation. In the Iranian case especially, the sanctioned state has maintained a continuous stance since 2006 – arguing its nuclear programme is intended for civilian uses and is inherently a domestic matter.

Still, the UN Charter does explicitly allow the SC to introduce sanctions in order to maintain or restore peace. In such state of affairs, the limitations to which the SC is bound can be interpreted differently, since, as mentioned, the narrowest understanding argues the hands of the SC are not tied in any way when it acts under Chapter 7. Nonetheless, Joyner believes Article 103 – giving precedence of obligations under the Charter over obligations of any other international body – should be understood narrowly, ‘with respect to the priority of the SC decisions over other treaty provisions, but not over principles of general or customary international law. Under this interpretation, the SC would still be bound by customary law, including human rights law.’

The third type of limitation refers to the law on countermeasures – which legal scientists argue is the correct term for unilateral sanctions. Limitations are imposed by the norms on countermeasures, stipulated in the ILC Draft Articles.<sup>143</sup> Some of those principles refer to general norms of IHL – such as the principles of humanity, proportionality and distinction. If such principles are not respected when imposing unilateral sanctions, the targeted state is allowed to introduce countermeasures itself.<sup>144</sup>

A central dilemma – within the debate on whether or not states need to take into consideration provisions of human rights law when introducing sanctions – is the controversial issue of international human rights obligations of states – bringing about the question on states’ accountability for the human rights of persons outside of their domestic jurisdiction. This issue has two opposing lines of interpretation as well. The first argues that states have obligations only towards their own citizens – in whose name they have ratified human rights conventions. Yet, this view has come to be increasingly considered as out-dated and too narrow as well. On the forefront of the struggle for recognition of universal human rights obligations of states stood several international legal bodies, in particular the ICJ and the CESC.

In the *Corfu Channel case* the ICJ underlined the enforceability of ‘elementary considerations of humanity, even more exacting in peace than in war’.<sup>145</sup> The *Nicaragua v United States* decision retained that common Article 3 of the Geneva Conventions reflected ‘elementary considerations

<sup>143</sup> ILC, ‘Report of the ILC on its 53<sup>rd</sup> session’ (August 2001) *Draft Articles on the Responsibility of States for Internationally Wrongful Acts* UN Doc A/56/10.

<sup>144</sup> Franco (n 142).

<sup>145</sup> *Corfu Channel Case (United Kingdom v Albania)* (Decision) [1949] ICJ.

of humanity' [para 218].<sup>146</sup> Still, the most significant provision arguing for the non-derogative nature of certain human rights – in particular of people living under occupation – was provided by the ICJ with its *Israeli Wall Opinion* which confirmed that occupying powers were responsible for implementation of human rights provisions *vis-à-vis* non-citizens, 'The Court further established that certain human rights instruments [ICCPR, ICESCR and Child Convention] were applicable in the Occupied Palestinian Territory.'<sup>147</sup>

The basis for CESCR's advocacy for certain universal obligations of states is mostly founded upon the wording of Articles 2, 11, 15, 22 and 23 of the ICESCR. In its General Comment 3, the CESCR

...wishes to emphasize that in accordance with Articles 55 and 56 of the Charter, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. [para 14]<sup>148</sup>

All considering, Joyner believes that 'when a state engages in economic warfare, it is still responsible for the human rights violations it may cause in the territory of another state.'<sup>149</sup> In this regard, even if claims that when the SC acts under Chapter 7 it is not bound by any other legislation are accepted, Joyner believes the principle of proportionality is nevertheless applicable,

...in order for the SC to lawfully derogate from such obligations, the sanctions regime that is approved should be in compliance with the principle of proportionality. In this case, one should also apply the principle of the prohibition of collective punishment, which is essentially a manifestation of the principle of proportionality.<sup>150</sup>

Many of those principles are undoubtedly violated by comprehensive sanctions regimes.

<sup>146</sup> *Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)* (Decision) [1986] ICJ.

<sup>147</sup> *Legal Consequences of the Construction of a Wall* (Advisory Opinion) [2004] ICJ <[www.icj-cij.org/en/case/131](http://www.icj-cij.org/en/case/131)> accessed 6 October 2018.

<sup>148</sup> Committee on Economic, Social and Cultural Rights, 'General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)' (adopted 14 December 1990) UN Doc E/1991/23 <[www.refworld.org/pdfid/4538838e10.pdf](http://www.refworld.org/pdfid/4538838e10.pdf)> accessed 4 October 2018.

<sup>149</sup> Franco (n 142) 25.

<sup>150</sup> *ibid* 25–6.



### 1.4.3 Limitations under IHL

Thus far, several points of convergence were mentioned between economic sanctions and military action – the first one being their shared legal basis within Chapter 7. Moreover, as mentioned with the Yemen and the Gaza cases – economic coercion as brought through land, air and/or naval blockades, has seen a revival in the past couple of years – being used as a weapon of war. Another point of convergence is the notion that one of the purposes of economic sanctions can be to deter military action. In such state of affairs, there are two sides of the debate on the applicability of IHL over economic sanctions regimes.

On the one hand, it seems anomalous to regulate a state's right to provide or withdraw economic benefits to another state. Traditionally, the *raison d'être* of classic IHL has been to regulate military actions and the use of arms, not foreign trade policies. On the other hand, this narrow legal perspective ignores the indiscriminate nature of economic sanctions and their detrimental effects on target populations. It also ignores IHL's general purpose as a humane response to coercive state action.<sup>151</sup>

Following the second view, several stakeholders (including the ICRC) believe that just as military use of force is limited with precise regulations, economic use of force necessarily needs to be subjected to certain legal principles as well. Segall argues that several international treaties contain provisions that should be followed during economic coercion:

- AP I, Article 54 (1): prohibits starvation of a civilian population;
- API, Article 75 (2) (d): states that all manners of collective punishment are prohibited;<sup>152</sup>
- IV Geneva Convention, Article 24: obliges states to allow the passage of medical supplies and essential foodstuffs and clothing intended for children under the age of 15.<sup>153</sup>

Certain experts believe obligations of imposers of economic sanctions

<sup>151</sup> Mallory Owen, 'The Limits of Economic Sanctions Under International Humanitarian Law: The Case of the Congo' (2013) *Texas International Law Journal* 48 (1) 114.

<sup>152</sup> AP to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977).

<sup>153</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949).

are even broader than the three mentioned provisions, thus following the argument that the five central principles of IHL should be the basis for any kind of coercive action.<sup>154</sup> Under this broader understanding, therefore, the purpose of IHL is to ‘conciliate the necessities of war with the laws of humanity’, by attempting to ‘shield individuals from all harm that cannot be justified as necessary and proportionate’.<sup>155</sup>

Finally, Owen makes the case for economic coercion to be subjected to limitations just as military coercion is, by concluding that ‘...all coercive instruments should be judged by their foreseeable effects and not merely by the mechanisms used for their implementation. Because of their costly foreseeable effects, economic sanctions should be treated like weapons of warfare and regulated as such.’<sup>156</sup> This conclusion is in line with findings of the previous subchapter which confirmed the damage inflicted upon the Yemeni people due to the economic blockade has been much more severe than the damage caused by the military activities of the Saudi-led coalition.

#### 1.4.4 *Limitations under the right to due process*

The argumentation for limitations of sanctions on the basis of either IHL or human rights law refers more to collective violations of human rights. Accordingly, such wide-scale breaches can primarily be caused through comprehensive sanctions regimes. An argument used by those who still claim the UN should not abolish the use of economic sanctions has been provided with the turn towards targeted sanctions – which, in theory, should deliver policy-results without causing breaches of civilian human rights. Yet, even though it is unclear precisely which kinds of sanctions fall under targeted and which under comprehensive regimes;<sup>157</sup> there is also a problem of collective human rights violations even under sanctions regimes claimed to be targeted. Additionally, the issue of breaches of individual human rights – even in the most targeted type of targeted sanctions – arises from sanctions targeting individuals, brought

<sup>154</sup> Those principles, in existence for so long and whose applicability is derived from the number of ratifications of their respective documents are so universally accepted that most legal analysts argue their *jus cogens* nature, are: the principle of distinction, of proportionality, of military necessity, of humanity and the prohibition of causing unnecessary suffering. See: Nataliia Dromina-Voloc, ‘Imperativization of International Law: Jus Cogens Concept in Jurisprudence’ (2015) *European Political and Law Discourse* 2 (1) 31–9.

<sup>155</sup> Owen (n 151) 115.

<sup>156</sup> *ibid.*

<sup>157</sup> Daniel W. Drezner, ‘Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice’ (2011) *International Studies Review* 13 (1) 96–108

about with the 9/11 restructuring of our international order and the consequently introduced lists of persons accused of affiliation to terrorist groups.<sup>158</sup>

Criticism of the Consolidated Lists appeared immediately after their introduction, from CoE<sup>159</sup> and UN officials<sup>160</sup> – in particular due to alleged violations of the right to due process. In 2008, UN's Special Rapporteur on human rights stated that 'terrorist listing procedures did not meet due process requirements of fair trial'.<sup>161</sup> In light of accusations, the UN introduced several criteria needed to be fulfilled prior to a listing by the CTC. The biggest innovation came in 2009 when a type of a third-party review came with the instituting of the Office of the Ombudsperson – following which damaged parties could file appeals for delisting and if the Ombudsperson grants them, they could be then submitted to the CTC.<sup>162</sup>

Not disregarding the progress that has been made, experts nonetheless believe it is still not enough to ensure respect for the right to due process – recognized as non-derogable under Article 9 of the ICCPR.<sup>163</sup> A central argument for such criticism is the fact that compliance with this right can only be ensured by a legal institution – while both the CTC and the Office of the Ombudsperson are inherently political bodies, and as such they 'cannot serve as review mechanisms in light of human rights standards'.<sup>164</sup> Another part of the problem is that while 'the impact of targeted sanctions is generally recognised as severe...the remedies offered by the UN are deemed insufficient'.<sup>165</sup> The delisting of individuals found to be wrongfully accused, Lugato argues, does not fulfil standards for compensation for the harm suffered.

<sup>158</sup> The legal foundation for the practice of listing individuals was provided with Resolution 1267 targeting Al-Qaeda and the Taliban. Although the resolution was enacted in 1999, the so-called Consolidated List of individuals and entities was not introduced until Resolution 1373 was voted in 2001 – obliging all states to criminalize assistance for terrorist activities and halt funding and safe haven to terrorists, as well as to share information regarding planning and execution of terrorist attacks.

<sup>159</sup> CoE 'Viewpoints of the Council of Europe Commissioner for Human Rights' (1 December 2008) European Commissioner for Human Rights, Thomas Hammarberg <[www.coe.int/t/commissioner/Viewpoints/default\\_en.asp](http://www.coe.int/t/commissioner/Viewpoints/default_en.asp)> accessed 10 October 2018.

<sup>160</sup> UN, 'Press Conference by Special Rapporteur on Human Rights and Countering Terrorism' (22 October 2008) Press Conference <[www.un.org/press/en/2008/081022\\_Scheinin.doc.htm](http://www.un.org/press/en/2008/081022_Scheinin.doc.htm)> accessed 10 October 2018.

<sup>161</sup> *ibid.*

<sup>162</sup> Franco (n 142).

<sup>163</sup> ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 172.

<sup>164</sup> Franco (n 142) 21.

<sup>165</sup> *ibid.*

#### 1.4.5 Conclusion

The question of whether or not the SC is bound by any kind of limitations when it takes action under Chapter 7 and Article 41 does not have a definite answer, in particular since it depends on interpretation of the Charter. The UN Charter – the unofficial highest source of international law – contains numerous controversies arising from mutually contradictory provisions, some of the most evident ones are the right to self-determination [Article 1.2] and the principle of state sovereignty [Article 2.1]; respect for human rights [Article 1.3] and non-intervention in the domestic affairs of states [Article 2.7]; and in this case – the SC’s authority to take action in order to prevent threats and breaches against the peace under Chapter 7 on one hand and respect for human rights, principles of IHL and the principle of non-intervention on the other.<sup>166</sup> A clear precedence of one norm over another is self-evident when one of those norms is contained in a higher source of law, yet, since all above-mentioned provisions are contained within the UN Charter, the legal architecture of the UN necessary leaves room for disagreements and opposing interpretations.

In that regard, one line of argumentation states that the SC is not restricted in any way when it acts under Chapter 7 – since those actions are intended to establish and/or restore international peace and security; while the opposite interpretation states that just like every international actor is bound to certain principles of international law – some of which in existence long before the UN was established – such as the five principles of IHL, but also human rights law, whose implementation is inseparably linked to the UN as a whole, and not to exclusive decision-making of the SC – the SC must necessarily take those legal norms into consideration in all its deliveries and cease to behave as if it holds unrestricted power and authority. These open issues do not create a conflict of laws only among the UN on one side and other international actors – in this case states and individuals – on the other side; but establish a conflict of laws and incoherence within the UN as a single legal body. While the SC’s primary task is to maintain and/or restore international peace and security, most other UN agencies are established with the explicit intend to guard and implement human

<sup>166</sup> Charter of the UN (signed 26 June 1945, entered into force 24 October 1945)

rights law, while the ICJ is given the authority to implement the Charter as a whole. Recent developments show increased legal disputes among the SC on one side and all other UN bodies on the other, and those incoherencies are particularly illustrated with the issue of economic sanctions – as the examination of all UN-introduced sanctions regimes will demonstrate in continuation.

## 2.

REVIEW OF UN-INTRODUCED ECONOMIC SANCTIONS  
REGIMES

## 2.1 SOUTHERN RHODESIA

Southern Rhodesia, Zimbabwe today, holds the precedent in UN's employment of sanctions. They were first enacted with Resolution 232 in December 1966<sup>167</sup> – following the unilateral declaration of independence under the government of Ian Smith – *de jure* establishing an apartheid system. The sanctions introduced an embargo on 90% of Southern Rhodesia's exports and forbade states from importing oil, arms, motor vehicles or airplanes into the country as well as to provide it with any form of 'financial or other economic aid'. Until today, these sanctions are regarded as one of the most comprehensive sanctions regimes in UN's history. Resolution 232, however – while explicitly obliging the 122 UN member-states at that time – contained less of a definitive language in regards to non-member states, 'urging' them to also act in accordance. This ambiguity caused several non-member states at the time – including Switzerland and West Germany – to freely trade with Southern Rhodesia, completely 'legally' in their views. Some UN members did so openly – such as Japan, Iran, Malawi, Israel, Portugal along with its colonial government in Mozambique, as well as the twin-apartheid regime of South Africa.<sup>168</sup> Other non-state actors, in particular the always-invested-in-the-political-affairs-of-Africa oil conglomerates – this time coming from the P5 without Russia and China – included Total, Exxon Mobil, Shell and British Petroleum, whose business interests kept the apartheid regime afloat until its fall in 1979.<sup>169</sup> The first UN sanctions regime, therefore, lasted for 13 years.

<sup>167</sup> UN SC Res 232 (16 December 1966) UN Doc S/RES/232.

<sup>168</sup> Harold Nelson, *Zimbabwe: a country study* (The American University 1983).

<sup>169</sup> William Minter and Elizabeth Schmidt, 'When Sanctions Worked: the Case of Rhodesia Examined' (1988) *African Affairs* 87 (347) 207–37.

## 2.2 SOUTH AFRICA

Although the arms embargo on South Africa was first introduced in 1963 with Resolution 181,<sup>170</sup> these sanctions were deemed as voluntary, and that was the form they kept until 1977 – with Resolution 418 turning them into mandatory.<sup>171</sup> That was the whole extent of sanctions enacted by the UN against the apartheid regime of South Africa, and they lasted from 1977 until Resolution 919 in 1994.<sup>172</sup> Contrary to popular thinking, one of the most efficient sanctions episodes in history<sup>173</sup> – the one against South Africa – widely commended for bringing down an apartheid regime and putting a stop to a civil war, was not the one enacted by the UN – since those sanctions encompassed nothing more than an arms embargo. The most fruitful sanctions were the ones individual states enacted on a voluntary basis as a part of the global anti-apartheid movement. Those sanctions are, on the other hand, recognized to have been the most comprehensive sanctions in history introduced outside the framework of the UN. The reason the UN did not lead this campaign can be found in the “guardianship” South Africa enjoyed by its colonial motherland and its two other trading partners – the United States and France. Presenting a puzzling legal logic – while the United Kingdom actively advocated for the sanctions against the apartheid regime in Southern Rhodesia – going as far as to send in a fleet guarding the Rhodesian coast from trade potentially violating UN sanctions<sup>174</sup> – at the same period, during the 1960s, British policy-makers found sanctions against South Africa to be ‘unconstitutional’.<sup>175</sup>

Accordingly, the United Kingdom allied with the United States to veto eight proposed SC resolutions regarding the situation in South Africa between the mid-1960s and the early 1990s, with France also joining to veto three of those resolutions. The difference between Southern Rhodesia and South Africa for the British can possibly be found inside the diamond

<sup>170</sup> UN SC Res 181 (7 August 1963) UN Doc S/RES/181.

<sup>171</sup> UN SC Res 418 (4 November 1977) UN Doc S/RES/418.

<sup>172</sup> UN SC Res 919 (25 May 1994) UN Doc S/RES/919.

<sup>173</sup> Philip Levy, ‘Sanctions on South Africa: What Did They Do?’ (1999) *The American Economic Review* 89 (2) 415–20.

<sup>174</sup> Richard Mobley, ‘The Beira Patrol: Britain’s Broken Blockade against Rhodesia’ (2002) *Naval War College Review* <[www.dtic.mil/dtic/tr/fulltext/u2/a526110.pdf](http://www.dtic.mil/dtic/tr/fulltext/u2/a526110.pdf)> accessed 10 October 2018.

<sup>175</sup> Bronwen Manby, ‘South Africa: The Impact of Sanctions’ (1992) *Journal of International Affairs* 46 (1) 193–217 <[www.jstor.org/stable/pdf/24384124.pdf?seq=1#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/pdf/24384124.pdf?seq=1#page_scan_tab_contents)> accessed 10 October 2018.

mines in the latter.<sup>176</sup> On the other hand, even though the United States was one of the leaders of the global anti-apartheid movement, its policies were inconsistent – depending on the administration in power. Reagan’s presidency followed a policy of ‘constructive engagement’ with the apartheid regime and vetoed several SC resolutions aiming to introduce more comprehensive sanctions than an arms embargo along with the United Kingdom; while on other occasions – the United States was the sole-vetoing P5 member – a policy the *Chicago Tribune* at the time called ‘A Crime in the UN’.<sup>177</sup>

### 2.3 SOMALIA, ERITREA AND ETHIOPIA

Somalia – with the arms embargo introduced with Resolution 733 in January 1992<sup>178</sup> – in response to the unfolding civil war in the late 1980s – holds the third exemplar of UN sanctions regimes. Resolution 1844 from 2008,<sup>179</sup> Resolution 1907 from the following year,<sup>180</sup> and Resolution 2036 from 2012<sup>181</sup> – expanded the sanctions regime to include training and financial assistance on individuals and entities; a travel ban and an asset freeze on individuals and entities; and a ban on the direct or indirect import of charcoal from Somalia, respectively. In line with the perpetual nature of one of the longest-lasting conflicts in modern history – sanctions against Somalia, although to a lesser extent, are still in effect today – making them the longest-lasting sanctions regime in history. Eritrea was added to the Somalia sanctions regime with Resolution 1907 in 2009<sup>182</sup> – imposing an arms embargo, travel bans and asset freezes on its political and military leaders and expanding the sanctions regime to include individuals and entities recruiting child soldiers. This policy was a response to findings confirming the Eritrean government had, in various forms, aided the Al-

<sup>176</sup> Richard Dowden, ‘Apartheid: made in Britain: Richard Dowden explains how Churchill, Rhodes and Smuts caused black South Africans to lose their rights’ *The Independent* (18 April 1994) <[www.independent.co.uk/voices/apartheid-made-in-britain-richard-dowden-explains-how-churchill-rhodes-and-smuts-caused-black-south-1370856.html](http://www.independent.co.uk/voices/apartheid-made-in-britain-richard-dowden-explains-how-churchill-rhodes-and-smuts-caused-black-south-1370856.html)> accessed 10 October 2018.

<sup>177</sup> *Chicago Tribune*, ‘A Crime in the UN: Vetoing South Africa Sanctions’ (9 March 1987) <[www.chicagotribune.com/news/ct-xpm:1987-03-09:8701180939-story.html](http://www.chicagotribune.com/news/ct-xpm:1987-03-09:8701180939-story.html)> accessed 10 October 2018

<sup>178</sup> UN SC Res 733 (23 January 1992) UN Doc S/RES/733.

<sup>179</sup> UN SC Res 1844 (20 November 2008) UN Doc S/RES/1844.

<sup>180</sup> UN SC Res 1907 (23 December 2009) UN Doc S/RES/1907.

<sup>181</sup> UN SC Res 2036 (22 February 2012) UN Doc S/RES/2036.

<sup>182</sup> UN SC Res 1907 (23 December 2009) UN Doc S/RES/1907.



Shabaab movement in Somalia.<sup>183</sup> Both sanctions regimes remain in force until this day. The most blatant violation of the sanctions and arguably, one of the reasons for the continuing crisis on the Horn of Africa, comes from the South African security company Sterling Corporate Services, which – as a UN Monitoring Group on Somalia and Eritrea Report concluded in 2012 – had assembled a ‘private army’ and continues activities in the region, yet sanctions against it were never introduced.<sup>184</sup>

Parallel to Eritrea’s actions contributing towards the turning of Somalia into a failed state – from 1998 to 2000 – the Eritrea-Ethiopia War took place and resulted with SC Resolution 1297 from May 2000<sup>185</sup> – which imposed an arms embargo on the two warring parties. The Eritrean government’s activities destabilizing other states in the region besides Somalia – such as the conflict with Djibouti – led the SC to impose with Resolution 2023 in 2011 additional sanctions aimed at preventing mining assets from contributing to the continued violations and thus, it *de facto* embargoed Eritrea’s mining sector.<sup>186</sup> The same Resolution also condemned Eritrea’s use of the “diaspora tax” on Eritrean expats – aimed at violating the UN sanctions and at further destabilization of the Horn of Africa – including by procuring arms and related materiel transfers to armed movements in several states.

Nonetheless, in the last couple of months, we were able to witness several positive events coming from the East African region. One of them was the signing of Eritrea-Ethiopia Peace Agreement this September,<sup>187</sup> while earlier, in July, Somalia and Eritrea decided to re-establish diplomatic ties.<sup>188</sup> Following both events, the countries involved requested from the UN to lift the sanctions regimes targeting them.<sup>189</sup>

<sup>183</sup> UN SC, ‘Extending Arms Embargoes on Somalia, Eritrea, Security Council Adopts Resolution 2385 (2017) by 11 votes in Favour, 4 Abstentions’ (14 November 2017) SC 8099<sup>th</sup> meeting <[www.un.org/press/en/2017/sc13065.doc.htm](http://www.un.org/press/en/2017/sc13065.doc.htm)> accessed 10 October 2018.

<sup>184</sup> UN, ‘Letter dated 27 June 2012 from the members of the Monitoring Group on Somalia and Eritrea addressed to the Chairman of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea’ (27 June 2012) Confidential copy <[fas.org/man/eprint/semg.pdf](mailto:fas.org/man/eprint/semg.pdf)> accessed 10 October 2018.

<sup>185</sup> UN SC Res 1297 (12 May 2000) UN Doc S/RES/1297.

<sup>186</sup> UN SC Res 2023 (5 December 2011) UN Doc S/RES/2023.

<sup>187</sup> *Al Jazeera*, ‘Ethiopia, Eritrea sign peace deal at Saudi Arabia summit’ (17 September 2018) <[www.aljazeera.com/news/2018/09/ethiopia-eritrea-sign-peace-deal-saudi-arabia-summit-180917055913813.html](http://www.aljazeera.com/news/2018/09/ethiopia-eritrea-sign-peace-deal-saudi-arabia-summit-180917055913813.html)> accessed 10 October 2018.

<sup>188</sup> *Al Jazeera*, ‘Eritrea and Somalia agree to restore diplomatic relations’ (30 July 2018) <[www.aljazeera.com/news/2018/07/eritrea-somalia-agree-restore-diplomatic-relations-180730152410668.html](http://www.aljazeera.com/news/2018/07/eritrea-somalia-agree-restore-diplomatic-relations-180730152410668.html)> accessed 10 October 2018.

<sup>189</sup> Michelle Nichols, ‘UN hails renewed ties between Eritrea and Ethiopia, no word on sanctions’ *Reuters* (11 July 2018) <[www.reuters.com/article/us-ethiopia-eritrea-un/u-n-hails-renewed-ties-between-eritrea-and-ethiopia-no-word-on-sanctions-idUSKBN1K0325](http://www.reuters.com/article/us-ethiopia-eritrea-un/u-n-hails-renewed-ties-between-eritrea-and-ethiopia-no-word-on-sanctions-idUSKBN1K0325)> accessed 10 October 2018.

## 2.4 LIBERIA AND SIERRA LEONE

Liberia was the fifth country to be sanctioned by the UN. Resolution 788 was passed in November 1992 following Charles Taylor's advance on Monrovia and introduced an arms embargo.<sup>190</sup> It was not until 2001 and Resolution 1343 that the SC imposed comprehensive sanctions against Liberia – in response to its coup government's export of rebel groups into neighbouring Sierra Leone.<sup>191</sup> Later on, other kinds of sanctions were also imposed – this time not against the sovereign government – but against rebel groups operating on Sierra Leone's territory. The link between the situations in the two states was further acknowledged with Resolution 1306, which put in force an embargo on rough diamonds from Sierra Leone.<sup>192</sup> Sanctions against Liberia remained in place until 2016 in various forms and against various stakeholders, with two periods of suspension – shifting from sanctions against state entities to sanctions against rebel groups – depending on the political situation in the West African state. The sanctions concerning the situation in Sierra Leone, however, also took various shapes and targeted several different entities, lasting from 1997 until 2010.

## 2.5 ANGOLA

The Angolan Civil War broke out shortly after the country's independence from its Portuguese colonial masters in 1975 and continued with some interludes until 2002. It was inherently a power struggle between two former liberation movements – MPLA and UNITA. The country was at the same time the centre of a proxy war between the two major blocks of the Cold War – with the Soviet Union, Yugoslavia and Cuba supporting the MPLA and South Africa and the United States – the UNITA movement.<sup>193</sup> Yet, American support ceded when UNITA's leader, Jonas Savimbi, lost an internationally supervised election in 1992. Instead, he returned to the bush and resumed the war against the

<sup>190</sup> UN SC Res 788 (19 November 1992) UN Doc S/RES/788.

<sup>191</sup> UN SC Res 1343 (7 March 2001) UN Doc S/RES/1343.

<sup>192</sup> UN SC Res 1306 (5 July 2000) UN Doc S/RES/1306.

<sup>193</sup> Piero Gleijeses, 'Collapse of the Portuguese Empire' In *Conflicting Missions: Havana, Washington, and Africa, 1959-1976* (University of North Carolina Press 2009) 230–45.

Angolan government. Money obtained as a result of the diamond trade transformed UNITA into a ferocious military organization. The SC sanctioned UNITA in 1993 with Resolution 864.<sup>194</sup> Under it, all states were prohibited from selling arms, petroleum and related products to UNITA, with exceptions as asked by the Angolan government. The sanctions were tightened in subsequent years and included: the freezing of UNITA funds; a ban on Angolan diamonds originating from UNITA-held territory with Resolution 1173 from 1998; as well as a ban on the sale of mining equipment, vehicles, aircraft and aircraft parts or services.<sup>195</sup> Yet, the sanctions regime including both the arms embargo and the blood diamonds ban – as several UN panels concluded (including the famous *Fowler Report*) – was violated on a spectacular scale.<sup>196</sup>

That led the Canadian chairmanship of the Angola Sanctions Committee in the early 2000s to initiate visits both to Africa and to the diamond centres of Europe in an effort to find how breaches were possible to occur. Those activities resulted with the Kimberley process,<sup>197</sup> and the historic Resolution 1295<sup>198</sup> – which asked of states hosting diamond markets to impose significant penalties for the possession of rough diamonds imported in contravention to Resolution 1173. Yet, ‘The unwillingness or inability of the diamond industry, particularly in Antwerp, to police its own ranks is a matter of special concern to

<sup>194</sup> UN SC Res 864 (15 September 1993) UN Doc S/RES/864.

<sup>195</sup> UN SC Res 1173 (12 June 1998) UN Doc S/RES/1173.

<sup>196</sup> UN, ‘Final Report of the UN Panel of Experts on Violations of Security Council Sanctions Against Unita’ *The Fowler Report* (10 March 2000) UN Doc S/2000/203 <[www.globalpolicy.org/global-taxes/41606-final-report-of-the-un-panel-of-experts.html](http://www.globalpolicy.org/global-taxes/41606-final-report-of-the-un-panel-of-experts.html)> accessed 10 October 2018. The Report found that South African-British company De Beers ‘is the main buyer of rough diamonds in the world [and] in 1999 [it] decided to cease buying any Angolan diamonds (except for the production of one particular mine, which De Beers is contractually obligated to purchase). The Panel came across substantial anecdotal evidence that the measures taken by De Beers to ensure that it does not purchase UNITA diamonds directly or from third parties, and De Beers’ subsequent withdrawal from the diamond market in Angola have made it more difficult for UNITA to sell its diamonds thereby raising the costs to UNITA and effectively lowering the price that UNITA be able to get [96]. Moreover, ‘Besides Antwerp, London also plays a significant role in the rough diamond trade. Trade statistics reported from the United Kingdom -- where De Beers and its Central Selling Organization are located -- only report the provenance of rough diamonds in their statistics. In their figures, imports of stones having transited through Switzerland represent two thirds of all imports into the United Kingdom’ [92]; *Human Rights Watch*, ‘ANGOLA UNRAVELS: The Rise and Fall of the Lusaka Peace Process’ (1999) Report <[www.hrw.org/legacy/reports/1999/angola/Angl1998-01.htm#P269\\_10642](http://www.hrw.org/legacy/reports/1999/angola/Angl1998-01.htm#P269_10642)> accessed 10 October 2018.

<sup>197</sup> David Rhode, ‘The Kimberley Process is a “perfect cover story” for blood diamonds’ *The Guardian* (24 May 2014) <[www.theguardian.com/sustainable-business/diamonds-blood-kimberley-process-mines-ethical](http://www.theguardian.com/sustainable-business/diamonds-blood-kimberley-process-mines-ethical)> accessed 10 October 2018

<sup>198</sup> UN SC Res 1295 (18 April 2000) UN Doc S/RES/1295.

the panel’, a subsequent report concluded.<sup>199</sup> Despite hard evidence on several former African colonial masters – Belgian authorities in particular, as well as British and Dutch but also Swiss and Israeli weak compliance with these provisions<sup>200</sup> – the SC’s response did not go any further. The Angolan War ended in 2002, with the death of UNITA’s leader. Subsequently, the sanctions regime was lifted.

## 2.6 HAITI

Briefly moving out of Africa, but not out of colonial ramifications – the next sanctions regime discussed here is the one targeting Haiti. Before being the target of UN sanctions, this state was devastated by colonial economic sanctions – as it was “obliged” by the French colonial overlords to pay the French government and slave-masters the modern equivalent of \$21 billion for the “theft” of the slaves’ own lives upon the declaration of its independence. The debt was financed by French banks and the American Citibank and paid off 143 years later, in 1947. In order to ensure the Haitian National Bank was going to deliberate on its obligation, United States president Wilson in 1914 sent Marines into Haiti which removed about \$500,000 from the Haitian National Bank for ‘safe-keeping’ in New York. American military was stationed in the country until 1934.<sup>201</sup> Haiti was unstable for the largest part of the 20<sup>th</sup> century. In late 1990, Jean-Bertrand Aristide was elected President in the first Haitian democratic election. Nevertheless, he was overthrown the following year by a military *coup d’état*. Resolution 841 from June 1993 imposed arms and oil embargoes, a ban on all traffic and an asset freeze on the coup leaders.<sup>202</sup> Only exceptional imports of petroleum were allowed for humanitarian purposes. With Resolution 917<sup>203</sup> the SC

<sup>199</sup> UN, ‘Conflict diamonds evade UN sanctions’ (December 2001) UN News <[www.un.org/africarenewal/magazine/december-2001/conflict-diamonds-evade-un-sanctions](http://www.un.org/africarenewal/magazine/december-2001/conflict-diamonds-evade-un-sanctions)> accessed 10 October 2018;

Blaine Harden, ‘U.N. Sees Violation of Diamond Ban in Angola’ *The New York Times* (11 March 2000) <[archive.nytimes.com/www.nytimes.com/library/world/africa/031100africa-diamonds.html](http://archive.nytimes.com/www.nytimes.com/library/world/africa/031100africa-diamonds.html)> accessed 10 October 2018.

<sup>200</sup> UN *The Fowler Report* (n 196).

<sup>201</sup> Edwidge Danticar, ‘The Long Legacy off Occupation in Haiti’ *The New Yorker* (28 July 2015) <[www.newyorker.com/news/news-desk/haiti-us-occupation-hundred-year-anniversary](http://www.newyorker.com/news/news-desk/haiti-us-occupation-hundred-year-anniversary)> accessed 10 October 2018.

<sup>202</sup> UN SC Res 841 (16 June 1993) UN Doc S/RES/841.

<sup>203</sup> UN SC Res 917 (6 May 1994) UN Doc S/RES/917.

imposed further sanctions on the military government – the result of which was another one of the most comprehensive sanctions regimes in history.

This regime is well proven to have caused grave civilian suffering – with an estimated 1000 children per month dying as a result of the embargo.<sup>204</sup> In what was a self-proclaimed “show of mercy”, president George H.W. Bush granted exemptions for trade to several American companies and president Bill Clinton extended them.<sup>205</sup> Yet, as the policy did not bear fruit, the United States took upon itself to restore democracy in Haiti. In September 1994 the United States led a military invasion which overthrew the coup government and brought Aristide back to power. This round of UN sanctions was thus abolished, yet, another one – this time coming from a regional organization – took place only several years later. Loans for health sector improvements, education reform, potable water systems and road infrastructure – already approved for Haiti through the Inter-American Development Bank in worth of \$146 million – were blocked by the United States. The justification for this measure were alleged irregularities during the May 2000 legislative elections.<sup>206</sup> The following presidential election was acclaimed by the United States, yet the other Bush administration continued to veto release of funds – claiming Haiti had not demonstrated enough commitment to democratic governing – objections not heard during the several decades of dictatorship prior to the 1990s.<sup>207</sup> In what seemed to be Aristide’s falling out of American grace, in 2004, he was – according to his own account – kidnapped by American forces in yet another coup, and a new government was installed. Today, after several natural disasters and scandalous conduct of various aid agencies in the

<sup>204</sup> UNICEF, ‘Sanctions: Children hard hit in Haiti’ (1996) In *The State of the World’s Children 1996 – 50<sup>th</sup> Anniversary Report* <[www.unicef.org/sowc96/dsanctns.htm](http://www.unicef.org/sowc96/dsanctns.htm)> accessed 10 October 2018; Carrol Haubert, ‘Evaluation of UNDP assistance to conflict-affected countries – Case-study Haiti’ (UNDP 2006) <[www.oecd.org/countries/haiti/44826404.pdf](http://www.oecd.org/countries/haiti/44826404.pdf)> accessed 10 October 2018.

<sup>205</sup> Howard W. French, ‘Clinton Faulted on Haiti Sanctions’ *The New York Times* (6 June 1993) <[www.nytimes.com/1993/06/06/world/clinton-faulted-on-haiti-sanctions.html](http://www.nytimes.com/1993/06/06/world/clinton-faulted-on-haiti-sanctions.html)> accessed 10 October 2018.

<sup>206</sup> Mark Lacey, ‘Rights Groups Assail U.S. for Withholding Aid to Haiti, Citing Political Motives’ *The New York Times* (24 June 2008) <[www.nytimes.com/2008/06/24/world/americas/24haiti.html?mtref=www.google.com&mtref=www.nytimes.com&gwh=E7552B357BA91944CF7D713CCF2B8CC6&gwt=pay](http://www.nytimes.com/2008/06/24/world/americas/24haiti.html?mtref=www.google.com&mtref=www.nytimes.com&gwh=E7552B357BA91944CF7D713CCF2B8CC6&gwt=pay)> accessed 10 October 2018.

<sup>207</sup> Mark Weisbrot, ‘America’s subversion of Haiti’s democracy continues’ *The Guardian* (13 March 2012) <[www.theguardian.com/commentisfree/cifamerica/2012/mar/13/america-subversion-haiti-democracy](http://www.theguardian.com/commentisfree/cifamerica/2012/mar/13/america-subversion-haiti-democracy)> accessed 10 October 2018.

country – most infamous of which is the Clinton Foundation<sup>208</sup> – Haiti is considered a failed state, with most of its population living well below the poverty line and struggling with medieval diseases.<sup>209</sup>

## 2.7 RWANDA

Still analysing sanctions directed against former European colonies – which account for 27 out of 30 UN sanctions regimes introduced thus far – the next discussion focuses on Rwanda. UN's actions in the state were infamously overdue – with an arms embargo introduced with Resolution 918 on 17 May 1994<sup>210</sup> – well into the mass slaughter of a million Tutsis, which began on 7 April and lasted until mid-July. The weapons used in the genocide are well known to have been acquired through careful planning beginning as early as in 1990.<sup>211</sup> Most of the arms came from former colonial masters in Belgium, then Egypt, South Africa; while Israel supplied them in the midst of the genocide with no repercussions whatsoever – as Israel's own Supreme Court ruled that weapons exports to Rwanda during the genocide have to stay secret.<sup>212</sup>

Yet, no violation of the arms embargo was as spectacular as the one committed by one of the P5 – France. In line with its strategic support of the Rwandan government – dating back to the 1980s – France initially opposed the UN arms embargo as 'the flow of arms deliveries was continuing, with the support of most of the [French] military personnel, who were hostile to the embargo'.<sup>213</sup> *Human Rights Watch* reports that

<sup>208</sup> Ansel Herz, 'The Clinton Bush Haiti Fund is Lying to You' *Huffington Post* (4 November 2010) <[www.huffingtonpost.com/crossover-dreams/the-clinton-bush-haiti-fund\\_b\\_778503.html?guccounter=1](http://www.huffingtonpost.com/crossover-dreams/the-clinton-bush-haiti-fund_b_778503.html?guccounter=1)> accessed 10 October 2018.

<sup>209</sup> Unni Karunakara, 'Haiti: where aid failed' *The Guardian* (28 December 2010) <[www.theguardian.com/commentisfree/2010/dec/28/haiti-cholera-earthquake-aid-agencies-failure](http://www.theguardian.com/commentisfree/2010/dec/28/haiti-cholera-earthquake-aid-agencies-failure)> accessed 10 October 2018.

<sup>210</sup> UN SC Res 918 (17 May 1994) UN Doc S/RES/918.

<sup>211</sup> Tim Gallimore, 'A Closer Look at Where Rwanda's Lethal Weapons Came From' *Huffington Post* (11 April 2014) <[www.huffingtonpost.com/tim-gallimore/a-closer-look-at-where-rw\\_b\\_5135559.html](http://www.huffingtonpost.com/tim-gallimore/a-closer-look-at-where-rw_b_5135559.html)> accessed 10 October 2018.

<sup>212</sup> Loulla Mae Eleftheriou Smith, 'Israel's weapon exports to Rwanda during genocide' to stay secret, following Supreme Court ruling' *The Independent* (13 April 2016) <[www.independent.co.uk/news/world/middle-east/israel-s-weapon-exports-to-rwanda-during-genocide-to-stay-secret-following-supreme-court-ruling-a6981911.html](http://www.independent.co.uk/news/world/middle-east/israel-s-weapon-exports-to-rwanda-during-genocide-to-stay-secret-following-supreme-court-ruling-a6981911.html)> accessed 10 October 2018.

<sup>213</sup> Mel McNulty, 'French arms, war and genocide in Rwanda' (2010) Crime, Law & Social Change 33 105–29, p171 <[www.francegenocidetutsi.org/McNulty.pdf](http://www.francegenocidetutsi.org/McNulty.pdf)> accessed 10 October 2018.

French arms flows to Hutu militias were not suspended immediately after the imposition of the arms embargo, but were rather diverted to Goma airport in Zaire and then transferred.<sup>214</sup> There is also evidence that arms transfers from France to the Former Government of Rwanda in exile continued at least until the collapse of the former Zaire in May 1997.<sup>215</sup> Not contributing for the good standing of the P5, the United Kingdom also breached its own-voted resolutions in the SC. Revelations from 1996 informed that British company Mil-Tec brokered the sale of arms from Albania and Israel to the former Rwandan government both before and during the 1994 genocide. In January 1997 it was reported that the British government had ‘failed to implement all the requirements of a UN arms embargo on Rwanda, thus allowing a British company to supply weapons to extremist Hutu militia.’<sup>216</sup>

At the same time when the United Kingdom and France were supporting extremist Hutus, another Western P5 member was providing arms and training of extremist Tutsis in Uganda – the United States.<sup>217</sup> The terrorist RPF crossed the border from neighbouring Uganda in 1990, and the massacres they carried out were unquestionably one of the main reasons behind the unleashed violence in 1994. The leader of the RPF, Paul Kagame, was for a long time praised by the international community as the man who put a stop to the genocide without carrying out retributions against civilian Hutus. The United States, therefore, continued to provide him with various forms of assistance also during his leadership of the country beginning in 1994 and his still on-going presidency, acclaiming him for democratic and economic development of the state and respect for human rights.<sup>218</sup> Yet, as the Rwandan conflict of 1994 overflowed into neighbouring states and triggered the ‘African World War’ – including the deadliest conflict fought since the end of the Second World War and still on-going today, the Congolese Civil

<sup>214</sup> *Human Rights Watch*, ‘Rearming with Impunity: International Support for the Perpetrators of the Rwandan Genocide’ (May 1995) Report 7 (4) <[www.hrw.org/reports/1995/Rwanda1.htm](http://www.hrw.org/reports/1995/Rwanda1.htm)> accessed 10 October 2018.

<sup>215</sup> McNulty (n 213).

<sup>216</sup> Matt Wells, ‘Arms firm linked to Rwandan army chief’ *The Guardian* (10 February 2000) <[www.theguardian.com/politics/2000/feb/10/ethicalforeignpolicy.foreignpolicy1](http://www.theguardian.com/politics/2000/feb/10/ethicalforeignpolicy.foreignpolicy1)> accessed 10 October 2018.

<sup>217</sup> Helen Epstein, ‘America’s secret role in the Rwandan genocide’ *The Guardian* (12 September 2017) <[www.theguardian.com/news/2017/sep/12/americas-secret-role-in-the-rwandan-genocide](http://www.theguardian.com/news/2017/sep/12/americas-secret-role-in-the-rwandan-genocide)> accessed 10 October 2018.

<sup>218</sup> *ibid.*

War – the Obama administration came to realize (only after a UN panel informed) that the Kagame government was funding the M23 terrorist group in neighbouring DRC and in response halted aid deliveries to Rwanda.<sup>219</sup>

## 2.8 DRC

The mentioned Congolese Civil War started in 1996. Nine other African countries and around 25 armed groups became involved in it and by 2008, it is estimated to have caused more than 5,5 million deaths and more than 3 million displaced Congolese. The conflict formally ended in 2003, yet violence is still on-going in at least three significant centres – whose location, unsurprisingly, overlaps with the location of the richest mineral reserves in the country. Attempting to relieve the situation, the SC first imposed an arms embargo in 2003 with Resolution 1493,<sup>220</sup> in particular targeting areas in Eastern Congo still suffering from conflict, yet several years later a UN Report condemned the United States and China for failing to prevent arms deliveries to the conflict areas – China to the Congolese government and the United States to rebel groups.<sup>221</sup> The controversial American policies in the region also came to the fore with the American veto on a proposed resolution condemning Rwanda and Uganda's arming of rebel groups operating in DRC – groups infamous for committing war crimes.<sup>222</sup> In 2008 Resolution 1807 lifted restrictions on the import of arms by the Congolese government, while the ones against the rebels are still in place.<sup>223</sup>

<sup>219</sup> UN SC, 'Letter dated 12 November 2012 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council' (15 November 2012) UN Doc S/2012/843 <[www.securitycouncilreport.org/atf/cf/%7b65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/s\\_2012\\_843.pdf](http://www.securitycouncilreport.org/atf/cf/%7b65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/s_2012_843.pdf)> accessed 10 October 2018.

<sup>220</sup> UN SC Res 1493 (28 July 2003) UN Doc S/RES/1493.

<sup>221</sup> Mark Bromley and Paul Holton, 'Arms Transfers to the DRC: Assessing the System of Arms Transfer Notifications, 2008-2010' (October 2010) Stockholm International Peace Research Institute <[www.files.ethz.ch/isn/123005/SIPRIBP1010a.pdf](http://www.files.ethz.ch/isn/123005/SIPRIBP1010a.pdf)> accessed 10 October 2018.

<sup>222</sup> Holum Lynch, 'Is the U.S. blocking a controversial U.N. report to shield Rwanda?' (20 June 2012) Foreign Policy <[foreignpolicy.com/2012/06/20/is-the-u-s-blocking-a-controversial-u-n-report-to-shield-rwanda/](http://foreignpolicy.com/2012/06/20/is-the-u-s-blocking-a-controversial-u-n-report-to-shield-rwanda/)> accessed 10 October 2018.

<sup>223</sup> UN SC Res 1807 (31 March 2008) UN Doc S/RES/1807.



## 2.9 IRAQ

The next instance of spectacular violations of own resolutions by the P5 is the deadliest sanctions regime in history – the one directed against Iraq. Saddam’s invasion of Kuwait began on 2 August 1990 and attracted the fastest and most comprehensive response by the SC recorded thus far – something lacking for most crises in Africa, including Rwanda – as this time the P5 were determined to defend their oil-exporting allies in the Persian Gulf. Only four days after the invasion, Resolution 661 introduced an embargo on virtually all products originating in Iraq or Kuwait; forbade any commercial activities of their citizens; enacted asset freezes and a ban on financial and economic transfers to either country – with the exception of humanitarian assistance.<sup>224</sup> Giving those measures less than four months to work, Resolution 678 from 29 November gave Iraqi forces until 15 January to withdraw from Kuwait, or face the consequences of the mandate of the SC to ‘use all necessary measures’,<sup>225</sup> in a rare instance for the SC to employ Article 41 and only in a subsequent resolution, Article 42 – the only other case being Libya with resolutions 1970 and 1973 from 2011. Aerial and naval bombardment on Iraq began on 17 January and a ground invasion on 24 February. The campaign ended with a decisive victory for the allies four days later. One of the problems that arise when analysing the impact of sanctions on Iraq is the fact that it is nearly impossible to determine which measure was more fatal for Iraqi civilians – the employment of Article 41 or of Article 42.

In a case interesting for an analysis from the perspective of IHL – in light of universally recognized principles of proportionality and humanity – the facts state that more than 90,000 tons of explosives rained down on Iraq, most of it targeting civilian infrastructure and destroying industrial complexes; oil refineries; sewage pumping stations; telecommunications facilities; roads; railroads and dozens of bridges. Electricity generation was reduced to 4% of pre-war levels and water supply was crippled.<sup>226</sup> A UN report released in the aftermath of Operation Desert Storm by

<sup>224</sup> UN SC Res 661 (6 August 1990) UN Doc S/RES/661.

<sup>225</sup> UN SC Res 678 (29 November 1990) UN Doc S/RES/678.

<sup>226</sup> George A. Lopez, ‘Economic Sanctions and Failed States: Too Little, Too Late and Sometimes Too Much?’ (Conference on Failed States and International Security II: Sources of Prevention, Modes of Response, and Conditions of State Success and Renewal, Purdue University, 8–11 April 1999) <[www.comm.ucsb.edu/faculty/mstohl/failed\\_states/1999/papers/Lopez.html](http://www.comm.ucsb.edu/faculty/mstohl/failed_states/1999/papers/Lopez.html)> accessed 10 October 2018.

Undersecretary General Martti Ahtisaari informed of ‘near apocalyptic destruction’ of Iraq, which had been ‘relegated to a preindustrial age’ and ‘most means of modern life support have been destroyed or rendered tenuous.’<sup>227</sup>

Still it seems, that was not enough punishment for Iraq’s civilians, as the United States – led by the provider of the infamous statement mentioned in the Introduction of this study, Madeleine Albright – started a lobbying campaign for further sanctions, starting with Resolution 687 which obliged Iraq to pay repatriations and compensations to Kuwait; and subsequent resolutions introducing an oil embargo – argued to be a response to the notoriously disputed Iraqi production of weapons of mass destruction – nowhere to be found until this very day. The sanctions were only halted after the 2003 invasion. A study conducted in 1999 claimed they were responsible for the deaths of 567,000 Iraqi children since the end of the Gulf War.<sup>228</sup> A 1999 UNICEF report found that 500,000 children died as a result of the sanctions, between 1991 and 1999.<sup>229</sup> Invoking concern over grave civilian suffering, the SC in 1995 with Resolution 986<sup>230</sup> introduced the Oil-for-Food-Programme – as envisaged by the Clinton administration – with the first shipment of supplies reaching Iraq only in March 1997. Instead of providing relief to civilians struggling under this policy of ‘genocidal’ sanctions, the Programme became one of the most notorious projects ever to be undertaken by the UN. The UN Humanitarian Coordinator in Baghdad, Denis Halliday, resigned his post in October 1998 after a 34-year career in the UN stating ‘I don’t want to administer a programme that satisfies the definition of genocide.’ Hans von Sponeck, his successor, also resigned in protest after two years on the post – calling the effects of the sanctions ‘a

<sup>227</sup> UN SC, ‘Report to the Secretary-General on Humanitarian Needs in Kuwait and Iraq in the Immediate Post-Crisis Environment by a Mission to the Area Led by Mr Martti Ahtisaari, Under Secretary-General for Administration and Management, 10-17 March 1991’ (20 March 1991) UN Doc S/22366 [para 8] <[www.un.org/Depts/oip/background/reports/s22366.pdf](http://www.un.org/Depts/oip/background/reports/s22366.pdf)> accessed 10 October 2018.

<sup>228</sup> Garfield, Richard, ‘Morbidity and Mortality among Iraqi Children from 1990 through 1998: Assessing the Impact of the Gulf War and Economic Sanctions’ (March 1999) <[reliefweb.int/sites/reliefweb.int/files/resources/A2E2603E5DC88A4685256825005F211D-garfie17.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/A2E2603E5DC88A4685256825005F211D-garfie17.pdf)> accessed 10 October 2018.

<sup>229</sup> UNICEF, ‘Iraq surveys show “humanitarian emergency”’ (12 August 1999) <[www.unicef.org/newsline/99pr29.htm](http://www.unicef.org/newsline/99pr29.htm)> accessed 10 October 2018.

<sup>230</sup> UN SC Res 986 (14 April 1995) UN Doc S/RES/986.

true human tragedy'. The head of WFP in Iraq, Jutta Burghardt, followed them.<sup>231</sup>

Senior bureaucrats informed that out of the total budget of \$60 billion, 'roughly 65% was actually applied to aid'.<sup>232</sup> While electricity was available in Iraq only for a couple of hours per day, about 193 "electrical consultants" with the Programme each received a monthly salary of \$15,000. In the period following the 2003 invasion, a major scheme was unearthed – in which individuals and organizations either sympathetic to the Iraqi regime or easily bribed – were given oil contracts which could then be sold on the open market. The seller was allowed to keep a transaction fee – estimated between \$0.15 and \$0.50 per barrel. They would then refund the Iraqi government a certain percentage of the commission. Lists of companies, political parties and government entities coming from all of the P5 – as well as companies originating in more than a dozen other states – were revealed in several scandalous disclosures. Contracts for selling humanitarian goods were given to companies based on their willingness to pay back an agreed percentage to the Saddam government, and were overcharging for the products by up to 10% – part of it being diverted into Saddam's private bank accounts.

UN's involvement in the scheme was impossible to be covered up after in February 2004 the name of the executive director of the Programme, Benon Sevan, appeared on documents of Iraq's Oil Ministry – according to which he received vouchers for at least 11 million barrels of oil, worth about \$3.5 million. Sevan denies the charges. The UN Secretary-General's own son, Kojo Annan, was also implicated in the scandal – having obtained a job position within a firm working in the Programme with the help of his father; even though before the release of the reports of UN's internal inquiry into the scandal confirming this, Kofi Annan stated he was 'very disappointed and surprised' when he learned that his son had not

<sup>231</sup> John Pilger, 'Squeezed to Death' *The Guardian* (4 March 2000) <[www.theguardian.com/theguardian/2000/mar/04/weekend7.weekend9](http://www.theguardian.com/theguardian/2000/mar/04/weekend7.weekend9)> accessed 10 October 2018.

<sup>232</sup> Sharon Otterman, 'IRAQ: Oil for Food Scandal' (28 October 2005) Council on Foreign Relations <[www.cfr.org/backgrounder/iraq-oil-food-scandal](http://www.cfr.org/backgrounder/iraq-oil-food-scandal)> accessed 10 October 2018.

told him he was working for the Cotecna company in Geneva.<sup>233</sup> To this day, neither Annan nor Sevan, nor the advocates for the sanctions – as due to the alleged manufacturing of weapons of mass destruction – nor any stakeholder involved in the scheme described, has suffered any form of consequences. Neither one state nor any UN official has apologised to the Iraqi people for the sanctions regime estimated to have caused between half a million and a million civilian deaths, nor has anyone apologised for bombing them back into the stone age – either with the 1991 Operation Desert Storm or with the 2003 Operation Iraqi Freedom.

## 2.10 IVORY COAST

The Ivory Coast is yet another African site of several rounds of civil wars – the first starting in 2002 with a rebel *coup d'état*, and ending in 2007. French military troops and diplomacy were heavily involved in the developments in the state, both rebel and government forces, however, accused them of aiding the opposing side.<sup>234</sup> The UN introduced an arms embargo in 2004 with Resolution 1572.<sup>235</sup> Resolution 1643 from the following year extended the arms embargo to include travel ban, asset freeze as well as a ban on trade in diamonds.<sup>236</sup> Yet, following another round of violence in 2011, the SC expanded the arms embargo

<sup>233</sup> UN Independent Inquiry Committee into the Oil for Food Programme, 'Independent Inquiry Committee Finds Mismanagement and Failure of Oversight: UN Member States and Secretariat Share Responsibility' (7 September 2005) <[web.archive.org/web/20070612182124/http://www.iic-offp.org/documents/Sept05/Press\\_07Sept05.pdf](http://web.archive.org/web/20070612182124/http://www.iic-offp.org/documents/Sept05/Press_07Sept05.pdf)> accessed 10 October 2005; UN Independent Inquiry Committee into the Oil for Food Programme, 'Second Interim Report: The 1998 Procurement of the Humanitarian Goods Inspection Contract Other Conduct of United Nations Officials' (29 March 2005) <[static01.nyt.com/packages/pdf/international/20050329otex.pdf](http://static01.nyt.com/packages/pdf/international/20050329otex.pdf)> accessed 10 October 2018; Anne Penketh, 'Annan "surprised" at son's link to oil-for-food scandal' *The Independent* (30 November 2004) <[www.independent.co.uk/news/world/middle-east/annan-surprised-at-sons-link-to-oil-for-food-scandal-535044.html](http://www.independent.co.uk/news/world/middle-east/annan-surprised-at-sons-link-to-oil-for-food-scandal-535044.html)> accessed 10 October 2018; After the Oil-for-Food Programme Hearings in the American Senate, the chairman of the Sub-committee on Investigations called the UN Secretary-General at the time, Kofi Annan, to resign his post because of his failure of oversight of the Programme. See: *BBC*, 'US Senator Calls on Annan to quit' (1 December 2004) <[news.bbc.co.uk/2/hi/middle\\_east/4060249.stm](http://news.bbc.co.uk/2/hi/middle_east/4060249.stm)> accessed 10 October 2018.

<sup>234</sup> John Lichfield, 'France entangled in Ivory Coast war after Legionnaires kill rebels' *The Independent* (23 December 2002) <[www.independent.co.uk/news/world/africa/france-entangled-in-ivory-coast-war-after-legionnaires-kill-rebels-137107.html](http://www.independent.co.uk/news/world/africa/france-entangled-in-ivory-coast-war-after-legionnaires-kill-rebels-137107.html)> accessed 10 October 2018.

<sup>235</sup> UN SC Res 1572 (15 November 2004) UN Doc S/RES/1572.

<sup>236</sup> UN SC Res 1643 (15 December 2005) UN Doc S/RES/1643.

and expressed particular concern with the wide violations of the diamond embargo with Resolution 2045.<sup>237</sup> Since then, the situation in the country has gradually been stabilizing so the SC abolished economic sanctions in 2016 and withdrew its peacekeeping mission in 2017.

## 2.11 SUDAN

One more state involved in a life-long, multi-layered and a multi-sided conflict on the African continent is Sudan. With the international community's eyes on ending the War in South Sudan and the emergence of a new state – Darfur became a site of genocidal atrocities, with the ICC issuing two arrest warrants for the still-president of Sudan, Omar al-Bashir.<sup>238</sup> The ethnic cleansing in Darfur began at least as early as 2003 – yet China primarily and to a lesser extent, Russia – were blocking attempts to introduce sanctions; with China finally agreeing not to veto a resolution urging the Sudanese government to disarm the Janjaweed militias and introduce an arms embargo – only after it made sure the sanctions will apply only on weapons intended to be used in the Darfur region – with Resolution 1556 in July 2004.<sup>239</sup> Resolution 1591 of March 2005 placed restrictions on those ‘impeding the peace process’ including an arms embargo only against “them”, as well as a travel ban and an asset freeze.<sup>240</sup> This kind of policy demonstrated by China in the SC is widely accepted to be related to its business dealings with Al-Bashir's government – in particular the trade in oil.<sup>241</sup> Yet, even compliance with that form of diminished sanctions is weak – as China and Russia have been accused by *Amnesty International* of violating the arms embargo.<sup>242</sup> Three former members of the UN Sudan Sanctions Committee produced a report stating that international commitment to the sanctions had eroded to the point that even the UN facilitated the travel of a rebel commander, Jibril Abdul Kareem – the target of a

<sup>237</sup> UN SC Res 2045 (26 April 2012) UN Doc S/RES/2045.

<sup>238</sup> *The Prosecutor v. Omar Hassan Ahmad Al Bashir* (Pre Trial) (2009) ICC 02/05-01/09 <[www.icc-cpi.int/darfur/albashir](http://www.icc-cpi.int/darfur/albashir)> accessed 12 October 2018.

<sup>239</sup> UN SC Res 1556 (30 July 2004) UN Doc S/RES/1556.

<sup>240</sup> UN SC Res 1591 (29 March 2005) UN Doc S/RES/1591.

<sup>241</sup> Phillip Manyok, ‘Oil and Darfur's Blood: China's Thirst for Sudan's Oil’ (2016) *Journal of Political Sciences & Public Affairs* 4 (1).

<sup>242</sup> *BBC*, ‘China, Russia deny weapons breach’ (8 May 2007) accessed 10 October 2018 <[news.bbc.co.uk/1/hi/6632959.stm](http://news.bbc.co.uk/1/hi/6632959.stm)> accessed 10 October 2018.

travel ban – to peace talks in Doha.<sup>243</sup> Heavy violence and war crimes in Darfur are still taking place with impunity.

## 2.12 GUINEA-BISSAU

The people of the former Portuguese colony of Guinea-Bissau have not seen political stability nor security since their country's proclaimed independence in 1974. No president has served a full five-year term, as Guinea-Bissau has witnessed three *coup d'états*, one presidential assassination and three rounds of civil wars.<sup>244</sup> Following the latest coup in 2011, the SC introduced a travel ban on designated individuals recognized to have taken part in it with Resolution 2048 from May 2012.<sup>245</sup>

## 2.13 LEBANON

The SC could not manage to find a common ground on the Lebanese Civil War – as between 1975 and 1990 – the United States blocked ten and the Soviet Union one proposed resolution concerning the situation. The murder of Prime Minister Rafik Hariri in February 2005 and the following series of assassinations causing popular demonstrations resulted in a subsequent withdrawal of the Syrian troops from Lebanon. In an attempt to contain the crisis, the SC voted Resolution 1636 in October 2005 introducing nothing more than a travel ban and an asset freeze of individuals identified to have taken part in the Hariri assassination.<sup>246</sup> Lebanon subsequently witnessed the 2006 Civil War, the 2007 Conflict and 2008 Conflict. The sanctions are still in force, maintaining the same form and extent.

<sup>243</sup> Colum Lynch, 'What's the point of U.N. sanctions in Darfur when even the U.N. flouts them?' (30 April 2012) Foreign Policy <[foreignpolicy.com/2012/04/30/whats-the-point-of-u-n-sanctions-in-darfur-when-even-the-u-n-flouts-them/](http://foreignpolicy.com/2012/04/30/whats-the-point-of-u-n-sanctions-in-darfur-when-even-the-u-n-flouts-them/)> accessed 10 October 2018.

<sup>244</sup> Afua Hirsch, 'Guinea-Bissau votes to elect president but military overthrow feared' *The Guardian* (18 March 2012) <[www.theguardian.com/world/2012/mar/18/guinea-bissau-vote-president-military-coup](http://www.theguardian.com/world/2012/mar/18/guinea-bissau-vote-president-military-coup)> accessed 10 October 2018.

<sup>245</sup> UN SC Res 2048 (18 May 2012) UN Doc S/RES/2048.

<sup>246</sup> UN SC Res 1636 (15 December 2005) UN Doc S/RES/1636.

## 2.14 CAR

The CAR gained independence from France in 1960; yet, the first democratic presidential election was only held in 1993. The first round of violence broke out three years later. Since the deployment of a UN peacekeeping mission the next year, the CAR has hosted about a dozen more peacekeeping missions – thus earning the title ‘world champion of peacekeeping’.<sup>247</sup> Despite that, several rounds of unrest took place since 2001 and the Bush War broke out in 2004. Even though peace treaties were signed in 2007 and in 2011, the next round of fighting started in December 2012 – leading to ethnic and religious cleansings and massive population displacements. The SC introduced an arms embargo only in December 2012 with Resolution 2127;<sup>248</sup> a month later a travel ban and an asset freeze on individuals with Resolution 2134.<sup>249</sup> The arms embargo allows for exceptions for the CAR government – only with prior notice and a green light from the CAR Sanctions Committee. The measures have been extended in several instances and are still in force today.

## 2.15 YEMEN

The humanitarian disaster in Yemen did not emerge from UN-enacted sanctions, but from the unilaterally imposed siege by the Saudi-led coalition – with American and British support. Yemen is yet another state that has not witnessed stability ever since its independence from the British in the late 1960s; still, the seriousness of the implications of the crisis starting in 2011 is unprecedented even for the poorest country in the Middle East. The SC, however, reacted to the unfolding violence only after Saudi Arabia’s regional foes, the Houthis, appeared on the military map in 2014 and threatened to march on Sanaa, with Resolution 2140 – which, nevertheless, introduced nothing more than a travel ban and an asset freeze.<sup>250</sup> In late March 2015, the Saudi-led coalition began

<sup>247</sup> Tu McCormick, ‘One day we will start a big war’ (28 October 2015) Foreign Policy <[foreignpolicy.com/2015/10/28/one-day-we-will-start-a-big-war-central-african-republic-un-violence/](http://foreignpolicy.com/2015/10/28/one-day-we-will-start-a-big-war-central-african-republic-un-violence/)> accessed 10 October 2018.

<sup>248</sup> UN SC Res 2127 (5 December 2013) UN Doc S/RES/2127.

<sup>249</sup> UN SC Res 2134 (28 January 2014) UN Doc S/RES/2134.

<sup>250</sup> UN SC Res 2140 (26 February 2014) UN Doc S/RES/2140.

its intervention in Yemen. Resolution 2216 from the following month ‘Demands that all Yemeni parties, in particular the Houthis...to refrain from further unilateral actions that could undermine the political transition in Yemen...’<sup>251</sup>

The question which arises is whether this language only counts the Houthis among the parties whose ‘unilateral actions...could undermine the political transition in Yemen’, or others as well – such as the Saudi-led coalition which blocks humanitarian aid in an effort critics have described as a tool for starving Yemen into submission, and bombs children with impunity, also proven to be working closely with Al-Qaeda on the Arabian Peninsula; the United Arab Emirates whose prisons in Yemen conduct systematic rapes on detainees; or the United States and the United Kingdom whose intelligence provides for notoriously imprecise data on targets for air strikes (featuring funerals, weddings, hospitals and school busses) – in that definition as well.<sup>252</sup> The arms embargo enacted with the same resolution, nevertheless, only applies to individuals and entities supporting the side of the Houthis. The same measures are still in force today.

In numerous instances, Saudi Arabia and its SC allies (meaning the United States and the United Kingdom) have blamed Iran for supplying weapons to the Houthis – thus violating the arms embargo. The Houthis deny the alleged support, while Iranian officials have questioned Iranian ability to smuggle weapons under the tight Saudi blockade. In February this year, Russia vetoed a proposed SC Resolution drafted number 156 sponsored by the United Kingdom, which would have condemned Iranian violations on the arms embargo.<sup>253</sup> The United Kingdom – while prepared to point to yet-to-be-proven-by-hard-evidence, Iranian

<sup>251</sup> UN SC Res 2216 (14 April 2015) UN Doc S/RES/2216.

<sup>252</sup> Jon Sharman, ‘UN blacklists Saudi Arabia-led military coalition for killing or injuring hundreds of children in Yemen’ *The Independent* (6 October 2017) <[www.independent.co.uk/news/world/middle-east/un-blacklist-saudi-arabia-military-coalition-child-deaths-yemen-attacks-a7985881.html](http://www.independent.co.uk/news/world/middle-east/un-blacklist-saudi-arabia-military-coalition-child-deaths-yemen-attacks-a7985881.html)> accessed 10 October 2018; Jonathan Kennedy, ‘Blame the Saudis for Yemen’s cholera outbreak – they are targeting the people’ *The Guardian* (2 August 2017) <[www.theguardian.com/global-development/2017/aug/02/blame-saudi-coalition-for-yemen-cholera-outbreak](http://www.theguardian.com/global-development/2017/aug/02/blame-saudi-coalition-for-yemen-cholera-outbreak)> accessed 10 October 2018; Associated Press, ‘Sexual abuse rife at UAE-run jails in Yemen, prisoners claim’ *The Guardian* (20 June 2018) <[www.theguardian.com/world/2018/jun/20/yemen-sexual-abuse-uae-run-jails-prisoners-allegations](http://www.theguardian.com/world/2018/jun/20/yemen-sexual-abuse-uae-run-jails-prisoners-allegations)> accessed 10 October 2018; Akshaya Kumar, ‘UN Should Consider Sanctions for Yemen Aid Obstruction’ (8 November 2017) Human Rights Watch <[www.hrw.org/news/2017/11/08/un-should-consider-sanctions-yemen-aid-obstruction](http://www.hrw.org/news/2017/11/08/un-should-consider-sanctions-yemen-aid-obstruction)> accessed 10 October 2018

<sup>253</sup> UN SC Draft Res (26 February 2018) S/2018/156 <[www.securitycouncilreport.org/un-documents/document/s2018156.php](http://www.securitycouncilreport.org/un-documents/document/s2018156.php)> accessed 12 October 2018.



arms supplies to the Houthis – is less willing to look at its own, legally questionable – by domestic law as well as IHL – arms sales to hardly deniable violator of humanitarian and basic human rights law – Saudi Arabia; worth £1.1 billion in 2017 only – condemned by the British political opposition, domestic and international NGOs and legal experts alike.<sup>254</sup>

## 2.16 SOUTH SUDAN

The newest UN member state, South Sudan, experienced inter-ethnic warfare long before its independence in 2011, but a full-scale civil war began in 2013 between government and opposition armed groups and is still on-going today, estimated to have taken the lives of at least 300,000 people and displaced around 3 million. The SC imposed a travel ban and an asset freeze on individuals and entities engaging in actions against the peace belonging to either of the military camps with Resolution 2206 from 2015,<sup>255</sup> and only introduced an arms embargo this past July with Resolution 2428.<sup>256</sup> China has been accused by the UN for grave breaches of the arms embargo.<sup>257</sup>

## 2.17 MALI

Mali became an independent republic in the 1960s and a democracy in the 1990s. Since the early 1990s, several rounds of violence shook the West African state and a civil war broke out in 2012 between government and rebel groups and military fractions. As is the case with most conflicts in that part of Africa – France intervened military the

<sup>254</sup> Diane Abbot, 'British arms sales to Saudi Arabia are immoral and illegal' *The Guardian* (25 March 2016) <[www.theguardian.com/commentisfree/2016/mar/25/british-arms-sales-saudi-arabia-immoral-illegal-yemen](http://www.theguardian.com/commentisfree/2016/mar/25/british-arms-sales-saudi-arabia-immoral-illegal-yemen)> accessed 10 October 2018; *Amnesty International*, 'Why the United Kingdom must stop arms sales to Saudi Arabia' (8 August 2018) <[www.amnesty.org.uk/why-uk-must-stop-arms-sales-saudi-arabia](http://www.amnesty.org.uk/why-uk-must-stop-arms-sales-saudi-arabia)> accessed 10 October 2018.

<sup>255</sup> UN SC Res 2026 (14 December 2011) UN Doc S/RES/2026.

<sup>256</sup> UN SC Res 2428 (13 July 2018) UN Doc S/RES/2428.

<sup>257</sup> UN SC, 'Letter dated 21 August 2015 from the Panel of Experts on South Sudan established pursuant to Security Council resolution 2206 (2015) addressed to the President of the Security Council' (21 August 2015) UN Doc S/2015/656 <[www.un.org/ga/search/view\\_doc.asp?symbol=S/2015/656](http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/656)> accessed 10 October 2018.

following year, yet, to no avail. Violence is still ravaging the country, due to which the SC introduced an asset freeze and a travel ban against designated individuals and entities in 2017 – with Resolution 2374.<sup>258</sup>

## 2.18 IRAN

As the Iraqi invasion of 2003 revealed no proof of production of weapons of mass destruction, Iran was bestowed the new Middle Eastern “bogeyman” – representing a danger to the region – at least for those advocating sanctions – in terms of its capability to develop prohibited weapons. Resolution 1696 of July 2006 demanded that Iran suspends all enrichment-related activities and threatened sanctions.<sup>259</sup> As it maintains for the past 12 years, Iran back then also claimed its nuclear programme is for civilian uses – including electricity-generating and medical purposes.<sup>260</sup> That did not convince the P5, so Resolution 1737 from December the same year banned the supply of nuclear-related materials and technology and introduced an asset freeze against individuals and companies related to the programme.<sup>261</sup> Resolution 1747 from March 2007 enacted an arms embargo.<sup>262</sup> Introduced in June 2010, Resolution 1929 targeted Iran’s banking sector and represents a type of a precedent for this kind of measures.<sup>263</sup> It recommended that states inspect Iranian cargo; prevent the provision of financial services used for sensitive nuclear activities; closely watch Iranian individuals and entities when dealing with them; prohibit the opening of Iranian banks on their territory and prevent Iranian banks from entering into relationship with their banks if it might contribute to the nuclear programme; as well as to prevent financial institutions operating on their territory from opening offices and accounts in Iran.

The provisions of the above-mentioned resolutions, therefore,

<sup>258</sup> UN SC Res 2374 (5 September 2017) UN Doc S/RES/2374.

<sup>259</sup> UN SC Res 1696 (31 July 2006) UN Doc S/RES/1696.

<sup>260</sup> Uriel Abulof, ‘Revisiting Iran’s Nuclear Rationales’ (2014) *International Politics* 51 (3) 404–15; UN SC, ‘Iranian Ambassador Zarif Statement before the Security Council’ (20 December 2006) <[www.un.int/iran/statements/securitycouncil/articles/Dr.%20Zarif%20Statement%20befor%20the%20Security%20Council.%20Dec.%2023.2006.pdf](http://www.un.int/iran/statements/securitycouncil/articles/Dr.%20Zarif%20Statement%20befor%20the%20Security%20Council.%20Dec.%2023.2006.pdf)> accessed 10 October 2018.

<sup>261</sup> UN SC Res 1737 (23 December 2006) UN Doc S/RES/1737.

<sup>262</sup> UN SC Res 1747 (24 March 2007) UN Doc S/RES/1747.

<sup>263</sup> UN SC Res 1929 (9 June 2010) UN Doc S/RES/1929.

negatively influenced a wide range of Iran's economic sectors – including its missile and arms industry, the Islamic Revolutionary Guard Corps, its nuclear industry, energy and petroleum industry, banking sector, the Central Bank of Iran, shipping industry, international trade, insurance sector and foreign firms doing business with Iran. In addition to the sanctions introduced by the UN, the EU and the United States enacted their own sets of measures, further targeting these sectors – the harshest being EU's embargo on Iranian oil introduced in October 2012.<sup>264</sup> Consequently, since 2011, the value of the Iranian rial is estimated to have devalued up to 80%, falling 10% immediately after the imposition of the EU oil embargo. Social and economic effects of sanctions are undoubtedly severe. The rise in black market dealings due to the prohibitions is reported to be notoriously high.<sup>265</sup> This has brought to the fore a two-sided problem. On one hand, it weakens government oversight – which is why officials have tried to cutback illegal activities by offering rates 2% below the alleged black-market rates – yet high demand seems to be overpowering their efforts.<sup>266</sup> On the other hand, as several analysts argue, the market for imports is dominated by state and state-friendly companies, since the only way to get around the sanctions is smuggling – which requires strong connections with the government.<sup>267</sup> Consequent phenomena have been weakened Iranian civil society and empowered state institutions, yet also increased corruption and organized crime.<sup>268</sup> These developments, namely, weakened state institutions and notorious corruption levels – leading to a failed state – simultaneously taking place with increased dictatorial powers of a regime and thus state capture – can be closely compared to the ones taking place in Iraq during the 1990s sanctions.

The situation in the Middle East as it is today – brought into being by brutal civil and, at the same time, international wars in Syria, Iraq and

<sup>264</sup> Julian Borger, 'EU agrees Iran oil embargo' *The Guardian* (4 July 2012) <[www.theguardian.com/world/2012/jan/04/eu-iran-oil-embargo-ban](http://www.theguardian.com/world/2012/jan/04/eu-iran-oil-embargo-ban)> accessed 10 October 2018.

<sup>265</sup> Amir Paivar, 'Iran currency crisis: Sanctions detonate unstable rial' *BBC* (2 October 2012) <[www.bbc.co.uk/news/business-19800532](http://www.bbc.co.uk/news/business-19800532)> accessed 10 October 2018.

<sup>266</sup> Najmer Bozorgmehr, 'Iran's currency traders forced underground' *Financial Times* (26 October 2012)

<[www.ft.com/content/d3396c9c-1c4e-11e2-a63b-00144feabdc0#axzz2Kkf9GUJG](http://www.ft.com/content/d3396c9c-1c4e-11e2-a63b-00144feabdc0#axzz2Kkf9GUJG)> accessed 10 October 2018.

<sup>267</sup> Greg Thielmann and Matthew Surgue, 'The UN Sanctions' Impact on Iran's Military' (11 June 2010) Arms Control, Issue Brief 1 (7) <[www.armscontrol.org/issuebriefs/iransanctionseffectonmilitary](http://www.armscontrol.org/issuebriefs/iransanctionseffectonmilitary)> accessed 10 October 2018.

<sup>268</sup> *ibid.*

Yemen; the West's favoured energy-partner Saudi Arabia's role in the chaos created; the ever-increasing economic development and domestic production in the EU, or, at least, parts of the EU – bringing about the need for both larger as well as more diverse energy sources; certain foreign-policy principles of the Obama administration, nevertheless, not followed everywhere; and last but not least, Russia and China's growing geo-political influence – proved themselves to be the perfect combination for the West to have a “change of heart” and decide to find a compromise with Iran, in the form of negotiations that led to the JCPOA. A full “180” on its policy towards Iran was, nonetheless, demonstrated in particular by the EU – following its comprehensive oil embargo on Iran introduced in 2012. The change in rhetoric as evolved from the Ahmadinejad to the Rouhani presidency played its role on Iran's part.<sup>269</sup>

The JCPOA was completed on 14 July 2015.<sup>270</sup> It demanded that Iran either limits or completely dismantles its activities in the following sectors: uranium enrichment, uranium stockpile, research and development of nuclear energy; close several nuclear reactors and completely submit itself to regular monitoring and verification by the IAEA, and in exchange, all of the UN and most of the EU and United States sanctions would be lifted. The provisions were agreed to be overseen by a Joint Commission composed by the P5+1 (Germany), EU and Iran – also in charge of mediation in the case of a dispute. The dispute resolution mechanism is described in detail in Articles 36 and 37 of the JSPOA. It requires the parties to submit complaints to the Joint Commission, which has to make a decision in 15 days, or submit the issue to another arbitration, which needs to deliver in further 20 days. In the case that such a compromise cannot be reached, the UN SC is the body where the discussion must continue. The described mechanism – as clear, precise and thorough as is – is one of very few such mechanisms introduced in international relations thus far and it is specifically designed to address fears of unilateral acts by either side.<sup>271</sup>

<sup>269</sup> Dan Roberts, ‘Obama holds historic phone call with Rouhani and hints at end to sanctions’ *The Guardian* (28 September 2013) <[www.theguardian.com/world/2013/sep/27/obama-phone-call-iranian-president-rouhani](http://www.theguardian.com/world/2013/sep/27/obama-phone-call-iranian-president-rouhani)> accessed 10 October 2018

<sup>270</sup> JCPOA (signed 14 July 2015, entered into force on 16 January 2015) Parties: China, France, Germany, EU, Iran, Russia, United Kingdom, United States (withdrew).

<sup>271</sup> EU, ‘Information Note on EU sanctions to be lifted under the Joint Comprehensive Plan of Action’ (23 January 2016) <[eeas.europa.eu/archives/docs/top\\_stories/pdf/iran\\_implementation/information\\_note\\_eu\\_sanctions\\_jcpoa\\_en.pdf](http://eeas.europa.eu/archives/docs/top_stories/pdf/iran_implementation/information_note_eu_sanctions_jcpoa_en.pdf)> accessed 10 October 2018.

The deal was subsequently endorsed by SC Resolution 2231 which confirmed all its provisions<sup>272</sup> – thus making any violation of the JCPOA a violation against the SC and the whole international community. The P5, therefore, have had the opportunity to analyse, vote and sign upon the provisions of the JCPOA on two occasions.

Yet, even though one of the main purposes of international law, as envisaged and designed, is to prevent change of national governments to modify international legal structures, and despite the JCPOA being constructed to counter unilateral actions by state-parties; “American exceptionalism” seems to have all but nullified what has been negotiated for so long. On 8 May this year, president Trump announced the United States would withdraw from the Iran deal. According to his own statements, he based this decision not on factual evidence of Iran breaching the provisions of the deal – but to a greater extent on his opinion that the previous administration made a ‘horrible, one-sided deal’.<sup>273</sup> The United States announced two sets of unilateral sanctions against Iran, the first package came into force on 7 August and includes restrictions on: Iran’s purchases of US dollars; trade in gold and other precious metals; sales of auto parts to Iran; commercial passenger aircrafts and related parts and services. The second set will be introduced on 4 November this year and will target trade in oil and petrochemical products.<sup>274</sup>

On that date, another notoriously restrictive measure will come into force, namely, the United States will sanction comprehensively – meaning will completely ban from trade of any kind with the United States – not only domestic, but foreign firms doing any kind of business with Iran<sup>275</sup> – measures the United States government failed to introduce against its own companies identified to have breached UN sanctions regimes against several countries presented in this historical timeline. The Trump administration has rejected several requests by European firms for exceptions allowing them

<sup>272</sup> UN SC Res 2231 (20 July 2015) UN Doc S/RES/2231.

<sup>273</sup> Julian Borger, ‘Iran deal: Trump breaks with European allies over “horrible, one-sided” nuclear agreement’ *The Guardian* (9 May 2018) <[www.theguardian.com/world/2018/may/08/iran-deal-trump-withdraw-us-latest-news-nuclear-agreement](http://www.theguardian.com/world/2018/may/08/iran-deal-trump-withdraw-us-latest-news-nuclear-agreement)> accessed 10 October 2018.

<sup>274</sup> CFR editors, ‘The Return of U.S. Sanctions on Iran: What to Know’ (6 August 2018) Council on Foreign Relations <[www.cfr.org/article/return-us-sanctions-iran-what-know](http://www.cfr.org/article/return-us-sanctions-iran-what-know)> accessed 10 October 2018.

<sup>275</sup> *ibid.*

to do business with both the United States and Iran. Several major companies which invested in Iran in the aftermath of the JCPOA have consequently left the country – one of them being French oil conglomerate Total.<sup>276</sup> This type of measures, according to several analysts, is not only unprecedented in international relations, but has almost nothing to do with international law and more to do with ‘international bullying’;<sup>277</sup> and although the case is fresh and not yet considered in full by international institutions – analysts hint it is a violation against several international structures and their principles, the UN and the WTO in particular. Furthermore, the withdrawal from the deal itself can be considered a breach of one of the fundamental legal principles in international relations – in existence long before the current international order came into being, so long that there is a consensus on its *jus cogens* nature – namely, the principle of *bona fide*.<sup>278</sup>

These arguments were also presented by Iran in its lawsuit against the United States before the ICJ, submitted on 17 July.<sup>279</sup> The Court’s decision will undoubtedly represent a legal precedent, since this type of sanctions has not been delivered upon by the ICJ before and will surely be something thought-provoking to see and study.

<sup>276</sup> David Keohane, ‘Threat of United States sanctions pushes France’s Total out of Iran’ *Financial Times* (20 August 2018) <[www.ft.com/content/6baba178-a459-11e8-926a-7342fe5e173f](http://www.ft.com/content/6baba178-a459-11e8-926a-7342fe5e173f)> accessed 10 October 2018.

<sup>277</sup> Seyed Houssein Mousavian, ‘Commentary: How bullying Iran could backfire for Trump’ *Reuters* (1 May 2018) <[www.reuters.com/article/us-mousavian-iran-commentary/commentary-how-bullying-iran-could-backfire-for-trump-idUSKBN1I23XK](http://www.reuters.com/article/us-mousavian-iran-commentary/commentary-how-bullying-iran-could-backfire-for-trump-idUSKBN1I23XK)> accessed 10 October 2018; Hashem Ahelbarra, ‘Iran president: “United States must stop bullying the world”’ *Al Jazeera* (27 September 2018) <[www.aljazeera.com/news/2018/09/iran-president-us-stop-bullying-world-180927080522366.html](http://www.aljazeera.com/news/2018/09/iran-president-us-stop-bullying-world-180927080522366.html)> accessed 10 October 2018; Pepe Escobar, ‘EU finally stands up to United States ‘bullying’ over Iran sanctions’ *Asia Times* (30 September 2018) <[www.atimes.com/article/eu-finally-stands-up-to-us-bullying-over-iran-sanctions/](http://www.atimes.com/article/eu-finally-stands-up-to-us-bullying-over-iran-sanctions/)> accessed 10 October 2018.

<sup>278</sup> WTO, ‘Principles and Concepts of General Public International Law’ <[www.wto.org/english/tratop\\_e/dispu\\_e/repertory\\_e/p3\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/repertory_e/p3_e.htm)> accessed 10 October 2018.

<sup>279</sup> *Iran institutes proceedings against the United States with regard to a dispute concerning alleged violations of the Treaty of Amity, Economic Relations, and Consular Rights between Iran and the United States, and requests the Court to indicate provisional measures* (Press release) [17 July 2018] ICJ <[www.icj-cij.org/files/case-related/175/175-20180717-PRE-01-00-EN.pdf](http://www.icj-cij.org/files/case-related/175/175-20180717-PRE-01-00-EN.pdf)> accessed 12 October 2018.

## 2.19 TALIBAN

The first time the UN sanctioned a sub-state actor was with Resolution 1267 from 1999;<sup>280</sup> targeting both the Taliban and Al-Qaeda in a single sanctions regime – considering that at the time Bin Laden and his associates were operating on Afghan territory and were protected by the Taliban. Nevertheless, since Resolution 1989 was adopted in 2011,<sup>281</sup> the Taliban and Al-Qaeda have been separated into two regimes. Resolution 1267 was a response to the Taliban’s overtaking of Kabul; wide human rights violations of domestic and foreign citizens; war crimes as well as destruction of historical legacy. The measures imposed a limited air and financial embargo on the Taliban. Resolution 1333 from December the following year introduced an asset freeze for Bin Laden and his associates; an arms embargo over Afghan territory controlled by the Taliban and embargo on the chemical acetic anhydride.<sup>282</sup> That chemical was specifically targeted due to its use for the synthesis of heroin by the diacetylation of morphine; and was therefore intended to limit the Taliban’s ability to fund its activities through trade in opioids. After the NATO-led invasion from 2001, Resolution 1390 from 2002 lifted the air embargo, while the measures against the Taliban and key individuals remain in force.<sup>283</sup>

Yet, despite one of the largest ever recorded international interventions – in terms of military and political engagement; duration as well as the amount of development assistance spent – the Afghan invasion, according to several categories of stakeholders and analysts, can be regarded as a major failure of the international community – considering that 2018 is the deadliest year up-to-date; the Taliban is increasingly gaining territories; and poverty is on the rise – as in 2017 there were 1.3 million more people living below the poverty line than in 2011 and more and more Afghan children are starving to death.<sup>284</sup> It is hardly deniable the key variable behind the intervention’s success is precisely the target of UN sanctions – as the link

<sup>280</sup> UN SC Res 1267 (15 October 1999) UN Doc S/RES/1267.

<sup>281</sup> UN SC Res 1989 (17 June 2011) UN Doc S/RES/1989.

<sup>282</sup> UN SC Res 1333 (19 December 2000) UN Doc S/RES/1333.

<sup>283</sup> UN SC Res 1390 (16 January 2002) UN Doc S/RES/1390.

<sup>284</sup> Alfred McCoy, ‘How the heroin trade explains the United States-United Kingdom failure in Afghanistan’ *The Guardian* (9 January 2018) <[www.theguardian.com/news/2018/jan/09/how-the-heroin-trade-explains-the-us-uk-failure-in-afghanistan](http://www.theguardian.com/news/2018/jan/09/how-the-heroin-trade-explains-the-us-uk-failure-in-afghanistan)> accessed 10 October 2018; World Bank, ‘Afghanistan Poverty Status Update – Progress at Risk’ (8 May 2017) Poverty Status Update Report <[www.worldbank.org/en/country/afghanistan/publication/afghanistan-poverty-status-update-report-2017](http://www.worldbank.org/en/country/afghanistan/publication/afghanistan-poverty-status-update-report-2017)> accessed 10 October 2018; Jon Stone, ‘Children starving to death in Afghanistan in need of international aid, UN warns’ *The Independent* (10 January 2017) <[www.independent.co.uk/news/uk/politics/afghanistan-international-aid-united-national-un-food-kabul-a7519471.html](http://www.independent.co.uk/news/uk/politics/afghanistan-international-aid-united-national-un-food-kabul-a7519471.html)> accessed 10 October 2018.

between security and the living standard in Afghanistan is opium production itself. ‘Throughout its three decades in Afghanistan, Washington’s military operations have succeeded only when they fit reasonably comfortably into central Asia’s illicit traffic in opium – and suffered when they failed to complement it.’<sup>285</sup> Various UN reports inform of the ever growing poppy cultivation, increasing 120% between 1999 and 2016.<sup>286</sup> In light of these facts, hints about the cause behind United States inefficiency in fighting opium production have varied from accusations of tolerating and condoning – to supporting poppy cultivation as a justification for extended American presence, ‘Afghanistan’s unique ecology converged with American military technology transformed this remote, landlocked nation into the world’s first true narco-state...’<sup>287</sup> The possibility of having yet another case of a P5 member violating sanctions they have voted for will be left open to interpretation in this study – as the previous examples were argued to be such on the basis of either UN, governmental agencies or courts’ official findings – and these are something the Afghan case still lacks.

## 2.20 AL-QAEDA

As mentioned, the Al-Qaeda sanctions regime as separate from the Taliban was established with Resolution 1989 which introduced asset freeze, travel ban and an arms embargo on individuals and entities associated with Al-Qaeda – as identified by the regularly upgraded Consolidated List which currently contains the names of 263 individuals and 83 entities and was last updated on 4 October 2018.<sup>288</sup> As is the case with the Taliban, the emergence of Al-Qaeda, its funding, training and supporting in various other ways – is undeniably linked to American geopolitical interests in the region,<sup>289</sup> beginning with the anti-Soviet upsurge in Afghanistan. While

<sup>285</sup> McCoy (n 284).

<sup>286</sup> UNODC ‘Afghanistan opium survey’ (November 2017) <[www.unodc.org/unodc/en/frontpage/2017/November/afghan-opium-production-jumps-to-record-level--up-87-per-cent\\_-survey.html](http://www.unodc.org/unodc/en/frontpage/2017/November/afghan-opium-production-jumps-to-record-level--up-87-per-cent_-survey.html)> accessed 10 October 2018; UNODC, ‘Afghanistan Opium Survey 2016’ (2016) Executive Summary Report <[www.unodc.org/documents/crop-monitoring/Afghanistan/AfghanistanOpiumSurvey2016\\_ExSum.pdf](http://www.unodc.org/documents/crop-monitoring/Afghanistan/AfghanistanOpiumSurvey2016_ExSum.pdf)> accessed 10 October 2018.

<sup>287</sup> McCoy (n 284).

<sup>288</sup> UNSC ‘Committee 1267 (1999) 1989 (2011 ) and 2253 (2015) concerning Daesh, Al-Qaida and associated individuals, groups, undertakings and entities’ <[www.un.org/securitycouncil/sanctions/1267](http://www.un.org/securitycouncil/sanctions/1267)> accessed 10 October 2018

<sup>289</sup> Alym Güney and Fulya Gökcan, ‘The “Greater Middle East” as a “Modern” Geopolitical Imagination in American Foreign Policy’, (2010) *Geopolitics* 15 22–38 <[www.tandfonline.com/doi/pdf/10.1080/14650040903420370](http://www.tandfonline.com/doi/pdf/10.1080/14650040903420370)> accessed 10 October 2018.



since the end of the Cold War the United States officially denies support for such organizations – considering they are included on the United States’ own list of terrorist organizations – denouncement for their activities still lacks by the closest American ally in the Middle East after Israel – Saudi Arabia.

It is difficult to deny both Saudi backing as well as American awareness for it, considering numerous findings – including the Council on Foreign Relations Terrorist Financing Task Force – whose report as early as in 2002 concluded ‘For years, individuals and charities based in Saudi Arabia have been the most important source of funds for al-Qaeda. And for years, Saudi officials have turned a blind eye to this problem.’<sup>290</sup> A leaked 2009 State Department memo by then Secretary of State, Hillary Clinton, stated that ‘donors in Saudi Arabia constitute the most significant source of funding to Sunni terrorist groups worldwide.’<sup>291</sup> The controversies around Saudi Arabia and its biggest weapons supplier came to the fore once again with the Arab Spring and the Syrian and Yemeni ordeals. In Yemen, with the goal of fighting the ideologically Shia-oriented Houthis, the Saudi coalition, which, as explained – is strongly backed by the United States and the United Kingdom – has reportedly been ‘cutting deals’ with the Sunni extremists – Al-Qaeda. As reported, ‘Elements of the United States military are clearly aware that much of what the United States is doing in Yemen is aiding Al-Qaeda on the Arabian Peninsula and there is much angst about that.’<sup>292</sup>

## 2.21 DAESH

UN sanctions against Daesh were introduced as late as in December 2015 with Resolution 2253 and included the same three measures as the sanctions against Al-Qaeda.<sup>293</sup> In accordance with the magnitude and duration of the Syrian tragedy – these measures are still in force. Nonetheless, this sanctions regime has too been violated on a spectacular scale. As the emergence of

<sup>290</sup> Council on Foreign Relations, ‘Terrorist Financing’ (2002) Report of an Independent Task Force Sponsored by the Council on Foreign Relations <[www.cfr.org/report/terrorist-financing](http://www.cfr.org/report/terrorist-financing)> accessed 10 October 2010.

<sup>291</sup> Wikileaks, ‘Terrorist Finance: Actions request for senior level engagement on terrorism finance’ (30 December 2003) <[wikileaks.org/plusd/cables/09STATE131801\\_a.html](http://wikileaks.org/plusd/cables/09STATE131801_a.html)> accessed 10 October 2018.

<sup>292</sup> *Al Jazeera*, ‘Report: Saudi-UAE coalition “cut deals” with al-Qaeda in Yemen’ (6 August 2018) <[www.aljazeera.com/news/2018/08/report-saudi-uae-coalition-cut-deals-al-qaeda-yemen-180806074659521.html](http://www.aljazeera.com/news/2018/08/report-saudi-uae-coalition-cut-deals-al-qaeda-yemen-180806074659521.html)> accessed 10 October 2018.

<sup>293</sup> UN SC Res 2253 (17 December 2015) UN Doc S/RES/2253.

Daesh is closely linked to Al-Qaeda – violators of both sanctions regimes should also be observed conjointly. Sanctions against Daesh have almost certainly been breached in particular by Saudi Arabia and Qatar. Regarding their support for what president Obama has described as ‘the face of evil’,<sup>294</sup> Wikileaks disclosures led analysts to conclude that ‘There is a bizarre discontinuity between what the Obama administration knew about the jihadis and what they would say in public.’<sup>295</sup>

Since Russia’s intervention in the Syrian Civil War on the side of Assad’s dictatorial regime began in September 2015, Russian officials and government institutions – including the Ministry of Defence and the Ministry of Foreign Affairs – have, on numerous occasions, accused the United States-led coalition in Syria – also including its European allies from the SC – which is currently conducting yet another illegal bombing campaign without a SC-approved mandate – of shielding and supporting Daesh. Accusations of cooperation between the United States and Daesh against their common opponent, Assad’s regime, have varied – from reports of the United States coalition’s avoidance to bomb Daesh targets in the areas under its air control; providing ammunition and training; to even facilitating the organisation of public relations provocations in the form of video-movies allegedly showing the aftermaths of government-conducted chemical attacks on Syrian civilians – as an excuse for further involvement in Syria.<sup>296</sup> In anticipation of a long-awaited halt of the Syrian carnage, the scope of the international community’s failures in yet another Middle Eastern country is yet to be fully scrutinized.

<sup>294</sup> Stephen Colinson, ‘Obama unyielding on ISIS as criticism mounts after Paris attacks’ CNN (17 November 2015) <edition.cnn.com/2015/11/16/politics/obama-isis-strategy-paris-attacks/index.html> accessed 10 October 2018.

<sup>295</sup> Patrick Cockburn, ‘We finally know what Hillary Clinton knew all along – United States allies Saudi Arabia and Qatar are funding Isis’ *The Independent* (14 October 2016) <www.independent.co.uk/voices/hillary-clinton-wikileaks-email-isis-saudi-arabia-qatar-us-allies-funding-barack-obama-knew-all-a7362071.html> accessed 10 October 2018.

<sup>296</sup> *Ministerstvo oboreny Rossii* [Ministry of Defence of Russia], ‘Nacalnik operativnogo upravlenia Genshtaba VS RF general-polkovnik Sergey Rudsko provel brifing dla predstavitelei SMI’ [Chief of the Main Operations Directorate of the General Staff of the Armed Forces of the Russian Federation, Colonel-General Sergei Rudskoy’s press briefing] (9 June 2017) Press Briefing <function.mil.ru/news\_page/country/more.htm?id=12127977@egNews> accessed 10 October 2018; *RIA Novosti*, ‘Pozvolili uiti: Minoboronii obvinilo SSA v pramoj podrzke IG v Sirii’ [They allowed them to leave: Ministry of Defense accused the United States of directly supporting ISIS in Syria] (15 November 2017) <ria.ru/syria/20171115/1508826658.html> accessed 10 October 2018.

3.

POLICY-CONCLUSIONS OF UN'S USAGE OF ECONOMIC  
SANCTIONS

3.1 INTRODUCTION

As mentioned, this study's main purpose is to assess the effectiveness of UN-introduced sanctions in regard to their contribution towards UN's central goals. With sanctions' legal foundations and their ambiguities analysed in the First Chapter; and the practical application of those provisions reviewed in the Second Chapter; this section aims to present the most important pragmatic aspects derived from UN's usage of sanctions thus far. The arguments used here primarily originate from evidence obtained of the 30 sanctions regimes enacted by the UN,<sup>297</sup> yet, the premises of all those arguments are also well established in theoretical form in the literature – not in particular regard to UN's practices, but relating to sanctions in general. The main purpose of this chapter, therefore, is to link the already well elaborated positive and negative aspects of economic sanctions from the literature to findings from the ground – with an exclusive focus on UN's practical actions.

The first section will present the problem of measuring the effectiveness of sanctions and will contain both appraising and condemning critiques on sanctions. The Second Subchapter will analyse certain practical issues and controversies that have thus far arisen from the SC's conduct towards the 30 sanctions regimes it has enacted – without trying to dispute the legal foundations providing the SC with the authority to introduce and deliver upon economic sanctions.

<sup>297</sup> UN SC 'Sanctions Committee Information' (2018) <[www.un.org/sc/suborg/en/sanctions/information](http://www.un.org/sc/suborg/en/sanctions/information)> accessed 4 October 2018.

## 3.2 MEASURING THE EFFECTIVENESS OF ECONOMIC SANCTIONS

The abundance of literature on sanctions has not provided a final answer to the question of which are the most objective criteria for assessment of sanctions' levels of success. Consequently, different analysts might decide on different degrees of efficiency of the same sanctions regimes. What most of the expert public does agree on is, nonetheless, the generally weak achievement of stated policy-goals through the usage of sanctions, 'In terms of changing behaviour, sanctions have a poor track record, registering a modest 20–30% success rate at best.'<sup>298</sup> The most comprehensive research on the topic of effectiveness of sanctions – to the extent of knowledge of the author of this study – was done by the Peterson Institute for International Economics.<sup>299</sup> The final result found sanctions 'to be at least partially successful in 34 per cent of the [documented] cases'.<sup>300</sup> Accordingly, criticism towards UN's usage of sanctions has been steadily growing since the 1990s – resulting in an increasing number of analyses and statements by policy-makers, with Secretary-General Boutros Boutros-Ghali stating that 'Sanctions cause suffering' and are 'a blunt instrument' in his plea to the SC as early as in 1996.<sup>301</sup>

<sup>298</sup> Emily Cashen, 'The impact of economic sanctions' (20 April 2017) World Finance <[www.worldfinance.com/special-reports/the-impact-of-economic-sanctions](http://www.worldfinance.com/special-reports/the-impact-of-economic-sanctions)> accessed 10 October 2018.

<sup>299</sup> Gary Clide Hufbauer et al *Economic Sanctions Reconsidered* (3<sup>rd</sup> ed., Peterson Institute for International Economics 2007) 3. The difference between that work and most other studies on sanctions, is the fact that while other analysts prove their arguments regarding sanctions on the basis of several chosen case studies, the authors of "Economic Sanctions Reconsidered" were driven by strictly naturalistic and statistical approach – according to which they compiled a database of 204 cases of sanctions from the 20th and the early 21st century (until 2007) – introduced both unilaterally and by various international organizations; and analyzed them for over 25 years, with the aim to calculate the percentage of success of sanctions by examining five political and five economic variables, divided across five types of foreign-policy goals. That type of an analysis makes up for the most detailed dataset on sanctions ever assembled. Accordingly, the authors identified five political variables: companion policy measures; international cooperation; international assistance to the target country; prior relations between sender and target and democracy versus autocracy (56-61); and five economic variables: estimating the economic costs to targets; country size and trade linkages; economic health and political stability of the target country; types of sanctions and estimating the costs to senders (61-64). The 204 cases were divided across five types of foreign-policy goals: change target-country policies in a relatively modest and limited way; change the target country's regime; disrupt a military adventure; impair the target country's military potential and change target-country policies in another major way (52–6).

<sup>300</sup> *ibid* 158.

<sup>301</sup> Boutros Boutros-Ghali, 'UN Sanctions Cause Suffering' (5 January 1996) Press Release <[www.globalpolicy.org/component/content/article/200/32815.html](http://www.globalpolicy.org/component/content/article/200/32815.html)> accessed 10 October 2018; As explained, this trend has none the least been demonstrated by UN's sharp reduction in the number of comprehensive sanctions regimes introduced and the turn towards 'smart sanctions'. See: Daniel W. Drezner, 'Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice' (2011) *International Studies Review* 13 (1) 96–108.

On the other hand, the same cannot be stated about economic coercion outside of UN's framework. As explained, the employment of unilateral embargoes as a weapon of war has been revived with the current sieges of Yemen and Gaza. Additionally, political disagreements among the P5 – as such impossible to be resolved by the SC – have resulted in American and EU's sanctions against Russia. Nowadays, with Trump's presidency and the increased influence of persons following populist ideology, such as Steve Bannon and John Brannon, trade wars are on the rise – unilaterally initiated in particular by the United States; and including measures against Russia, Iran, Turkey, China and the EU – employed to various degrees, targeting different sectors and justified with separate reasoning. As states' usage of sanctions has not diminished despite the academic community's "almost consensus" reached on sanctions' inefficiency, 'It is perhaps not surprising that much of the literature on sanctions focuses on a dominant puzzle: If sanctions do not work, why do states continue to impose them?'<sup>302</sup>

All considering, there is a degree of uncertainty on what the future employment of sanctions will bring – being within or outside of the UN system – and how much it will influence international order. As a never-resolved controversy, sanctions are, therefore, still the subject of an inquiry asking whether or not they are a legitimate policy-tool for usage in the 21<sup>st</sup> century.<sup>303</sup> The UN, as the organization which has institutionalized the usage of sanctions; provided their legal basis in its Charter; according to Russian and Chinese officials holds a monopoly over their employment [p24]; has been the primary institutional set up for debates surrounding sanctions and has been the source of policy-innovations regarding their usage; thus – needs to be accordingly seen as the key subject of any analysis revolving around sanctions. This study will, therefore, try to evaluate the effectiveness of sanctions by looking into UN's 30 sanctions regimes. In continuation, certain policy-results of all of the regimes will be briefly introduced, yet, the identified crucial aspects will be more comprehensively analysed in the final chapter.

As explained, different authors use different methods to evaluate

<sup>302</sup> Kim Richard Nossal, 'International Sanctions as International Punishment' (1989) *International Organization* 43 (2) 301–22, 302.

<sup>303</sup> *ibid* 301–3. David Francis and Lara Jakes, 'Sanctions Are a Failure. Let's Admit That' (28 April 2016) *Foreign Policy* <[foreignpolicy.com/2016/04/28/sanctions-are-a-failurelets-admit-that/](http://foreignpolicy.com/2016/04/28/sanctions-are-a-failurelets-admit-that/)> accessed 10 October 2018.

the success of sanctions. Baldwin argues they are one amongst many foreign-policy mechanisms and as such, they are successful in fulfilling their role for exercising influence.<sup>304</sup> His central research question is ‘what are the useful purposes of sanctions – as a form of statecraft’. In contrast, many other analyses revolve not around sanctions’ useful purposes, but around their negative externalities.<sup>305</sup> The approach this study will take can be argued to be a middle ground between the two methods of evaluation, as – on the basis of the main hypothesis provided in the Introduction – it will try to weigh the benefits of sanctions against the damage they inflict.

In recognition of the fact that there is no consensus on which are the most relevant variables that should be explored for assessing sanctions’ levels of success, since the focus of this work is on the UN – it will look into those aspects that can be considered important from the point of view of UN’s central purposes: international peace and security as underlined in Article 1.1 and their effects on human rights [Article 1.3]. Important consideration will be given to long-term effects – that is, not only their fulfilment of non-fulfilment of policy-goals as stated in the resolutions introducing them; but also their continuing influence on the target states’ overall political, economic and above all, security-wise situations. Accordingly, when looking into UN’s 30 sanctions regimes, what will be mostly analysed is: the degree of achievement of policy-goals and their contribution towards international peace and security; the duration of the sanctions regimes; the political, economic and security direction they have taken the target state into; their efficacy in deterring military interventions; the externalities blameless third states have been exposed to; and least but not least – the effects sanctions regimes have had on human rights in the sanctioned states – with a particular focus on sanctions’ influence on so called “core” human rights. What this approach will crucially take into account is not only the direct effects of sanctions on human rights – but also the indirect influence that certain political, economic or legal developments in the target state – caused by sanctions – have subsequently had on the promotion of human rights of

<sup>304</sup> David A. Baldwin, *Economic Statecraft: Theory and Practice* (Princeton University Press 1985).

<sup>305</sup> Chiara Franco, ‘Coercive Diplomacy, Sanctions and International Law’ (*Istituto Affari Internazionali*, international conference on ‘Coercive Diplomacy, Sanctions and International Law’, 13 February 2015) <[www.iai.it/sites/default/files/iai1505.pdf](http://www.iai.it/sites/default/files/iai1505.pdf)> accessed 4 October 2018.

the citizens of the sanctioned state.<sup>306</sup>

The Second Chapter contains an overview of UN's previous sanctions regimes, without the 5 regimes that will be looked into in the final chapter. The regimes have, therefore, targeted 25 states and the Al-Qaeda and Daesh. 17 of them are African states, 4 are Middle Eastern (Iraq, Lebanon, Iran and Yemen), 1 Caribbean (Haiti), 1 Eastern Asian (DPRK) and 1 European (the FRY). Out of the 25 states, only 3 are not former European colonies (the FRY, Iran and DPRK); while Iraq, Yemen and Lebanon have been mandates of the League, the first two governed by the United Kingdom and Lebanon by France. The geographical and historical background of targeted states self-evidently explains why decision-making through the SC is often criticized as 'imperialistic',<sup>307</sup> and sanctions are no exception to the rule.

Out of the 25 targeted states, only 11 can be argued to be in a state of relative stability today,<sup>308</sup> and therefore, do not present a threat to the peace. Still, out of these 11 states, Zimbabwe, Eritrea and the DPRK are ruled through harsh dictatorial regimes, that being – in the opinions of political scientists – also a risk to the peace, in particular as described within the 'Democratic peace theory'.<sup>309</sup> Rwanda, on the other hand – although regarded security-wise stable and democratic – can be safely argued, on the basis of UN findings – to finance the war in the neighbouring DRC,<sup>310</sup> and therefore, still represents a threat to the

<sup>306</sup> For example, UN's comprehensive sanctions against Iraq are – almost unquestionably – proven to have caused lack of basic medications and other pharmaceutical essentials in the state and – being unable to be treated – that has resulted in a disputed number of children's deaths, varying between half a million and a million victims. Yet, what can be considered as an indirect externality of the sanctions has been Saddam's even more colossal grip of power – considering the economic monopoly his government has gained in consequence to the embargo and in particular the monopoly of trade under the Oil for Food Programme. With Saddam's increased dictatorial powers, we can safely state additional damage was inflicted upon the Iraqi people, as besides deteriorating social and economic rights, they have suffered worsened civil and political rights. See: Ahmed Shehabaldin and William M. Laughlin Jr, 'Economic sanctions against Iraq: Human and economic costs' (1999) *The International Journal of Human Rights* 3 (4) 1-19.

<sup>307</sup> Michelle D. Smith, 'Expanding Permanent Membership in the UN Security Council: Opening a Pandora's Box or Needed Change' (1993) *Penn State International Law Review* 12 (6) 173-93.

<sup>308</sup> Those are: the FRY (Serbia and Montenegro), Iran, Zimbabwe (sanctions against Southern Rhodesia), South Africa, Rwanda, Liberia, Lebanon, Sierra Leone, Angola, North Korea and Eritrea.

<sup>309</sup> Patrick G. Rear, 'Democratic Peace Theory as Applied to Europe and the Middle East' (2013) *Global Tides* 7 (4) <digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1084&context=globaltides> accessed 10 October 2018.

<sup>310</sup> UN, 'DR Congo: UN-mandated group finds evidence Rwanda, army aiding rival rebels' (12 December 2008) *UN News* <news.un.org/en/story/2008/12/285222-dr-congo-un-mandated-group-finds-evidence-rwanda-army-aiding-rival-rebels> accessed 10 October 2018.

peace.<sup>311</sup>

15 of the sanctions regimes have lasted for more than a decade,<sup>312</sup> while most of them are still in force,<sup>313</sup> thus providing foundations for the argument that sanctions have rarely achieved their policy-goals, or even if they did, it took the measures such a long time to work that it is difficult to argue sanctions “did the job” instead of other variables. Regarding this issue, it is important to mention that stakeholders, the UN included, do admit that ‘Sanctions do not operate, succeed or fail in a vacuum. The measures are most effective...when applied as part of a comprehensive strategy encompassing peacekeeping, peace-building and peace-making.’<sup>314</sup> Related to this aspect, several targets of sanctions subsequently experienced international military interventions (the FRY – two, Iraq – two; Libya, Afghanistan and Yemen – one each). Nonetheless, before analysing the level of effectiveness in fulfilling stated policy-goals, one needs to be aware of the crucial issue of defining those goals – considering they might be more than one and differ regarding their priority.<sup>315</sup>

Still, these facts shed a negative light on sanctions’ efficacy analysed from the point of view of: their levels of success; the political, legal, economic and security direction into which they have taken the target states and their efficacy in deterring military interventions. Even though, as stated, issues such as the above-mentioned are complex and require detailed analysis on a case to case basis, from the first look of it – it is difficult to understand how the sanctions regimes introduced against the 14 states mentioned as unstable today – have contributed towards international peace and security. Considering a similar argument, out of the 25 targeted states, 4 have been subjected to more than one sanctions

<sup>311</sup> The rest of the states (14) are either in a state of civil war or inter-ethnic violence, are ‘failed states’ (Haiti), while Guinea-Bissau is considered to be in a highly risky state of security and the SC has extended the presence of its ‘Integrated Peace Building Office’.

<sup>312</sup> Those are: Southern Rhodesia, South Africa, Somalia, Eritrea-Ethiopia, Liberia, Sierra Leone, Angola, Congo, Libya (first round), Iraq, Iran, Ivory Coast, Lebanon, CAR, Taliban and Al-Qaeda.

<sup>313</sup> Those are: Somalia, Eritrea-Ethiopia, Congo, Libya, Iran, Ivory Coast, Lebanon, Taliban and Al-Qaeda.

<sup>314</sup> UN SC ‘Sanctions Committee Information’ (2018) <[www.un.org/sc/suborg/en/sanctions/information](http://www.un.org/sc/suborg/en/sanctions/information)> accessed 4 October 2018.

<sup>315</sup> For example, officials from the Clinton administration still hold that sanctions against Iraq were efficient in averting production weapons of mass destruction, yet others might consider them to have been inefficient in initiating a regime change. See: Shehabaldin and Laughlin Jr. (n 307).



regime (the FRY – 2, Iraq – 3, Libya – 2 and Liberia – 3). Such data can be argued to speak that the first sanctions regimes as such have not been compelling enough to make the targeted state submit itself to international rules and regulations.<sup>316</sup>

In the last couple of years, a view stating that sanctions often contribute towards failed states has gained ground. Of the targets, as failed states are currently considered: DRC, CAR, Sudan, South Sudan, Somalia, Ethiopia, Zimbabwe, Iraq, Yemen and Afghanistan.<sup>317</sup> Out of 25 targeted, 10 failed states should be considered a substantial problem, not only since failed states as such represent danger to the peace, but also regarding their effect on human rights.<sup>318</sup> On sanctions' role in erosion of state structures, analysts state

...sanctions, not unlike other measures of international diplomacy or coercion, do little to deter or halt massive rights violations or further state breakdown when it is in the offing or already occurring...in some instances, such as the case of Iraq after 1991, states which are still somewhat functioning, may be pushed into the "failed state" category due to the impact of sanctions.<sup>319</sup>

While different causes can be offered by different experts, most cited ramifications of sanctions in this regard are: smuggling – causing organized crime – causing state corruption – causing diminished government oversight – transcending from the economic sectors to

<sup>316</sup> This is particularly relevant for the Yugoslav and the Iraqi cases, since the sanctions regimes were introduced against two states in the course of less than a decade, when both states were ruled by exactly the same regimes and on the basis of, arguably, similar reasons (Yugoslavia first regime for the participation in the Bosnian war and the second for the Kosovo war and Iraq the first one for the invasion of Kuwait and the second for production of weapons of mass destruction).

<sup>317</sup> All of the above-counted states are on the first 15 places of the list of fragile states. See: The Fund for Peace, 'Fragile States 2018' <[fundforpeace.org/fsi/2018/04/19/fragile-states-index-2018-issues-of-fragility-touch-the-worlds-richest-and-most-developed-countries-in-2018/](http://fundforpeace.org/fsi/2018/04/19/fragile-states-index-2018-issues-of-fragility-touch-the-worlds-richest-and-most-developed-countries-in-2018/)> accessed 10 October 2018.

<sup>318</sup> Ignatieff has probably gone furthest in the debate on the link between failed states and human rights violations by claiming anarchy and failed states pose greater danger for the citizens of those states, than autocratic, but security-wise stable regimes 'Today, however, the chief threat to human rights comes not from tyranny alone, but from civil war and anarchy.' See: Michael Ignatieff, 'Human Rights as Politics' (4–7 April 2000) The Tanner Lectures on Human Values, Princeton University, 287–319, 310.

<sup>319</sup> George A. Lopez, 'Economic Sanctions and Failed States: Too Little, Too Late and Sometimes Too Much?' (Conference on Failed States and International Security II: Sources of Prevention, Modes of Response, and Conditions of State Success and Renewal, Purdue University, 8–11 April 1999) <[www.comm.ucsb.edu/faculty/mstohl/failed\\_states/1999/papers/Lopez.html](http://www.comm.ucsb.edu/faculty/mstohl/failed_states/1999/papers/Lopez.html)> accessed 10 October 2018.

all other state functions; and last but not least – the economic toll of sanctions that leads to a reduced state budget, consequently disabling state institutions from performing their vital roles.<sup>320</sup>

On an opposite side of the spectrum of arguments, sanctions in some cases might increase the dictatorial power of already autocratic regimes. Examples to be used include targeted states which during the sanctions remained governed by the exact same establishment and there are indications that anti-government movements became even more suppressed than before sanctions were introduced, including: Libya under Gaddafi; Yugoslavia under Milosevic; Iraq under Saddam Hussein; Eritrea under Afwerki; Sudan under Al-Bashir and South Sudan under Mayardit.<sup>321</sup>

The overall effect of sanction is robustly important for the dictator, fostering repressions and co-optation (separately treated) as the ways of buttressing the regime legitimacy. Moreover, cumulative effect of sanctions (i.e. the influence of all the previous periods under sanctions) increases the levels of repressions with decreasing marginal effects.<sup>322</sup>

There are three lines of argumentation for this phenomenon, the first one – as explained within the Iraqi case reviewed in Section 2.9 of Chapter 2 – is the obvious government monopoly of economic activity, transcending into all other spheres. The second one can be summed up with the quote of a Venezuelan citizen, ‘All I have is hunger - I don’t care if the people protest or not...with what strength will I protest if my stomach is empty since yesterday?’<sup>323</sup> Several analysts claim that citizens’ diminished living standards contribute towards their diminished political participation.<sup>324</sup> The third issue appears due to a state’s international

<sup>320</sup> Lopez (n 319).

<sup>321</sup> Jason McLure, ‘Don’t sanction dictators’ (10 July 2009) Foreign Policy <foreignpolicy.com/2009/07/10/dont-sanction-dictators/> accessed 10 October 2018; Abughalia et al, ‘Impact of International Economic Embargoes on the Libyan Foreign Trade’ (2012) International Journal of Academic Research in Economics and Management Sciences 1 (3) 80–103. ‘...people will rely more on government for survival or maintaining the supply base. Therefore, sanctions could support the ideological legitimacy of the regime.’ 82.

<sup>322</sup> Chmel et al, ‘Dictators’ Behavior Under Conditions of Economic Sanctions Cumulative Effect’ (2017) Political Science Series, working paper WP BRP 50/PS/2017 <wp.hse.ru/data/2017/10/23/1157845650/50PS2017.pdf> accessed 10 October 2018.

<sup>323</sup> Anatoly Kurmanaev and Keyal Vyas, ‘Many Poor Venezuelans Are Too Hungry to Join Anti-government Protests’ *The Wall Street Journal* (20 April 2017) <www.wsj.com/articles/many-poor-venezuelans-are-too-hungry-to-join-antigovernment-protests-1492680607> accessed 10 October 2018.

<sup>324</sup> Abughalia et al (n 322); Chmel et al (n 323).

isolation as a result of sanctions. In such state of affairs, international oversight decreases. Additionally, officials of an autocratic government are less “socialized” within international processes and forums, consequently – as argued by liberal theories – these tools of “international socialization” lose their potential to influence autocratic leaders through peer pressure and positive practices.

Closely related to this problem is the notion that sanctions can contribute towards the rise of nationalism. Central premise here is rhetoric justifying dictatorial measures by using the “international conspiracy” argument. According to statements given by officials of autocratic governments therefore, international sanctions targeting their country are just “another proof” of the international community’s efforts to harm their state and its citizens as such. Subsequently, autocrats’ grip of power is legitimized with the notion that civil and political rights need to be sacrificed during the state of emergency their country is facing due to sanctions.<sup>325</sup> Boutros Boutros-Ghali in 1997 stated that ‘sanctions can also defeat their own purpose by provoking a patriotic response against the international community, symbolized by the UN, and by rallying the population behind the leaders whose behaviour the sanctions are intended to modify.’

The final aspect looked into considers negative externalities third states experience due to sanctions. The case of the Macedonian economy suffering under a double North-South blockade – without the state having any international legal transgressions to speak of – is analysed on pp25–28. This debate can be traced back to the 1990s, amid the effects enacted comprehensive sanctions have had on neighbouring states. The GA’s Sixth Committee argued that ‘Member states must share responsibility of sanctions on third states’; as early as in 1996.<sup>326</sup> Such findings are supported by a number of states, including China, ‘Sanctions should not be used as the chief tool for dispute settlement because they caused serious difficulties for third States, especially developing countries.’<sup>327</sup> UN organs, including

<sup>325</sup> Examples of rise of nationalism during the duration of sanctions include Yugoslavia, Libya, Iraq, Iran, Sudan, Eritrea and North Korea.

<sup>326</sup> UN GA Sixth Committee, ‘Member States Must Share Responsibility for Economic Effects of Sanctions on Third States, Sixth Committee Told Correction’ (2 October 1996) Press Release <[www.un.org/press/en/1996/19961002.gal3005.c1.html](http://www.un.org/press/en/1996/19961002.gal3005.c1.html)> accessed 10 October 2018.

<sup>327</sup> UN GA Second Committee, ‘Negative Impact of Economic Sanctions Stressed by Speakers in Second Committee’ (17 October 1996) Press Release <[www.un.org/press/en/1996/19961017.gaf2724.html](http://www.un.org/press/en/1996/19961017.gaf2724.html)> accessed 10 October 2018.

ECOSOC,<sup>328</sup> and the GA,<sup>329</sup> have adopted resolutions calling for the policy of assistance to third states to factually enter into force, yet, their pleas have not been supported by the SC.

This subchapter aims to introduce both sides of the debate on sanctions' efficiency. With the goal of presenting a balanced analysis and considering that the above-mentioned arguments generally point towards a negative conclusion of sanctions' efficiency, it is important to shortly mention cases regarded by some as successful. The following examples have been chosen as efficient – the only of all enforced sanctions regimes – due to two reasons: fulfilment of stated policy-goals – as sanctions have been lifted; and contribution towards international peace and security – meaning that these five states are currently in a state of relative stability.

### *I: Southern Rhodesia*

There is no consensus regarding the impact of sanctions on Southern Rhodesia's apartheid regime, as some consider them not influential enough to be praised for bringing down the white-minority government – in consideration of the much larger effects in crippling the regime that the Rhodesian Bush War has had.<sup>330</sup> Under this line of argumentation, what forced Ian Smith to the negotiating table was white immigration towards neighbouring apartheid South Africa – causing shortage of manpower, as weighed against the growing momentum of the ZAPU and ZANU guerrillas led by Robert Mugabe, and in addition – the halt of South African aid.<sup>331</sup> An opposing view argues that sanctions' effects should not be analysed as if they were implemented as a sole policy, but as something additionally aggravating the situation of the regime and in that, they did fulfil their role. Even though sanctions were in place for 13 years, their defenders believe that despite their low impact in the initial years, they did play an overall significant role 'No economy...can exist under a sanctions type situation for a long period of time. Sooner or later something had

<sup>328</sup> UN ECOSOC Res 2000/32, 'Assistance to third States affected by the application of sanctions' (28 July 2000) UN Doc E/RES/2000/32.

<sup>329</sup> UN GA Res 60/23 (6 January 2006) UN Doc A/RES/60/23.

<sup>330</sup> William Minter and Elizabeth Schmidt, 'When Sanctions Worked: the Case of Rhodesia Examined' (1988) *African Affairs* 87 (347) 207–37. 'In the case of Rhodesia...the severe economic difficulties of the late 1970s owed far more to the world economic recession and, increasingly, to the war than to sanctions.' 208.

<sup>331</sup> Sue Onslow, 'South Africa and Rhodesia: cooperation, confrontation, coercion' (Working Paper for Unilateral Declaration of Independence 40 Years on, 5–6 Jan 2006).

to give.<sup>332</sup> Nevertheless, looking into the long-run – the way Ian Smith was forced to concede power has been criticized for creating a power-vacuum that was filled in by Mugabe’s dictatorship.<sup>333</sup> The autocrat only surrendered leadership of the country last year, after a 37-year rule, in particularly infamous for its poor human rights record, poor economic policies and the spread of political violence.

### *II: South Africa*

Sanctions against South Africa are acclaimed for their global and popular response which eventually played a significant part in the fall of an illegal apartheid regime. Yet – as explained in Section 1.2 of Chapter 2 – UN’s policies are impossible to be regarded as an influential variable in the fall of the apartheid government, since they introduced nothing more than an arms embargo. The United Kingdom and the United States – while publicly denouncing white-minority rule – have put their political and trading interests above those of the international community, and have thus used their veto power in the SC to shield this racist regime.<sup>334</sup>

### *III: Liberia*

UN’s three sanctions regimes targeting Liberia from 1992 to 2016 – varying from arms to comprehensive to diamond embargoes – are argued to have contributed to the fall of Charles Taylor.

Liberia is an example of a recent UN case where the sanctions were eventually paired with larger multilateral efforts like EU aid or UN peacekeeping... Sanctions within a larger framework of dispute resolution become more robust and more effective... The Liberia situation is one of the chief ones.<sup>335</sup>

Not denying sanctions’ positive impact on restoring peace, the facts, however, state that the arms and blood diamond embargoes were violated

<sup>332</sup> That was stated by an employee in the Associated Chambers of Commerce of Rhodesia during the sanctions. Minter and Schmidt (n 331) 208.

<sup>333</sup> Michael Hartnack, ‘40 years in wilderness after UDI declaration’ *The Herald* (2006) <[web.archive.org/web/20060320101625/http://www.theherald.co.za/herald/2005/10/25/cols/hcols.htm](http://web.archive.org/web/20060320101625/http://www.theherald.co.za/herald/2005/10/25/cols/hcols.htm)> accessed 10 October 2018

<sup>334</sup> *Chicago Tribune*, ‘A Crime in the UN: Vetoing South Africa Sanctions’ (9 March 1987) <[www.chicagotribune.com/news/ct-xpm-1987-03-09-8701180939-story.html](http://www.chicagotribune.com/news/ct-xpm-1987-03-09-8701180939-story.html)> accessed 10 October 2018.

<sup>335</sup> Robert McMahon, ‘UN Sanctions: A Mixed Record’ (17 November 2006) Council on Foreign Relations <[www.cfr.org/background/un-sanctions-mixed-record](http://www.cfr.org/background/un-sanctions-mixed-record)> accessed 10 October 2018.

on a spectacular scale.<sup>336</sup> That has obstructed and significantly delayed sanctions' effects, consequently, prolonging violence. Charles Taylor's government lost power in 2003. In 2012 he was sentenced to 50 years in prison by a special court for Sierra Leone. Today Liberia is considered politically and security-wise stable, trying to redress the civil wars' legacy with a Truth and Reconciliation Commission.

#### *IV: Angola*

Angola offers a similar case. Civil war ravaged the country from 1975 until 2002, yet, not the whole territory but only the terrorist UNITA movement was sanctioned with a comprehensive and later a blood diamond embargo. The ban of trade in illegal diamonds was, once again, violated on a spectacular scale.<sup>337</sup> The war ended in 2002 only with the death of UNITA's leader, Jonas Savimbi.<sup>338</sup> The sanctions' contribution towards the end of violence might be considered, therefore, even less significant than the influence sanctions had on the developments in Liberia. Today Angola is also considered to be a relatively stable state.

#### *V: Iran*

UN's comprehensive sanctions against Iran – an exception in the organization's move towards smart sanctions – are acclaimed to have played a large role in bringing Iran to the negotiating table for the JCPOA. The facts, however – explained in Section 1.18 of the Second Chapter – show Iran has suffered enormous losses due to the sanctions in all spheres of its society, while Iranian commitment to halt its nuclear programme has not been accordingly rewarded by the international community – amid recent American policies. Additionally, there is a legitimate dilemma on whether Iran's nuclear programme indeed represented a threat to the peace instead of being used solely for civilian purposes.<sup>339</sup>

<sup>336</sup> UN, 'UN panel reports violations of embargo against Liberia' (30 October 2002) UN News <[news.un.org/en/story/2002/10/50032-un-panel-reports-violations-embargo-against-liberia](http://news.un.org/en/story/2002/10/50032-un-panel-reports-violations-embargo-against-liberia)> accessed 10 October 2018. *Human Rights Watch*, 'Liberia: U.N. Arms Embargo Failing' (5 November 2001) <[www.hrw.org/news/2001/11/05/liberia-un-arms-embargo-failing](http://www.hrw.org/news/2001/11/05/liberia-un-arms-embargo-failing)> accessed 10 October 2018; Michael Fleshman, 'Conflict Diamonds Evade UN Sanctions' (2002) Global Policy Forum <[www.globalpolicy.org/component/content/article/182-diamonds/33801.html](http://www.globalpolicy.org/component/content/article/182-diamonds/33801.html)> accessed 10 October 2018.

<sup>337</sup> Fleshman (n 336).

<sup>338</sup> Global Policy Forum, 'An End to Angola's 27 Years of War' (31 March 2002) <[www.globalpolicy.org/component/content/article/255-security-council-and-angola/41525-an-end-to-angolas-27-years-of-war.html](http://www.globalpolicy.org/component/content/article/255-security-council-and-angola/41525-an-end-to-angolas-27-years-of-war.html)> 10 October 2018.

<sup>339</sup> *Radio Free Europe*, 'IAEA Saw No 'Credible Evidence' Iran Was Working On Nuclear Weapon After 2009' (1 May 2018) <[www.rferl.org/a/iaea-saw-no-credible-evidence-iran-was-working-on-nuclear-weapon-after-2009/29201840.html](http://www.rferl.org/a/iaea-saw-no-credible-evidence-iran-was-working-on-nuclear-weapon-after-2009/29201840.html)> accessed 10 October 2018.

## 3.3 SC'S CONDUCT IN REGARD TO ECONOMIC SANCTIONS

The SC's legal authorization providing it with the responsibility to decide on matters concerning international peace and security is not something that will be disputed here – given the clauses in the UN Charter that provide it with such entitlements. What will be looked into, however, is the behaviour of individual members of the SC that speaks of their credibility to be in a position of decision-makers on these issues and thus, hold the “fate of the world” in their hands.

As mentioned in the previous subchapter, 15 out of 30 sanctions regimes have lasted for more than a decade, 8 of them are still in force. In such state of affairs, a self-evident issue is brought about arguing that the low efficiency of the sanctions regimes should be traced back to violations against them.<sup>340</sup> Within the 25 sanctions regimes analysed in Chapter 2, violations on a spectacular scale (claimed as such on the basis of findings described in Chapter 2) have taken place in at least 16 instances:

- in Southern Rhodesia by American, British and French oil conglomerates;
- on the Horn of Africa (Somalia and Ethiopia) by the South African security company Sterling Corporate Services;
- blood diamonds in Liberia, Sierra Leone, Angola and the DRC by Belgian, Dutch, British, Swiss, South African and Israeli companies; in particular infamous actions have been committed by the South African-British-Dutch company De Beers;<sup>341</sup>
- Haiti where two American presidents granted exceptions for American companies;
- in Rwanda: arms trade by Israel, France and the United Kingdom

<sup>340</sup> While, as mentioned, this study is unable to thoroughly analyse 30 regimes and thus safely state how many of those have been breached and by whom, it did manage to mention the most infamous, spectacular violations – and only claimed them as such based on official UN, governmental agencies or judicial reports, which is why it was explained that the “enigmatic” rise in poppy cultivation in Afghanistan since the arrival of NATO troops will not be considered as a violation – but will be left to the readers’ own interpretation. See Chapter 2, Section 2.19.

<sup>341</sup> UN, ‘Final Report of the UN Panel of Experts on Violations of Security Council Sanctions Against Unita’ *The Fowler Report* (10 March 2000) UN Doc S/2000/203 <[www.globalpolicy.org/global-taxes/41606-final-report-of-the-un-panel-of-experts.html](http://www.globalpolicy.org/global-taxes/41606-final-report-of-the-un-panel-of-experts.html)> accessed 10 October 2018.

- in the midst of the genocide (Carisch et al state ‘Whatever could go wrong in sanctions policies was delivered by the Rwanda sanctions regime’<sup>342</sup>);
- in the DRC by Rwanda and Uganda, a SC resolution condemning them was vetoed by the United States, still the United States was accused of arms trade with the rebels and China with the Congolese government;
  - in Iraq by all of the P5 and other states, by companies and state agencies; as well as the scandalous behaviour displayed by the UN as an organization in the Oil-for-Food Programme;
  - in South Sudan by China for trade in arms;
  - in Yemen due to arms trade and support for Al-Qaeda by the Saudi-led coalition supported by the United States and the United Kingdom, while Iran has been accused of aiding the Houthis;
  - Al-Qaeda in Syria and Yemen and Daesh in Syria – sanctions were violated by Saudi Arabia and Qatar with explicit American and British knowledge, but support for their Gulf allies never ceased.

Out of the 16 regimes, direct breaches have been committed by at least one member of the P5 in 10 cases: Sothorn Rhodesia; blood diamonds (affects 4 states); Haiti; Rwanda; DRC; Sudan and Iraq. Such behaviour of the P5 surely questions where their priorities lie – whether towards ensuring international peace and security or towards fulfilling their national interests. Thus considering, what is particularly enigmatic is – why would a member of P5 vote for a resolution in the SC introducing sanctions and then violate it.

To be fair, it is important to recognize that disregarding trade in arms which is mostly a state-regulated activity, violations regarding blood diamonds and by the oil conglomerates are tricky to be safely considered as breaches by their respective states – as per the already described process of erosion of state oversight [p17]. State officials of the countries concerned can argue and have argued that supervision of the activities of those companies lies beyond their enforcement capacities. An opposing view claims it has rarely happened in today’s

<sup>342</sup> Enrico Carisch Loraine Rickard-Martin and Shawna R. Meister, *The Evolution of UN Sanctions* (Springer, 2017) 315.



world of blurred lines between the public and the private spheres that governmental agencies have not colluded in any way with the sanctions-breaching private entities. In this respect, particularly worrisome is the UN report explicitly calling out Belgium authorities' weak compliance with resolutions enforcing ban on blood diamonds.<sup>343</sup> If UN agencies have been able to trace violators of sanctions regimes in four African states – all either former French or Belgium colonies – what exactly excuses Belgium as a western, liberal democracy, hosting the seat of the EU and providing its courts with universal jurisdiction, for being unable to supervise its domestic market in Antwerp – a large contributor to its state revenues?<sup>344</sup> Supportive evidence for this debate may be provided depending on United States' ability to oversee companies from third countries doing business with Iran once the second package of sanctions enters into force in November. On a related note – since countries argue they are unable to ensure compliance of their private enterprises – the SC should have attempted to sanction the violating enterprises. After all, companies such as Sterling Corporate Services [p46] and De Beers [p48] have been explicitly criticized in UN reports due to their role in prolonging more than half of the conflicts on African soil, yet, once again – the SC has stood idle by the pleas of UN's own agencies.

Closely linked to the problem of selectivity in enforcing sanctions is criticism towards the P5's shielding of sanctions-violating countries, or international law violators in general – as per their own international political alliances. *Human Rights Watch*, as explained, has been one of several stakeholders to ask the UN to sanction Saudi Arabia for the Yemeni siege and Israeli crimes against Palestine have

<sup>343</sup> UN, 'Conflict diamonds evade UN sanctions' (December 2001) UN News <[www.un.org/africarenewal/magazine/december-2001/conflict-diamonds-evade-un-sanctions](http://www.un.org/africarenewal/magazine/december-2001/conflict-diamonds-evade-un-sanctions)> accessed 10 October 2018; Blaine Harden, 'UN Sees Violation of Diamond Ban in Angola' *The New York Times* (11 March 2000) <[archive.nytimes.com/www.nytimes.com/library/world/africa/031100africa-diamonds.html](http://archive.nytimes.com/www.nytimes.com/library/world/africa/031100africa-diamonds.html)> accessed 10 October 2018 'The unwillingness or inability of the diamond industry, particularly in Antwerp, to police its own ranks is a matter of special concern to the panel.'

<sup>344</sup> Louis Goreux, 'Conflict Diamonds' (31 March 2001) World Bank Working Paper 1/1/22704 <[documents.worldbank.org/curated/en/216551468741661999/Conflicts-diamonds](http://documents.worldbank.org/curated/en/216551468741661999/Conflicts-diamonds)> accessed 10 October 2018; Roman Grynberg and Letsema Mbayi, *The Global Diamond Industry: Economics and Development* (2<sup>nd</sup> vol, Palgrave Macmillan, 2015)

also been the reason for numerous calls for international action.<sup>345</sup> Saudi and Qatari evident and long-lasting support for Al-Qaeda and Daesh (described in Chapter 2, Sections 2.20 and 2.21) has not resulted in a SC resolution condemning them. The United States and the United Kingdom are still their enormous international proponents in all areas. The United States has vetoed a resolution condemning Rwandan and Ugandan involvement in the Congo War; Russia has done it for Iran's alleged trade in arms with the Houthis; and China has vetoed numerous resolutions condemning Sudanese crimes in Darfur.<sup>346</sup> To what extent can UN sanctions regimes be expected to deliver results if no action of any kind is taken against countries that violate them on a spectacular scale – is beyond the limits of comprehension of this research.

A summation of the behaviour of the P5 and the working of the SC is offered by Carisch et al

[There is a] deeper question of why big powers confront asymmetric threat actors sometimes by mobilizing the UN and sometimes unilaterally...UN sanctions system is applied to conflicts that are either too insignificant for the national security of major powers, or where UN confrontation with asymmetric opponents is politically more feasible. Why was the [SC] not mobilized to mitigate the Vietnamese civil war, the Israel–Palestine standoff, United Kingdom–Argentina confrontation over the Falkland islands, China's annexation of Tibet, Russia's two Chechnya wars, or France's many raids of former African colonies? Of course, the interests of the P5 and the threat of their veto power discouraged any other country from seeking a just resolution from the SC. In a sense, this is the scenario...Roosevelt envisioned: four policemen who would regulate the conflicts of the world. Except that the four policemen are now five, and it appears...that it's mostly their wars and legacies that require intervention.”<sup>347</sup>

<sup>345</sup> UN GA, 'General Assembly Adopts Resolution on Protecting Palestinian Civilians Following Rejection of United States Amendment to Condemn Hamas Rocket Fire' (13 June 2018) 10<sup>th</sup> Emergency Special Session, 38th Meeting <[www.un.org/press/en/2018/ga12028.doc.htm](http://www.un.org/press/en/2018/ga12028.doc.htm)> accessed 10 October 2018; UN GA Committee on the Inalienable Rights of the Palestinian People, 'United Nations Palestinian Rights Committee Condemns Excessive, Disproportionate Use of Force by Israeli Security Forces against Demonstrators at Gaza Fence' (14 May 2018) Press Release <[www.un.org/press/en/2018/gapal1406.doc.htm](http://www.un.org/press/en/2018/gapal1406.doc.htm)> accessed 10 October 2018; UN OCHA, 'Gaza Blockade'. Press releases and statistical databases <[www.ochaopt.org/theme/gaza-blockade](http://www.ochaopt.org/theme/gaza-blockade)> accessed 10 October 2018-

<sup>346</sup> Nevertheless, even with such a wide range of questionable actions by all of the P5, the United States is the country that has vetoed the largest number of resolutions condemning its numerous geopolitical partners, yet as particularly infamous – Israel and Saudi Arabia definitely stand out.

<sup>347</sup> Carisch et al (n 343) 284.

## 3.4 CONCLUSION

This Chapter aimed to briefly present some practical aspects arising from UN's cases of employment of sanctions – with a larger focus on the crucial goal coming out of Article 1.1 and a lesser focus on all the implications those sanctions regimes have had on the human rights of the citizens concerned. Being more complex, the impact on human rights is considered thoroughly in Chapter 4. Nonetheless, even disregarding their toll on human rights – sanctions' effectiveness in fulfilment of policy goals remains to be generally low.

Keeping in mind – argued but also elaborated through practical findings – sanctions' contribution towards rise of nationalism, anarchy, organized crime, increased authoritarian power and, probably most detrimental – sanctions' input in creating failed states; contrasted with sanctions' long duration in several cases without marking a positive development in: halting civil wars; inter-ethnic violence and illegal exploration of mineral resources; along with sanctions' failure to prevent military interventions – all offer as much a condemning picture of the employment of economic sanctions, as is their negative impact on human rights. The five examples mentioned on pp81-83, widely regarded as successful episodes of UN's employment of sanctions, however, upon closer look – offer conflicting results – leading to an inconclusive judgement.

Even with sanctions' weak contribution towards international peace and security, a regression in their employment by the SC is not accordingly noticeable, while their unilateral usage is on the rise. Those are only some of the controversies surrounding the working methods of the SC regarding its actions under Article 41, the others can be summed up with the notions of: selectivity, spectacular violations and placing national (financial and economic) above international interests (peace and security). While this Chapter aimed to shed a light on the numerous aspects arising from the employment of economic sanctions, the three case-studies looked into in Chapter 4, were selected as such precisely due to the fact that all of them combined offer a balanced illustration of all of the above-mentioned issues.

## 4.

CASE-STUDIES ON THE IMPACT OF UN-INTRODUCED  
ECONOMIC SANCTIONS

## 4.1 INTRODUCTION

As mentioned among the limitations of this study in the Introduction, deciding which of UN's 30 sanctions cases are most illustrative of both the positive and the negative effects of economic sanctions is particularly challenging – especially considering that each sanctions episode is unique in its own right. Before selecting the FRY, the DPRK and Libya, also considered were the examples of: Iraq – due to the sanctions' civilian toll and the permanent stain the Oil-for-Food Programme has left on the UN; Iran – since it represents the legal dilemmas between UN-enacted and unilateral sanctions; and also, one of the several African states whose civil and international wars at the same time were prolonged and intensified because of breaches against the enacted sanctions regimes. Nonetheless, upon further research, it was concluded that the Iraqi case is relatively well analysed thus far; the Iranian example was disregarded in the last moment; while the blood-diamonds-implicated cases were left out because analysing them – in light of several decades of conflict – is not only challenging, but it would offer no balance, considering that most of the wars are still on-going and it is fairly difficult to point to the positive impact of sanctions.

The FRY, the DPRK and Libya, located on three different continents, targeted by three different types of sanctions, on three different premises under Chapter 7: the FRY for destabilization of other Yugoslav republics; Libya for supporting terrorism; and the DPRK for proliferation activities – were finally selected. UN's policies towards the FRY ended up in two military interventions, while the

one against Libya in the 2011 'R2P' mission. Nonetheless, those two examples are held in high regard in terms of sanctions' efficiency, and on the basis of that appraisal, it was decided that analysing them would offer the kind of balance this research aims to produce.

The regimes targeting the FRY were chosen due to two primary reasons. Several precedencies were set up with this case: the FRY is the only European state to be sanctioned by the UN; Resolution 820 was UN's first targeting of a sub-state actor (Bosnian Serbs);<sup>348</sup> both sanctions regimes resulted in two military interventions; the first sanctions regime is the most comprehensive one ever implemented; finally, at first SFRY and then the FRY are the only federations to ever be sanctioned by the UN. The second reason is similar to why Libya was selected as well – the appraisal of these sanctions as one of the most efficient sanctions episodes displayed by the UN thus far.

In contrast to the FRY featuring comprehensive sanctions, the DPRK was chosen precisely because it reflects well upon UN's intentions – to avoid civilian suffering under comprehensive embargoes and therefore employ targeted sanctions. Yet, the sanctions targeting the DPRK have evolved from strictly targeted to a comprehensive regime. The case of Libya is particularly interesting for analysing due to a completely unrelated reason. The DPRK and the FRY were chosen primarily because of the numerous negative externalities that sanctions have had and still have in regard to protection of human rights and the overall political and security-wise situations in the countries – without even tackling the issue of whether or not those countries legitimately deserved, due to their actions, to be sanctioned. The Libyan case, however, was chosen on different premises.

The impact of UN's sanctions on Libya was much less devastating than on the other two states – in terms of both human rights violations and economic consequences. Libya was selected because yet another purpose of this study is to investigate the effectiveness of sanctions as a political tool for preserving and/or restoring international peace and security – by weighting their positive against their negative effects – and to conclude if they are worth to be employed; since much of

<sup>348</sup> UN SC Res 820 (17 April 1993) UN Doc S/RES/820

the logic for using sanctions does not deny their heavy toll on human rights, but it rests on the premises that even such “collateral damage”<sup>349</sup> – is worthy in the name of international peace and security. With such (this study argues it to be flawed) argumentation, many analysts praise the sanctions against Libya 1992–2003 as one of the most – if not the most successful sanctions episode in UN’s history – since they forced the Libyan regime to cede support for terrorism; accept responsibility for the Lockerbie tragedy; deliver those responsible to stand trial and pay compensation to the victims. All in all, proponents of the sanctions claim that the first sanctions regime targeting Libya managed to turn a “rogue state” into an international law-abiding actor, and the sanctions have, therefore, fulfilled their primary goal in contributing towards international peace and security.<sup>350</sup>

What this case-study will show, however, is that the whole system of deciding which international actor deserves to be sanctioned; for which reasons and to what ends – is inherently flawed. It will aim to prove this hypothesis on the basis of a lack of system of checks and balances within the working of the SC, due to which members of the P5 are allowed and even given support in accomplishing their national political aims – which do not always overlap with the aims of the UN. In this case, the United States and the United Kingdom have used the SC and the international legitimacy of the UN and its Charter to advance their own political goals, and the victim of the lack of a system of checks and balances was a state, which, at that time, was a sort of an outsider in international policy-making<sup>351</sup> – and consequently, easier to be pressured. It is not argued the Libyan state was a victim because it bore no responsibility for the damage inflicted

<sup>349</sup> The term ‘collateral damage’ used by certain policy-makers and the media has no standing in international law. Purposefully causing ‘collateral damage’ under IHL is forbidden. IHL rests upon the principles of distinction, proportionality and humanity. See: ICRC, ‘Practice Relating to Rule 14. Proportionality in Attack’ <ihl-databases.icrc.org/customary-ihl/eng/docs/v2\_cha\_chapter4\_rule14> accessed 10 October 2018.

<sup>350</sup> Ian Hurd, ‘The Strategic Use of Liberal Internationalism: Libya and the UN Sanctions, 1992–2003’ (2005) *International Organization* 59 495–526, 499; Kimbely Ann Elliot, ‘Analyzing the Effects of Targeted Sanctions’ Chap. 8 in *Smart Sanctions*, ed by David Cortright and George Lopez (Rowman and Littlefield 2002) ‘...with the exception of Libya, the results of UN targeted sanctions have been disappointing’ [171]; Daniel W. Drezner, ‘Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice’ (2011) *International Studies Review* 13 (1) 96–108. Drezner considers Libya an ‘...exemplar case [which] demonstrates the utility of targeted sanctions’ [103].

<sup>351</sup> Hurd (n 351) 495.

with the Pam-Am 103 flight bombing – as conducting a criminal investigation is not among the purposes of this study – but it was a victim in a way that the human right to due process and presumption of innocence of two of its citizens; as well as Libya’s right – as a state – to be judged on the principle of certain evidentiary standards – were breached, regardless of fact that the economic damage caused by the sanctions was insignificant in comparison to other UN sanctions regimes.

## 4.2 LIBYA

### 4.2.1 *Timeline*

Animosities between the United States and the United Kingdom on one side and Libya on the other were peaking long before the Lockerbie incident entered the agenda of the SC.<sup>352</sup> A major escalation was the 1986 West Berlin discotheque bombing – which the Libyan government was accused of ordering. Without organizing a trial – on the basis of intercepted messages between Tripoli and officials in the Libyan embassy in West Berlin – president Reagan ordered retaliating airstrikes on Tripoli and Benghazi ten days after the attack, resulting in 30 soldiers’ and 15 civilian deaths.<sup>353</sup>

The Pan-Am Flight 103 exploded over Lockerbie, Scotland on 21 December 1988, killing all 243 passengers and 16 crew members, most of whom American citizens, as well as 11 Lockerbie residents.<sup>354</sup> Joint investigation conducted by the local Scottish police and the FBI

<sup>352</sup> Those included the Rome and Vienna airport attacks of 1986; Western funding of anti-Gaddafi forces and Gaddafi’s funding of the IRA and organizations within the United States antagonistic to the American government; Libya’s occupation of Chad; and opposed territorial claims over the Gulf of Sidra between the United States and Libya resulting in several naval actions by both sides.

<sup>353</sup> Nick Squires, ‘Italy “tipped off” Libya about 1986 United States raid’ *The Telegraph* (20 October 2008) <[www.telegraph.co.uk/news/worldnews/africaandindianocan/libya/3287700/Italy-tipped-off-Libya-about-1986-United\\_States-raid.html](http://www.telegraph.co.uk/news/worldnews/africaandindianocan/libya/3287700/Italy-tipped-off-Libya-about-1986-United_States-raid.html)> accessed 10 October 2018.

<sup>354</sup> *BBC*, ‘Colonel Gaddafi ordered Lockerbie bombing’ (23 February 2011) <[www.bbc.com/news/uk-scotland-south-scotland-12552587](http://www.bbc.com/news/uk-scotland-south-scotland-12552587)> accessed 10 October 2018.

centred on a suitcase identified to have contained the explosives,<sup>355</sup> and it led the investigators to the two subsequently accused, al-Megrahi and Fhimah. Resolution 731 noted four demands to Libya – previously stated by United States and United Kingdom officials in the SC: to surrender for trial those charged and accept full responsibility for the actions of the Libyan officials; disclose all information regarding these crimes; pay appropriate compensation to the victims' families and cease support to terrorist groups. As Libya ignored the requirements, the rationale for Resolution 748 to introduce sanctions was provided.<sup>356</sup> This was the first case for the SC to introduce sanctions under Chapter 7 on the premises of state-sponsored terrorism.

Yet, Hurd notes that no measures

...included restrictions on the purchase of Libyan petroleum itself or affected assets abroad concerned with oil imports and exports. Despite the fact that the Libyan economy was heavily dependent on oil revenue [the SC] did not interrupt this trade directly because of the significance of Libyan oil exports to several major European countries, notably Italy, Spain, Germany, and France.<sup>357</sup>

SC's double-standards become apparent regarding the type of sanctions enacted, in particular when the Libyan case is compared to the notoriously heavy Iraqi sanctions regime – which took place

<sup>355</sup> Where also clothes bought from a Maltese store were found. The owner of the store led the investigators to the first accused and subsequently convicted, Abdelbaset al-Megrahi, the head of security for Libyan Arab Airlines, since he was identified as having made the purchase. The name of the second accused, however, acquitted, Lamin Khalifa Fhimah, a station manager for Libyan Arab Airlines in Malta, was obtained on the basis of another store owner's testimony, this time a Swiss electronics company, claimed to have provided some parts of the device that was used to detonate the bomb. See: Severin Carrell, 'United States paid reward to Lockerbie witness, Abdelbaset al-Megrahi papers claim' *The Guardian* (2 October 2009) <[www.theguardian.com/world/2009/oct/02/lockerbie-documents-witness-megrahi](http://www.theguardian.com/world/2009/oct/02/lockerbie-documents-witness-megrahi)> accessed 10 October 2018.

<sup>356</sup> Acting under Chapter 7, the SC demanded that all states: deny permission of Libyan aircraft to take off from, land in or overfly their territory if it has taken off from Libyan territory – excluding humanitarian need; prohibit the supply of aircraft or aircraft components or the provision or servicing of aircraft or aircraft components; prohibit the provision of weapons, ammunition or other military equipment to Libya and technical advice or training; withdraw officials present in Libya that advise the Libyan authorities on military matters; significantly reduce diplomatic and consular personnel in Libya; prevent the operation of all Libyan Airlines offices; deny or expel Libyan nationals involved in terrorist activities in other states. See: Hurd (n 351).

<sup>357</sup> *ibid* 504.



almost simultaneously and on, arguably, comparable premises under Chapter 7. In this regard, the influence of the P5's national interests on their decision-making within the SC – comes to the fore once again.

Accordingly, the Libyan sanctions, even though in place for 11 years, were not as economically devastating to the Libyan economy, as were other sanctions regimes enacted at the same time period. Libya was one of the first examples for the SC to introduce targeted instead of comprehensive sanctions. Still, briefly looking at Libya's GDP during the sanctions regime, regression is evident.<sup>358</sup> Additionally, Libya's exports fell by 24% in the year following introduction of sanctions, while numerous foreign-based state-owned entities were sold.<sup>359</sup>

Crucial for the subsequent developments was the degree of compliance with the sanctions regime by third states. At the beginning, SC's provisions were well respected, yet minor breaches began to take place in 1995 and continued to increase.<sup>360</sup> Analysts conclude this was seen as undermining the authority of the SC.<sup>361</sup> Libya made several propositions for a compromise, yet, those were rejected by the United States and the United Kingdom.<sup>362</sup> Finally, an agreement was reached in 1998 – under which the two suspects were to stand trial in a third country (the Netherlands) – under Scottish legislation. This deal, however, is strikingly similar to a proposal Gaddafi made as early as in 1994, asking for a trial of the two suspects before the ICJ, yet under Scottish law.<sup>363</sup> Besides extraditing the two individuals, Libya also accepted responsibility for the actions of its officials; renounced terrorism and arranged for payment of compensation

<sup>358</sup> World Bank, 'Libya-GDP' World Bank Data <data.worldbank.org/country/libya> accessed 10 October 2018.

<sup>359</sup> Hurd (n 351) 504.

<sup>360</sup> *ibid* 516. Those included Niger, Nigeria, Sudan, Chad, Mali, CAR, Egypt, and even Italy, and those actions included flight and diplomatic connections with Libya.

<sup>361</sup> *ibid* 517.

<sup>362</sup> *ibid*. Because of that, the Secretary General noted 'I realized that if we didn't find a way forward [the sanctions would lose credibility]. [By] rejecting every Libyan proposal [the United States and the United Kingdom] had boxed themselves into a situation of being the stubborn negative ones.'

<sup>363</sup> *ibid* 518. At the time, the United States State Department stated 'There can be no compromise on the need for trying the suspects in a Scottish court under Scottish law. We are absolutely opposed to any alternative trial venue.'

to the families of the victims.<sup>364</sup> Accordingly, SC Resolution 1506 of September 2003 lifted the sanctions.

The trial of the two accused began in May 2000. Megrahi was found guilty of 270 counts of murder, while Fhimah was found not guilty. Information on alleged controversies regarding the investigation; the handling of evidence and the reliability of key witnesses; have, however, never ceased to emerge. Consequently, some of the victims' families have called for a second investigation, some families have refused to accept compensation money from the Libyan government,<sup>365</sup> yet, maybe the loudest criticism came from Michael Scharf – a legal adviser to the State Department at the time, who, as such, drafted SC Resolutions 731, 748 and 883 in 1992, and – given his position – presented before the SC obtained evidence that incriminated Libya. Five years after the trial – in light of new information he obtained regarding the case – he stated that the 'Lockerbie trial was a CIA fix... The CIA and the FBI kept the State Department in the dark... The case was so full of holes it was like Swiss cheese...it should never have gone to trial.'<sup>366</sup> He also appeared in a BBC documentary in 2008 stating 'I have to say, years later, that I feel to have played a role similar to that of Colin Powell after the invasion of Iraq'.<sup>367</sup>

<sup>364</sup> UN SC, 'Security Council Lifts Sanctions Imposed on Libya After Terrorist Bombing of Pan Am 103' (12 September 2003) Press Release <[www.un.org/press/en/2003/sc7868.doc.htm](http://www.un.org/press/en/2003/sc7868.doc.htm)> accessed 10 October 2018 Interestingly enough, Libya did not only compensate the families of the victims of Pan-Am 103, but also the families of the American victims of the Berlin discotheque bombing, the UTA Flight 772 bombing and even the families of the Libyan victims of the 1986 American bombing of Tripoli and Benghazi.

<sup>365</sup> Alex Duval Smith, 'Vital Lockerbie evidence "was tampered with"' *The Guardian* (2 September 2007) <[www.theguardian.com/business/2007/sep/02/theairlineindustry.libya](http://www.theguardian.com/business/2007/sep/02/theairlineindustry.libya)> accessed 10 October 2018; *The Guardian*, 'What if they are innocent?' (17 April 1999) <[www.theguardian.com/uk/1999/apr/17/lockerbie](http://www.theguardian.com/uk/1999/apr/17/lockerbie)> accessed 10 October 2018; Soussi Alasdair, 'Controversy remains 25 years after Lockerbie' *Al Jazeera* (21 December 2013) <[www.aljazeera.com/indepth/features/2013/12/controversy-remains-25-years-after-lockerbie-2013122184326527724.html](http://www.aljazeera.com/indepth/features/2013/12/controversy-remains-25-years-after-lockerbie-2013122184326527724.html)> accessed 10 October 2018; Severin Carrell, 'Lockerbie families split over call for new investigation' *The Guardian* (8 April 2011) <[www.theguardian.com/uk/2011/apr/08/lockerbie-families-split-way-forward](http://www.theguardian.com/uk/2011/apr/08/lockerbie-families-split-way-forward)> accessed 10 October 2018.

<sup>366</sup> Liam McDougall, 'Lockerbie trial was a CIA fix, United States intelligence insider claims' *Sunday Herald* (12 November 2006) <[www.informationliberation.com/?id=17888](http://www.informationliberation.com/?id=17888)> accessed 10 October 2018.

<sup>367</sup> BBC, 'The Conspiracy Files: Lockerbie.' (Interview in a documentary aired 31 August 2008) <[rutube.ru/video/236c268df63242b26b084621e8b1b38c/](http://rutube.ru/video/236c268df63242b26b084621e8b1b38c/)> accessed 10 October 2018;

BBC, 'Gaddafi's son attacks "greedy" Lockerbie relatives in BBC Two documentary'. Press Release (29 August 2008) <[www.bbc.co.uk/print/pressoffice/pressreleases/stories/2008/08\\_august/29/lockerbie.shtml](http://www.bbc.co.uk/print/pressoffice/pressreleases/stories/2008/08_august/29/lockerbie.shtml)> accessed 10 October 2018.

#### 4.2.2 *Evidentiary standards*

As stated, investigating the incident is not a purpose of this paper. What does speak plenty about the decision-making processes within the SC is, however, the fact that on the premises of suspected actions of two individuals – which may or may have not acted on behalf of the Libyan government – a state of 4.5 million people at the time, was sanctioned for 11 years, so that later one of those two individuals could be found not guilty, and the evidence used to charge the other one is still suspected to be non-reliable by numerous stakeholders in the affair. The only aspect of this case that can be considered even worse than enacting sanctions – without hard evidence of guilt – is their introduction on the basis of Libya's refusal to extradite two of its citizens to Scotland, which is not even required under the relevant provisions of international law.<sup>368</sup>

The crucial premise for Libya's claims that the sanctions were a breach of international law was the Montreal Convention.<sup>369</sup> Several of the its provisions [Articles 7; 8.1 and 8.2] stipulate that Libya had no obligation to deliver the two suspects for trial in the United Kingdom, yet it was bound to investigate the incident itself and subsequently decide upon eventual extradition – that could be arranged as per existing extradition treaties among the concerned parties (Libya did not have extradition agreements neither with the United States nor with the United Kingdom). Furthermore, under Article 14 of the Montreal Convention, any dispute regarding interpretation of the Convention was to be submitted before the ICJ. As Libya initiated its own legal

<sup>368</sup> Hurd (n 351) 506 identifies three 'rhetorical themes' around which United States and United Kingdom's lobbying for sanctions in the SC revolved, '...the threat to international peace and security posed by the potential proliferation of terrorism, the adherence to well-established community standards on procedural justice, and the need to promote and enforce respect for legitimate international organizations.' The logic of the first theme is self-evident. Regarding the second motif, the United States ambassador to the SC argued the sanctions meet all relevant standards of international law, as they are proportionate, compassionate and used as a last resort. The third topic, Hurd argues, was used to denounce violations of the sanctions regime, thus, keeping it afloat for such a long time, as any actor disagreeing with the measures would be regarded to act in contravention to international peace and security. The author later analyses how Libya responded to the three themes. Over the years, its officials reiterated that the introduction of sanctions breached principles of procedural justice present in international as well as domestic law, including United States and United Kingdom's legislation, therefore, compliance with the sanctions was itself a violation of accepted norms of international organizations – which consequently constituted a threat to international peace and security.

<sup>369</sup> Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (signed 23 September 1971, entered into force 26 January 1973) 188.

proceedings about the Lockerbie incident, it requested assistance by the joint United States-United Kingdom investigation on the basis of Article 11.1 – maintaining that evidence from the crash site is crucial for the examination – yet, the United States and the United Kingdom refused to provide it.<sup>370</sup> Founded upon Libya's refusal to extradite the two accused to the United Kingdom, sanctions were imposed in March 1992. On the basis of Article 14 of the Montreal Convention, Libya submitted the case before the ICJ on 3 March 1992, filing two applications against the United States and the United Kingdom.<sup>371</sup>

The United Kingdom raised two preliminary objections – the first one regarding the jurisdiction of the ICJ,<sup>372</sup> and the second regarding the admissibility of Libya's requests.<sup>373</sup> The ICJ dismissed both of them,<sup>374</sup> and continued to deliver upon the case. The court proceedings were halted in 2003 after both parties informed the ICJ they had resolved their differences. Nonetheless, ICJ's decision that it held jurisdiction

<sup>370</sup> Hurd (n 351). 'Libya ... claimed, [on the basis of Article 1 that the Montreal Convention is] the only appropriate Convention in force between the Parties, and asserted that it had fully complied with its own obligations... Article 5 of which required a State to establish its own jurisdiction over alleged offenders present in its territory in the event of their non-extradition; and that there was no extradition treaty between Libya and the respective other Parties, so that Libya was obliged under Article 7 of the Convention to submit the case to its competent authorities for the purpose of prosecution. Libya contended that [the United States and the United Kingdom] were in breach of the Montreal Convention through rejection of its efforts to resolve the matter within the framework of international law... in that they were placing pressure upon Libya to surrender the two Libyan nationals for trial. [Libya asked of the ICJ] to enjoin [the United States and the United Kingdom] from taking any action against Libya calculated to coerce or compel it to surrender the accused individuals to any jurisdiction outside Libya and to ensure that no steps were taken that would prejudice in any way the rights of Libya with respect to the legal proceedings that were the subject of Libya's Applications.'

<sup>371</sup> *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)* (Overview of the case) ICJ <[www.icj-cij.org/en/case/88](http://www.icj-cij.org/en/case/88) accessed 8 October 2018> accessed 10 October 2018.

<sup>372</sup> Hurd (n 351) The United Kingdom asked the ICJ 'to rule that the intervening resolutions of the [SC] have rendered the Libyan claims without object'. The United Kingdom contended that the Libyan Application was inadmissible because the so-called issues in dispute 'are now regulated by decisions of the Security Council.'

<sup>373</sup> *ibid.* The United Kingdom maintained that, even if the Montreal Convention did confer on Libya the rights it claims, they could not be exercised in this case because they were superseded by SC resolutions 748 and 883 which, by virtue of Articles 25 and 103 of the UN Charter, have priority over all rights and obligations arising out of the Montreal Convention.

<sup>374</sup> *ibid.* Regarding United Kingdom's second objection, the ICJ dismissed the argument of inadmissibility based on SC resolutions 748 and 883; maintaining that the objection raised by each of the respondent states on the ground that those resolutions would have rendered the claims of Libya without object did not – in the circumstances of the case – have an exclusively preliminary character, and as such, the ICJ is bound to rule on the merits affecting Libya's rights.

over the dispute can be interpreted as to mean that the differences among the parties were of legal nature – and as such they should have been delivered upon by a body of law, instead of having the SC enact sanctions before the legal dispute was resolved.

#### 4.2.3 *Aftermath*

After resolving the dispute in 2003, relations between Gaddafi's regime and the states previously accusing it of being a threat to international peace and security were lifted up to an exceptionally high level. That took place despite what analysts argue was an even stronger grip of power by the regime in Libya following 2003 – due to the sanctions-caused increased dependence on state institutions, economic monopoly, rise of nationalism, suppression of democratic movements,<sup>375</sup> and a strong international support on top of that – mostly due to the West's interests involving Libyan oil.<sup>376</sup> The display of a new era of Libyan-Western ties featured: the removal of Gaddafi's regime from the United States' list of terrorism supporters after 27 years; Libya's election as a non-permanent member of the SC in 2007; Berlusconi's decision to pay \$5 billion compensation for Italy's colonial exploitation of Libya; close meetings between Gaddafi and several United States officials; Tony Blair's visit to Gaddafi's personal tent in the desert; and last but not least – what a 2017 legal scandal disclosed was Gaddafi's contribution of €50 million to Sarkozy's presidential campaign.<sup>377</sup>

Yet, as “all good things come to an end”, the Arab Spring led the SC to introduce Resolution 1970 enacting targeted sanctions against Libya.<sup>378</sup> Giving those measures less than three weeks to work, one of the

<sup>375</sup> Abughalia et al, 'Impact of International Economic Embargoes on the Libyan Foreign Trade' (2012) *International Journal of Academic Research in Economics and Management Sciences* 1 (3) 80–103. '...people will rely more on government for survival or maintaining the supply base. Therefore, sanctions could support the ideological legitimacy of the regime' [82];

Chmel et al. 'Dictators' Behavior Under Conditions of Economic Sanctions Cumulative Effect' (2017) *Political Science Series, working paper WP BRP 50/PS/2017* <wp.hse.ru/data/2017/10/23/1157845650/50PS2017.pdf> accessed 10 October 2018; Enrico Carisch Loraine Rickard-Martin and Shawna R. Meister, *The Evolution of UN Sanctions* (Springer, 2017).

<sup>376</sup> Amin Saikal, 'Gaddafi: the ruler the West embraced and disliked' *ABC News* (24 August 2011) <[www.abc.net.au/news/2011-08-24/saikal-gaddafi-the-ruler-the-west-embraced-and-disliked/2853592](http://www.abc.net.au/news/2011-08-24/saikal-gaddafi-the-ruler-the-west-embraced-and-disliked/2853592)> accessed 10 October 2018.

<sup>377</sup> *ibid*; Angelique Christafis, 'Nicolas Sarkozy in police custody over Gaddafi allegations' *The Guardian* (20 March 2018) <[www.theguardian.com/world/2018/mar/20/nicolas-sarkozy-police-custody-french-president-campaign-funding-libya](http://www.theguardian.com/world/2018/mar/20/nicolas-sarkozy-police-custody-french-president-campaign-funding-libya)> accessed 10 October 2018.

<sup>378</sup> UN SC Res 1970 (26 February 2011) UN Doc S/RES/1970.

most controversial resolutions ever enacted by the SC came into being (Resolution 1973 was mentioned on p14),<sup>379</sup> whose provision ‘to use all necessary measures to protect civilians’ was interpreted by the group of states which lobbied for the previous sanctions regime and then had a change of heart – only to have another change of heart in 2011 – as to give them the authority to conduct a regime-change operation in Libya. Today, more than seven years later, Libya is a failed state, in a situation of constant civil war and anarchy, with more than 30,000 killed (still disputed),<sup>380</sup> about 300,000 internally displaced persons; and dozens of torture centres and slave markets.<sup>381</sup>

#### 4.2.4 Evaluation

In conclusion, on the basis of the above-explained arguments, it can be deduced about the first sanctions regime targeting Libya that ‘There are many interesting ways in which validity claims make arguments more powerful, but the Libyan case shows also how even (presumably) cynical uses of international norms can affect the outcome of interstate disputes.’<sup>382</sup> The problem of evidentiary standards, in this regard, undermines the credibility of the UN as a legitimate representative of the international community, of all its member states and of all people, whose rights, opportunities and quality of life should not be infringed upon regardless of their country of citizenship, the actions of their governments, nor the international lobbying skills of various officials – enabling them to “construct” a truth-narrative.

Regarding UN’s policies towards Libya since 2011, the 1970 sanctions regime still in place cannot be analysed apart from NATO’s intervention and its consequences. This study does not have the capacity to examine the controversies surrounding the operation, yet a further research – also from the perspective of IHL – might shed further light on UN’s failures that brought Libya into its current state. What this paper can

<sup>379</sup> UN SC Res 1973 (17 March 2011) UN Doc S/RES/1973.

<sup>380</sup> Ian Black, ‘Libyan revolution casualties lower than expected, says new government’ *The Guardian* (8 January 2013) <[www.theguardian.com/world/2013/jan/08/libyan-revolution-casualties-lower-expected-government](http://www.theguardian.com/world/2013/jan/08/libyan-revolution-casualties-lower-expected-government)> accessed 10 October 2018; Libya Body Count, ‘Data, 2011-2018’ <[www.libyabodycount.org/table](http://www.libyabodycount.org/table)> 10 October 2018.

<sup>381</sup> *Human Rights Watch*, ‘Libya – Events of 2017’ (2018) <[www.hrw.org/world-report/2018/country-chapters/libya](http://www.hrw.org/world-report/2018/country-chapters/libya)> accessed 10 October 2018.

<sup>382</sup> Hurd (n 351) 501.

argue, however, is that UN's first sanctions regime was detrimental for the state of democracy in Libya and arguably, those consequences did play a role in the 2011 uprisings.

## 4.3 DPRK

### 4.3.1 *Timeline*

The development of the DPRK's nuclear programme should be traced back to 2003, when the state withdrew from the NPT.<sup>383</sup> The evolution of UN's sanctions measures must be observed conjointly with the evolution of the DPRK's nuclear programme. Resolution 1718 was passed in 2006 after the DPRK's first nuclear test – introducing targeted sanctions against state officials and an embargo on selected products.<sup>384</sup> As the DPRK failed to comply – after its second nuclear test in 2009 – Resolution 1774 broadened the arms embargo and asked of states to inspect the DPRK's ships.<sup>385</sup> The DPRK conducted a satellite launch in 2013 and consequently, Resolution 2087 strengthened previous measures regarding states' duty to seize and destroy cargo.<sup>386</sup> The DPRK's third nuclear test took place in 2013 and Resolution 2094 isolated the DPRK from the international financial system.<sup>387</sup> Resolution 2270 adopted

<sup>383</sup> Treaty on the Non-Proliferation of Nuclear Weapons (adopted 1 July 1968, entered into force 5 March 1970) 190.

<sup>384</sup> UN SC Res 1718 (14 October 2006) UN Doc S/RES/1718 It introduced an arms embargo, assets freeze and travel ban on persons involved in the DPRK's nuclear programme as well as a ban of certain weapons: battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems, large-scale arms, nuclear technology, and related training on nuclear weapons development, as well as an embargo on certain luxury goods.

<sup>385</sup> UN SC Res 1984 (9 June 2011) UN Doc S/RES/1984. The measures included: preventing financial services that could contribute to the nuclear or ballistic missile related programmes, asked of states not to provide financial assistance to the DPRK nuclear programme, or enter into loans with the country, except for humanitarian or developmental reasons and expanded the arms embargo by banning all weapons exports from the country and most imports, with an exception to small arms, light weapons and related material – though member states must notify the Security Council five days prior to selling the weapons.

<sup>386</sup> UN SC Res 2087 (22 January 2013) UN Doc S/RES/2087.

<sup>387</sup> UN SC Res 2094 (7 March 2013) UN Doc S/RES/2094. Decides that Member States shall, in addition to implementing their obligations pursuant to paragraphs 8 (d) and (e) of resolution 1718 (2006), prevent the provision of financial services or the transfer to, through, or from their territory, or to or by their nationals or entities organized under their laws (including branches abroad), or persons or financial institutions in their territory, of any financial or other assets or resources, including bulk cash, that could contribute to the DPRK's nuclear or ballistic missile programmes [Art 11].

after the DPRK's fourth nuclear test imposed an embargo on precious metals.<sup>388</sup> The trend continued with Resolution 2321 which expanded the embargo to include certain ore minerals,<sup>389</sup> and Resolution 2371.<sup>390</sup> Finally, Resolution 2375 of September 2017 introduced the harshest measures thus far – limiting oil, refined petroleum and natural gas imports; banning textile exports and prohibiting North Koreans from working abroad.<sup>391</sup>

A peculiarity of UN's sanctions regime targeting the DPRK is the embargo on the most specifically defined list of luxury good thus far – expanded by several resolutions.<sup>392</sup> These measures rest on the argument that banning trade in luxury goods will have a negative impact on the DPRK's elite – by preventing it to enjoy certain privileges, yet, criticism brings out the question of priorities on the SC's agenda. While no sanctions have been introduced in light of grave human rights violations and international destabilization – as carried out by states such as Saudi Arabia, Israel or Myanmar for that matter – international capacities are being utilized to prevent the DPRK's regime from buying tableware of porcelain or bone china valued at more than \$100. Still, the loudest criticism against this sanctions regime is its impact on the delivery of humanitarian aid to the North Korean people.

<sup>388</sup> UN SC Res 2070 (12 October 2012) UN Doc S/RES/2070. It enforces sectorial sanctions (coal, minerals and fuel ban), with an exemption for transactions that were purely for 'livelihood purposes' as well as expands the arms embargo and non-proliferation measures, including small arms and light weapons, catch-all provisions to ban any item if related to prohibited programmes, dual-use nuclear/missile items, and operational capabilities of the DPRK's and another Member States' armed forces.

<sup>389</sup> UN SC Res 2321 (30 November 2016) UN Doc S/RES/2321. It introduces an embargo on copper, nickel, zinc, and silver.

<sup>390</sup> UN SC Res 2371 (5 August 2017) UN Doc S/RES/2371.

<sup>391</sup> UN SC Res 2375 (11 September 2017) UN Doc S/RES/2375. It bans exports of coal, iron, lead and seafood.

<sup>392</sup> UN, 'DPRK 1718 Sanctions Regime: Additional Items and Luxury Goods' (last updated 21 December 2016) <[www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/list\\_items\\_and\\_luxury\\_goods.pdf](http://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/list_items_and_luxury_goods.pdf)> accessed 10 October 2018. It currently includes a ban on: jewelry (jewelry with pearls; gems; precious and semi-precious stones - including diamonds, sapphires, rubies, and emeralds; jewelry of precious metal or of metal clad with precious metal); transportation items (yachts; luxury automobiles and motor vehicles; automobiles and other motor vehicles to transport people, other than public transport, including station wagons, racing cars); luxury watches (wrist, pocket, and other with a case of precious metal or of metal clad with precious metal; transportation items - aquatic recreational vehicles, such as personal watercraft; snowmobiles - valued greater than \$2,000; items of lead crystal; recreational sports equipment); rugs and tapestries (valued greater than \$500); tableware of porcelain or bone china (value greater than \$100).



#### 4.3.2 *Humanitarian impact*

Pleas for consideration of the sanctions' toll on human rights have in particular been raised by officials of several UN agencies. In December 2017, HCHR, al-Hussein, stated before the SC

The humanitarian assistance provided by UN agencies...is literally a life-line for some 13 million acutely vulnerable individuals. But sanctions may be adversely affecting this essential help...controls over international banking transfers have caused a slowdown in UN ground operations, affecting the delivery of food rations, health kits and other humanitarian aid. I ask that members of this Council conduct an assessment of the human rights impact of sanctions, and that action be taken to minimize their adverse humanitarian consequences.<sup>393</sup>

Assistant Secretary-General for Political Affairs, Miroslav Jenca, supported al-Hussein's call.<sup>394</sup>

In a reply to the OHCHR, the 1718 Sanctions Committee underlined humanitarian exemptions contained in Resolution 2375, '[sanctions] are not intended to have adverse humanitarian consequences for the civilian population...'<sup>395</sup> Despite sanctions' 'lack of intention' to harm civilians, UN agencies and their officials (UNICEF; UN's resident coordinator of UNDP, UNICEF, WFP, UNFPA, FAO and WHO - Tapan Mishra; UN's special rapporteur on human rights in the DPRK - Tomas Quintana) have reiterated their diminished abilities to act due

<sup>393</sup> UN OHCHR 'Security Council briefing on the situation in the Democratic People's Republic of Korea: Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein' (8 December 2017) <[www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22526](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22526)> accessed 10 October 2018.

<sup>394</sup> UN Department of Political Affairs, 'Security Council Briefing on the Human Rights Situation in DPRK, Assistant Secretary-General Miroslav Jenča' (11 December 2017) <[www.un.org/undpa/en/speeches-statements/11102017/dprk](http://www.un.org/undpa/en/speeches-statements/11102017/dprk)> accessed 10 October 2018. 'An estimated 18 million people (70% of the population) are suffering from food insecurity, and 10.5 million people (41% of the population) are undernourished. The situation is even more critical with the current lack of funding... Humanitarian partners operating in the country have reported increasing operational challenges including custom clearances of life-saving items, procurement of humanitarian supplies, transport of goods, rising food prices (up 160% since April). In addition, the banking channel for the international organizations working in the country has broken down for the third time in the last seven years.'

<sup>395</sup> UN SC, 'Security Council 1718 Sanctions Committee Underlines Humanitarian Exemptions Pursuant to Paragraph 26 of Security Council Resolution 2375' (8 December 2017) Press Release <[www.un.org/press/en/2017/sc13113.doc.htm](http://www.un.org/press/en/2017/sc13113.doc.htm)> accessed 10 October 2018.

to the sanctions.<sup>396</sup> The SC has remained silent on the issue. In such state of affairs, the discrepancy in the operating of the UN as a single international body comes to the fore once again – bringing out the question of precedence between the Articles 1.1 and 1.3 of the Charter.

In the case of the DPRK, the grave humanitarian effects of the sanctions are felt not by the DPRK's ruling regime – but by civilians.<sup>397</sup> Particularly telling regarding distribution of life essentials in times of crises is the research conducted on famines in the DPRK taking place in the 1990s – clearly showing that the government distributed food primarily to its political elite and not to the general population.<sup>398</sup> Nonetheless, these issues are not considered by decision-makers, with former United States Secretary of State stating 'The regime could feed and care for women, children and ordinary people...if it chose the welfare of its people over weapons development'.<sup>399</sup> Civilian ordeal,

<sup>396</sup> Tom Miles, 'Tackling North Korea's chronically poor sewage "not rocket science": UN' *Reuters*, 20 June 2018 <[www.reuters.com/article/us-northkorea-unicef/tackling-north-koreas-chronically-poor-sewage-not-rocket-science-u-n-idUSKBN1JG2Q4](http://www.reuters.com/article/us-northkorea-unicef/tackling-north-koreas-chronically-poor-sewage-not-rocket-science-u-n-idUSKBN1JG2Q4)> accessed 10 October 2018; Mythili Sampathkuma, 'United Nations own sanctions hinder its humanitarian aid efforts in North Korea' *The Independent* (12 April 2018) <[www.independent.co.uk/news/world/north-korea-nuclear-weapons-humanitarian-aid-united-nations-a8302181.html](http://www.independent.co.uk/news/world/north-korea-nuclear-weapons-humanitarian-aid-united-nations-a8302181.html)> accessed 10 October 2018; 'The UN's own SC sanctions were part of what hampered humanitarian aid supplies and financial transfers making their way into the country, UN resident coordinator Tapan Mishra told AFP News Agency. The UN was only able to solicit \$31m in member country contributions of the required \$114m. Out of that 10.3 million people that Mr Mishra said need help, the UN targeted helping about four million with the decreased amount of aid money they had received. They reached approximately 660,000 people - or 15% - of them'. 'We need to deal with the nuclear problem, but we need to properly ponder our means for achieving that goal', Tomás Ojea Quintana, the U.N. special rapporteur on North Korean human rights, said in an interview in Tokyo. See: Anna Fifield, 'Sanctions are hurting aid efforts — and ordinary people — in North Korea' *The Washington Post* (16 December 2017) <[www.washingtonpost.com/world/asia\\_pacific/sanctions-are-hurting-aid-efforts--and-ordinary-people--in-north-korea/2017/12/15/df57fe6e-e109-11e7-b2e9-8c636f076c76\\_story.html?noredirect=on&utm\\_term=.df5fa59c71b9](http://www.washingtonpost.com/world/asia_pacific/sanctions-are-hurting-aid-efforts--and-ordinary-people--in-north-korea/2017/12/15/df57fe6e-e109-11e7-b2e9-8c636f076c76_story.html?noredirect=on&utm_term=.df5fa59c71b9)> accessed 10 October 2018; UN, 'Interview: UN's top official in North Korea foresees 'surge' in humanitarian aid' (28 June 2018) UN News <[news.un.org/en/interview/2018/06/1013432](http://news.un.org/en/interview/2018/06/1013432)> accessed 10 October 2018. 'UN News: How much have economic sanctions affected everyday life in North Korea?' *Tapan Mishra*: I have raised this issue, not only with the Chair of the UN Sanctions Committee (1718 Committee) that there are unintended consequences of the sanctions that are being seen in terms of the work that we do in the UN and other humanitarian agencies.'

<sup>397</sup> Fifield (n 397) 'These sanctions were not intended for them, but they have ended up being victims of the international sanctions regime.'

<sup>398</sup> Stephen Haggard, *Famine in North Korea: Markets, Aid, and Reform* (Columbia University Press 2007).

<sup>399</sup> Nonetheless, an opposing stance of the one argued – that it is a regime's responsibility to take care of its own people – is often taken by the United States regarding human rights violations in other parts of the world; using those breaches to intervene in the domestic affairs of sovereign states. See: Seung-Whan Choi and Patrick James, 'Why does the U.S. Intervene Abroad? Democracy, Human Rights Violations, and Terrorism.' (2014) *Journal of Conflict Resolution* 60 (5) <[www.researchgate.net/publication/274509404\\_Why\\_Does\\_the\\_United\\_States\\_Intervene\\_Abroad\\_Democracy\\_Human\\_Rights\\_Violations\\_and\\_Terrorism](http://www.researchgate.net/publication/274509404_Why_Does_the_United_States_Intervene_Abroad_Democracy_Human_Rights_Violations_and_Terrorism)> accessed 10 October 2018.

therefore, is legitimized with sanctions' contribution towards non-proliferation, as United States ambassador to the UN, Hailey, argued 'Every ounce of revenue North Korea receives they put to their nuclear program. So the fact that sanctions have completely squeezed them, that is less money they can put towards that nuclear program.'<sup>400</sup> By having civilian suffering justified with policy-goals expected to be delivered through sanctions – the question of whether or not the sanctions have factually impaired the development of the DPRK's nuclear programme becomes crucial.

#### 4.3.3 *Evaluation*

The above-presented timeline on sanctions' evolution against the DPRK's nuclear activities shows the coercive economic measures do not seem to have brought hesitation in the DPRK's leaders' risk assessments – considering they have continued to conduct nuclear tests and satellite launches, whose frequency has risen since 2006 – all despite UN's 18 resolutions condemning those activities and introducing more and more comprehensive sanctions over the past 12 years. Among the variables analysts count as responsible for the low efficiency of sanctions are the lack of data proving factual financial harm on the DPRK's decision-makers and their ability to obtain materials for development of its nuclear programme due to China's weak compliance with the sanctions regime. Yet, a specific political reason is provided by Carisch et al arguing that 'in the case of the DPRK...the demand for UN sanctions was promoted by the United States and ROK who have never signed a formal peace accord with the DPRK. Adding sanctions to a poorly implemented armistice, is by definition an act of economic warfare.'<sup>401</sup> According to that logic – the leadership of the DPRK can argue to be entitled to develop a proliferation programme crucial for its national security, amid the fact that the war on the Korean peninsula has never been factually completed, and many issues remain open – among them

<sup>400</sup> Joshua Berlinger, 'North Korea Sanctions Could Hurt Millions as Winter Bites' *CNN* (12 December 2017) <[edition.cnn.com/2017/12/12/asia/north-korea-un-sanctions-intl/index.html](http://edition.cnn.com/2017/12/12/asia/north-korea-un-sanctions-intl/index.html)> accessed 10 October 2018 Trump stated at a rally 'I don't know that sanctions are going to work with him (Kim Jong Un). We've got to give it a shot.'

<sup>401</sup> Carisch et al (n 376) 476.

American military presence on the DPRK's border. In such state of affairs, reaching a peace treaty among the two Koreas should be considered a much more viable and adequate solution to the DPRK's proliferation activities than the enactment of sanctions.

Efforts for rapprochement both between the two Koreas and between the DPRK and the United States can be traced back at least as far as 1985 – when the DPRK joined the NPT and a series of diplomatic visits began taking place.<sup>402</sup> Most analysts detect the start of deteriorated relations with the first Bush presidency, who referred to the DPRK as part of the 'axis of evil' along with Iraq and Iran. In 2003, as mentioned, the DPRK exited the NPT and the vicious cycle between UN sanctions and the DPRK's proliferation activities came into being. Nonetheless, 2018 saw several rounds of Inter-Korean *détente* – starting from the Winter Olympic Games in Seoul; a subsequent DPRK delegation visit, on which United States vice-president Mike Pence refused to shake hands with DPRK officials; still, in March president Trump agreed to take part in an upcoming DPRK-United States Peace Summit; Kim's historic visit for an Inter-Korean Peace summit to ROK took place in April; the chain of positive developments was interrupted in May when Trump called off the already agreed Singapore summit, but yet another turn of events followed, as the summit did take place in June.<sup>403</sup> All considering – the process of rapprochement and full denuclearization of the Korean peninsula is moving forward despite setbacks.

Nonetheless, numerous analysts argue the positive course of development is moving more smoothly between the two Koreas, yet, less so between the DPRK and the United States – amid their diplomatic "hot and cold" relations. In this regard, both policy observers and DPRK officials point to the United States' history of sabotaging peace processes on the Korean peninsula for the past 64 years and link them to the mentality displayed by certain members of the current United States presidential administration

<sup>402</sup> For a practically useful and detailed historical timeline of the events on the Korean peninsula since the 1980s see: *Council of Foreign Relations*, 'North Korean Nuclear Negotiations: 1985 – 2018'. <[www.cfr.org/timeline/north-korean-nuclear-negotiations](http://www.cfr.org/timeline/north-korean-nuclear-negotiations)> accessed 10 October 2018.

<sup>403</sup> *ibid.*

– in particular national security advisor John Bolton.<sup>404</sup>

In such state of affairs, the P5 members' genuine intentions towards international peace and security – argued to be the primary motif for sanctions enacted through the SC – need to be re-examined. The necessity to assess whether economic sanctions causing grave civilian suffering, or a factual appeasement accompanied with practical efforts towards denuclearization and demilitarization, is a more appropriate solution – becomes self-evident. A decisive variable that needs to be considered, in this respect, is the totality of policy-actions undertaken by members of the P5 – analysing whether or not the rhetoric argued on behalf of international peace and security and used for lobbying for economic sanctions in the SC – is factually accompanied with the P5's individual policies in regard to the same issues. If members of the P5, on the one hand, claim to pursue the central goals of the international community before the SC, yet, they sabotage reconciliation among nations on the other hand – sanctions cannot be expected to deliver policy results contributing towards international peace and security. The only results they can deliver, in such situations, is starvation and lack of basic medications and life necessities – all paid for by the civilian population who, very seldom, plays an actual role in deciding the foreign-policy direction that their government pursues.

<sup>404</sup> Michael Pembroke, 'How 11 United States presidents failed to make peace with North Korea' *Al Jazeera* (10 June 2018) <[www.aljazeera.com/indepth/opinion/11-presidents-failed-peace-north-korea-180609133308201.html](http://www.aljazeera.com/indepth/opinion/11-presidents-failed-peace-north-korea-180609133308201.html)> accessed 10 October 2018; Alex Lockie, 'Trump's national security advisor John Bolton has advocated bombing North Korea — and he may be sabotaging talks' *Business Insider* (16 May 2018) <[www.businessinsider.com/john-bolton-may-sabotage-north-korea-talks-libya-2018-5?IR=T](http://www.businessinsider.com/john-bolton-may-sabotage-north-korea-talks-libya-2018-5?IR=T)> accessed 10 October 2018; Se-Woong Koo, 'Trump wants war, Moon wants peace' *Al Jazeera* (11 January 2018) <[www.aljazeera.com/indepth/opinion/renewed-talks-prevent-war-korean-peninsula-180111080802535.html](http://www.aljazeera.com/indepth/opinion/renewed-talks-prevent-war-korean-peninsula-180111080802535.html)> accessed 10 October 2018; *Sputnik*, 'North Korea Praises Trump, Slams Other United States Officials for Sabotaging Peace' (9 August 2018) <[sputniknews.com/asia/201808091067084355-DPRK-Praises-Trump-Slams-Peace-Sabotage/](http://sputniknews.com/asia/201808091067084355-DPRK-Praises-Trump-Slams-Peace-Sabotage/)> accessed 10 October 2018.

## 4.4 FRY

4.4.1 *Timeline*

The initial arms embargo including all SFRY republics was introduced with Resolution 713 in 1991.<sup>405</sup> With war taking place in several of the republics – but the situation becoming alarming particularly in BH – the SC unanimously passed Resolution 752 – demanding elements of YPA and the Croatian Army to withdraw from BH and respect its territorial integrity.<sup>406</sup> 15 days later, the SC introduced the most comprehensive sanctions regime in UN's history,<sup>407</sup> enacting a full embargo on all products and prohibiting any kind of funding resources from reaching the state, this time specifically against the FRY with Resolution 757.<sup>408</sup> As the SC became aware these measures did not pertain to trade among the republics of the former federation – Resolution 787 reinforced the sanctions regime – preventing the other four republics from trading with the FRY.<sup>409</sup>

Yet, despite the political will demonstrated by all of the P5 to implement the sanctions regime, the FRY government did not cease arms supply to the paramilitary groups it supported in BH.<sup>410</sup> The Bosnian Serbs discarded a peace plan proposed in the fall of 1994.

<sup>405</sup> UN SC Res 713 (25 September 1991) UN Doc S/RES/713.

<sup>406</sup> UN SC Res 752 (15 May 1992) UN Doc S/RES/752.

<sup>407</sup> Vojin Dimitrijevic and Jelena Pejic, 'UN Sanctions Against Yugoslavia: Two Years Later', Chap. 7 in *The United Nations in the New World Order*, ed by Bourantonis D. and Wiener J. (Palgrave Macmillan 1995).

<sup>408</sup> UN SC Res 757 (30 May 1992) UN Doc S/RES/757. Passed with 13 votes, with the only two abstentions from China and Zimbabwe, the regime allowed only for import of humanitarian aid and went as far as to prohibit organization of sports events or scientific conferences.

<sup>409</sup> UN SC Res 787 (16 November 1992) UN Doc S/RES/787. A precedence enacted with this sanctions regime was the partnership between the SC Sanctions Committee and OSCE – jointly establishing the Sanctions Assistance Mission, which operated through a coordination centre in Brussels with units in Bulgaria, Hungary, Romania, Albania, Croatia, Macedonia, and Ukraine, making that the first occasion the UN cooperated so closely with a regional organization in monitoring a sanctions regime. See: Carisch et al (n 376) 207.

<sup>410</sup> '...the European Commission presented evidence in December 1992, indicating the systematic violation of sanctions by Greek companies, which were sending several thousand tons of oil per week to Serbia via Romania and Bulgaria,' yet those violations were never penalized. '...in 1994, Albania Imported twice as much oil as it consumed... EU sanctions monitor Richardt Vork estimated at that time that 40% of the fuel smuggled into the the FRY was entering via Albania'. See: Peter Andreas, 'Criminalizing Consequences of Sanctions: Embargo Busting and Its Legacy' (2005) *International Studies Quarterly* 335–60, 345.

The bloodiest phase of the conflict took place in July 1995 with the Srebrenica massacre.<sup>411</sup> Even though most analysts recognize that the sanctions did play a major role in forcing the Serbian leadership to the negotiating table for what resulted with the Dayton Peace Accords – in particular due to their heavy toll on Serbian economy<sup>412</sup> – Carisch et al claim the decisive variable for the appeasement was NATO's Operation Deliberate Force. '[The Srebrenica] massacre proved that additional efforts were needed and in the month following Srebrenica, NATO launched Operation Deliberate Force. It targeted the Bosnian Serb paramilitaries and forced them to accept a diplomatic solution...'<sup>413</sup> In the aftermath of the elections held in BH in September 1996 – Resolution 1074 abolished all remaining sanctions.<sup>414</sup>

Sanctions against the FRY were reintroduced with the outbreak of violence in Kosovo with Resolution 1160, which, nevertheless, did not go further than an arms embargo – this time following united Russian and Chinese policy of vetoing any more comprehensive measures through the SC.<sup>415</sup> Still – just like the first sanctions regime was being spectacularly breached during the Bosnian war – the arms embargo amid the Kosovo crisis was violated as well, by all sides involved. The fact of the matter is that arms started reaching Kosovo long before the UN enacted sanctions in 1998.

Conversely, it can be argued that the Kosovo crisis would not have been able to reach the proportions it did if the conflict was as disproportionate in regard to military capacities as it was claimed to be by the decision-makers who used that argument to justify NATO's illegal Operation Allied Force.<sup>416</sup> The fact that the Serbian Army – a successor of the YPA – Europe's fourth largest military force at the time, was in possession of arms which it subsequently used amid its crackdown in Kosovo, should not come as a surprise, yet, the KLA's

<sup>411</sup> Carisch et al (n 376) 206.

<sup>412</sup> David Cortright and George Lopez, 'Sanctioning Yugoslavia'. Chap. 4 in *The Sanctions Decade: Assessing UN Strategies in the 1990s*, 63–86 (Lynne Rienner Publishers 2000).

<sup>413</sup> *ibid* 209.

<sup>414</sup> UN SC Res 1074 (1 October 1996) UN Doc S/RES/1074.

<sup>415</sup> UN SC Res 1160 (31 March 1998) UN Doc S/RES/1160. Unlike China and Russia's views regarding the Bosnian War, the question on Kosovo was seen – and that approach remains unchanged today – as inherently an internal matter – then of the FRY and today of Serbia.

<sup>416</sup> Michael Ignatieff, 'Human Rights as Politics' (4–7 April 2000) The Tanner Lectures on Human Values, Princeton University, 287–319 [317]: 'The Kosovo Liberation Army committed human rights abuses against Serbian civilians and personnel in order to trigger reprisals, which would in turn force the international community to intervene on their behalf.'

ability to organize the terrorist provocations it conducted must be traced back to American, British and, possibly most decisive – German interests in the region.<sup>417</sup> Findings reveal arms smuggling continued during the enforcement of the UN embargo – the primary supplier for the Serbian Army being Israel; while the KLA obtained American-supplied weapons through border smuggling from Albania and BH; old Albanian military equipment and by using narco-profits from several European states – most notably Switzerland.<sup>418</sup>

Still it seems, arms supplies by some of the P5 in violation to the embargo they themselves had imposed through the SC had not sufficed their interests for the Balkan region. Operation Allied Force took place between March and June 1999 and subsequently, several international missions led by NATO took control over Kosovo. Resolution 1367 lifted the arms embargo in 2001.<sup>419</sup> The second sanction regime imposed on the FRY, therefore, was also lifted in the aftermath of a military intervention, yet, unlike Operation Deliberate Force, Operation Allied

<sup>417</sup> Regarding foreign support for KLA, see: Tim Judah, *Kosovo: War and Revenge* (Yale University Press 2012). The author claims CIA supported the KLA since 1996; James Bissett, 'We Created a Monster' *Toronto Star* (31 July 2008) <[www.deltax.net/bissett/a-monster.htm](http://www.deltax.net/bissett/a-monster.htm)> accessed 10 October 2018. The author brings about the involvement of CIA and British Armed Services in supporting the KLA; Roger Faligot, 'How Germany backed the KLA' *The European* (April 1998) <[www.vrijmetselaarsgilde.eu/Maconnieke%20Encyclopedie/RMAP~1/ritualenGO/konvront/5904.html](http://www.vrijmetselaarsgilde.eu/Maconnieke%20Encyclopedie/RMAP~1/ritualenGO/konvront/5904.html)> accessed 10 October 2018. The author claims the KLA emergence of the overlaps with the coming to power of the new head of the BND and that Germany supported the KLA before the United States.

<sup>418</sup> Mark Bromley, 'Case study: Federal Republic of Yugoslavia, 1998–2001' (2007) Stockholm International Peace Research Institute <[www.sipri.org/sites/default/files/files/misc/UNAE/SIPRI07UNAEFRY.pdf](http://www.sipri.org/sites/default/files/files/misc/UNAE/SIPRI07UNAEFRY.pdf)> accessed 10 October 2018, 8–9. 'The KLA are also alleged to have benefited from the patronage of a number of Western powers. Following a meeting between United States Special Envoy Richard Holbrooke and KLA representatives in the summer of 1998, the United States underwent a change in policy, recognizing the KLA as 'a [political] reality on the ground', rather than a threat to regional security, as had previously been stated. Certain reports allege that in the ensuing months United States intelligence agencies helped to equip and train KLA fighters, providing them with logistical support, including satellite telephones. More firmly established are the allegations of ad-hoc operational ties that developed between NATO and KLA forces before and during the bombing campaign. There is evidence that a tacit understanding developed, whereby KLA forces would draw Serb forces out in the open so that NATO pilots overflying the area could identify and bomb them.'

<sup>419</sup> *ibid* 10 'Resolution 1367...noted KFOR's responsibilities in restricting and strictly controlling "the flow of arms into, within and out of Kosovo". Therefore, despite the conditions that sparked its imposition having been met in June 1999, the arms embargo remained in place for two more years. The Russian government had tabled a draft resolution for lifting the arms embargo in November 2000, but were unable to gain the support of other UN SC members, particularly the United States and the United Kingdom. The decision to maintain the arms embargo seems to have been aimed at maintaining pressure on the Milosevic government. Had the embargo been subject to an annual review and UN SC vote for its continuation, it seems apparent that Russia would have used its veto and lifted the embargo.'



Force was conducted without the approval of the SC – deeming it illegal in the eyes of international law. Nonetheless, its role in compelling the Serbian leadership to accept the requested conditions – and hence, deem the UN sanctions regime completely irrelevant – was much larger than the effects of the previous military intervention.

#### 4.4.2 *Economic impact*

The economic consequences of the first round of sanctions against the FRY are in line with assumptions one could have about a sanctions regime regarded as the most comprehensive one in history. The results not had only indiscriminate effects on the whole population of the state, but consequences were disproportionately suffered more by civilians than by policy-makers – similarly as in the case of the DPRK.

The fastest ever recorded effects of sanctions on a state's economy caused a 40% decline in industrial production in the first three months and inflation rate of 19,810% after the first 7 months. The historical record in inflation rate of 313 million% in 1993 has not been broken to this day. Almost a million Yugoslav workers lost their jobs by the end of 1993; those who remained employed were receiving an average monthly payment of about \$15. The 25 months of hyperinflation between 1992 and 1994 mark the third longest-lasting hyperinflation period in history.<sup>420</sup> Consequently, 'the economic crisis and the UN sanctions had a tremendous impact on the people's everyday diet. Many basic, locally produced foods became unavailable as food retailers severely limited their stock to save it from depreciation caused by hyperinflation.'<sup>421</sup>

A CIA Report of 1993 noted that 'Serbs have become accustomed to periodical shortages, long lines in stores, cold homes in the winter and

<sup>420</sup> Ivana Bajić-Hajduković, 'Remembering the "Embargo Cake": The Legacy of Hyperinflation and the UN Sanctions in Serbia' (2014) *Contemporary Southeastern Europe* 1 (2) 61–79 <citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.852.6792&rep=rep1&type=pdf> accessed 10 October 2018. 'In January 1994, hyperinflation in Serbia peaked at 5,578,000,000,000,000,000 per cent, or 113 per cent daily. Prices doubled on a daily - sometimes even hourly - basis, and empty shops became a regular sight.' 62; Jakub Hejsek, 'The Impact of Economic Sanctions on Civilians: Case of the Federal Republic of Yugoslavia' (2012) *The Science for Population Protection* 2 <pdfs.semanticscholar.org/518a/7985bacaf2031772336f7a3356530a9c42f.pdf> accessed 10 October 2018; UN OCHA, 'Economic Sanctions, Health, and Welfare in the Federal Republic of Yugoslavia, 1990 -2000' (25 May 2001) Report <reliefweb.int/report/serbia/economic-sanctions-health-and-welfare-federal-republic-yugoslavia-1990-2000> accessed 10 October 2018.

<sup>421</sup> Bajić-Hajduković (n 421) 61.

restrictions on electricity’<sup>422</sup> The sanctions had devastating effects on the availability of medical supplies. Basic medical equipment – such as antibiotics and X-ray machines – were lacking in Serbian hospitals by the end of 1993.<sup>423</sup> According to *The New York Times*, by the beginning of 1994, suicide rates had increased by 22% since the imposition of sanctions.<sup>424</sup> Yet, during those civilian ordeals, ‘Up to the end of 1993, the sanctions strengthened Milosevic’s hold on power and made him and his cadre wealthier than they were before the war.’<sup>425</sup> The crucial ingredient for such an outcome was state-sanctioned organized crime.

#### 4.4.3 Political impact

Cortright and Lopez trace the fault back to the type of sanctions the UN chose to employ, as ‘restrictions applied only to government assets and did not target the personal accounts of Milosevic and other Serbian political leaders and military commanders’<sup>426</sup> The regime was opening offshore companies and bank accounts, primarily in Cyprus, even though ‘The sanctions committee...urged Cypriot authorities to cooperate with sanctions enforcement, but it had no power to investigate or take enforcement action’<sup>427</sup> Paramilitary groups – most infamous of which were Arkan’s Tigers – were financed by government institutions for their activities in Croatia and BH; yet – with the sanctions in place – the state was looking for ways to circumvent the oil embargo and ended up selling gas stations and similar enterprises to such individuals – thus cementing the “state capture” among the FRY’s political elite and criminals – with war

<sup>422</sup> V. Mijatovic, ‘CIA o Srbiji 1993: Sankcije ne pogađaju dovoljno’ [CIA about Serbia in 1993: Sanctions aren’t hitting hard enough] *Vecernje novosti* (30 September 2013) <[www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:456612-CIA-o-Srbiji-1993-Sankcije-ne-pogađaju-dovoljno](http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:456612-CIA-o-Srbiji-1993-Sankcije-ne-pogađaju-dovoljno)> accessed 10 October 2018.

<sup>423</sup> Stephen Kinzer, ‘Sanctions driving Yugoslav economy into deep decline’ *The New York Times* (31 August 1992) <[www.nytimes.com/1992/08/31/world/sanctions-driving-yugoslav-economy-into-deep-decline.html?pagewanted=all](http://www.nytimes.com/1992/08/31/world/sanctions-driving-yugoslav-economy-into-deep-decline.html?pagewanted=all)> accessed 10 October 2018; Paul Lewis, ‘Yugoslavs Face Hard Winter as the Blockade Bites’ *The New York Times* (29 October 1992) <[www.nytimes.com/1992/10/29/world/yugoslavs-face-hard-winter-as-the-blockade-bites.html](http://www.nytimes.com/1992/10/29/world/yugoslavs-face-hard-winter-as-the-blockade-bites.html)> accessed 10 October 2018.

<sup>424</sup> Roger Cohen, ‘Embargo Leaves Serbia Thriving’ *The New York Times* (30 May 1994) <[www.nytimes.com/1994/05/30/world/embargo-leaves-serbia-thriving.html?pagewanted=all](http://www.nytimes.com/1994/05/30/world/embargo-leaves-serbia-thriving.html?pagewanted=all)> accessed 10 October 2018.

<sup>425</sup> Almir Hodzic, ‘The Sanctions on Yugoslavia: How the Milosevic Regime turned Sanctions-Busting into a State Enterprise’ (17 December 2015) <[www.linkedin.com/pulse/sanctions-federal-republic-yugoslavia-how-milosevic-regime-hodzic/](http://www.linkedin.com/pulse/sanctions-federal-republic-yugoslavia-how-milosevic-regime-hodzic/)> accessed 10 October 2018.

<sup>426</sup> Cortright and Lopez (n 413) 71.  
<sup>427</sup> *ibid.*

criminals among both of those groups of stakeholders. As a consequence, Giatzidis argues that

...international embargoes that were imposed to prevent ethnic carnage had perverse effects: they created a dependency on criminal operatives within each ethnic community because of the need to arrange cross-border transactions to obtain weapons, fuel and other commodities...The result [provided] an environment ripe for corruption.<sup>428</sup>

This criminal cooperation was essential for the regime's political survival. Andreas writes that the state capture would have probably materialized even without the sanctions, yet, the conditions caused by them 'exacerbated the environment to the point that the whole society succumbed to criminal operations'<sup>429</sup> State capture between political leaders and organized crime leaders is not a phenomenon unique to the FRY and its successor states, nonetheless, analysts claim that during the sanctions regime this abnormality reached unprecedented levels – the consequences of which are still widely felt today. Breaches of the sanctions was 'directed and promoted as patriotic smuggling' and the 'embargo-busting system eventually became institutionalized'<sup>430</sup>

In this regard, 'Sanctions are what cemented Milosevic's power.'<sup>431</sup> Besides the paradox of introducing sanctions with the aim to halt inter-ethnic carnage – only to have them facilitating the operating of nationalist-criminal-paramilitary groups; yet another paradox – as such mentioned within Subchapter 2.2 regarding sanctions' negative effects on the overall political situation in the target state; the case of the FRY is another proof that UN sanctions, sometimes aiming either to initiate a regime change or at least partial democratization under a dictatorial regime – actually produce a reverse effect. The sanctions not only failed to support democratization movements – considering people were forced to fight for their basic economic survival – but they increased society's susceptibility to criminalization, thus sealing Milosevic's grip of power, further shared with criminal elites.<sup>432</sup>

<sup>428</sup> Emil Giatzidis, 'The Challenge of Organized Crime in the Balkans and the Political and Economic Implications' (2007) *Journal of Communist Studies and Transitional Politics* 23 (3) 327–51 <[www.tandfonline.com/doi/full/10.1080/13523270701507022?src=recsys](http://www.tandfonline.com/doi/full/10.1080/13523270701507022?src=recsys)> accessed 10 October 2018.

<sup>429</sup> Andreas (n 411) 337.

<sup>430</sup> *ibid* 341.

<sup>431</sup> Blaine Harden, 'The Milosevic Generation' *The New York Times Magazine* (29 August 1999) <[www.nytimes.com/1999/08/29/magazine/the-milosevic-generation.html](http://www.nytimes.com/1999/08/29/magazine/the-milosevic-generation.html)> accessed 10 October 2018.

<sup>432</sup> Andreas (n 411).

#### 4.4.4 *Impact on third states*

The negative externalities did not only debilitate the FRY and its successor states' (Serbia and Montenegro's) economic, democratic and political development, but UN's two rounds of sanctions left behind wide negative implications for their neighbouring states as well. During the first sanctions regime 'In Albania, Bulgaria, Macedonia and Romania, smuggling and cross-border crime were not a part of the hidden agenda of the governments, but were organized and conducted by individuals and groups within or closely connected to the ruling elites...', in particular due to the difference in oil prices – which was used by the FRY's neighbours for financial profits.<sup>433</sup> Yet, Albania and its border with Kosovo should be primarily analysed as exemplars for the sky-rocketing rise in organized crime in the 1990s that took place on their territories and is still on-going today.

While it is self-evident why, amid the collapse of one of the most totalitarian states of the 20<sup>th</sup> century, leaving behind huge stockpiles of arms and other military equipment, although out-dated, Albanians would try to smuggle them in order to both earn financially – considering the collapse of the social structure of their state – but also to support their compatriots on the other side of the border – struggling for national liberation; findings point that arms, heroine and human trafficking – centred in and around Kosovo – would have not been able to reach the levels they did without those activities being encouraged and supported by certain Western allies, among them members of the P5. The consequences for Kosovo and Albania, in this regard, can be argued to have surpassed the implications that organized crime and smuggling left behind in the other mentioned Balkan states.<sup>434</sup>

<sup>433</sup> Marko Hajdinjak, 'Smuggling in Southeast Europe' (2012) Centre for the Study of Democracy Report 11–26, 13 <[seldi.net/fileadmin/public/PDF/Publications/Anti-Corruption\\_in\\_SEE/Background.pdf](http://seldi.net/fileadmin/public/PDF/Publications/Anti-Corruption_in_SEE/Background.pdf)> accessed 10 October 2018.

<sup>434</sup> One only needs to look at: CoE, 'Inhuman treatment of people and illicit trafficking in human organs in Kosovo' Committee on Legal Affairs and Human Rights (12 December 2010) AS/Jur (2010) 46 <[www.assembly.coe.int/CommitteeDocs/2010/ajdoc462010prov.pdf](http://www.assembly.coe.int/CommitteeDocs/2010/ajdoc462010prov.pdf)> accessed 10 October 2018, 14: 'We found that the "Drenica Group" had as its chief – or, to use the terminology of organised crime networks, its "boss" – the renowned political operator and perhaps most internationally recognised personality of the KLA, Hashim Thaqi'.

Giatzidis argues

The smuggling networks, usually organically rooted in the paramilitary units, served their purpose well during wartime while narcotics trafficking reflected the general breakdown of law and order and allowed some of the warring parties to generate revenue... these networks remained active and still prospering even after the end of the war, and their operations can be seen as a continuation of the control these groups exercised on the ground over the movement of illicit goods.<sup>435</sup>

#### 4.4.5 Evaluation

Regarding the decisive role sanctions played in the rise of organized crime in the Balkans and its long-lasting detrimental effects in the political sphere – resulting in a state-capture by criminals and political officials – the academic community has come to something as-close-to-consensus as it can about a social phenomenon.<sup>436</sup> The same can be said about relevant law enforcement bodies, including the UN.<sup>437</sup> All data shows implicit link between the current low socio-economic development; high levels of corruption and organized crime; low democratization levels and therefore – diminished not only social and economic, but also civil and political rights of the citizens of the FRY, SFRY's successor states, and other neighbours (Albania and Kosovo) on one side; and UN's two rounds of sanctions targeting this region – on the other side.

The main shortcoming of the first round of sanctions can be safely stated to have been the type of enacted sanctions – as targeted

<sup>435</sup> Giatzidis (n 419).

<sup>436</sup> CQ Chukwu, 'Transnational Organized Crime in the Former Yugoslav and Post-Soviet Republics: A Desk Review' (2017) *Journal of Political Sciences & Public Affairs* 5 (3) <[www.omicsonline.org/open-access/transnational-organized-crime-in-the-former-yugoslav-and-postsovietrepublics-a-desk-review-2332-0761-1000281.pdf](http://www.omicsonline.org/open-access/transnational-organized-crime-in-the-former-yugoslav-and-postsovietrepublics-a-desk-review-2332-0761-1000281.pdf)> accessed 10 October 2018;

Katarina Štrbac, Branislav Milosavljević and Veljko Blagojević, 'Organized Crime in Western Balkans/ Case: Serbia' (2016) *Vojno delo* 4 (6) 46–63 <[www.odbrana.mod.gov.rs/odbrana-stari/vojni\\_casopisi/arhiva/VD\\_2016-4/68-2016-4-06-Strbac.pdf](http://www.odbrana.mod.gov.rs/odbrana-stari/vojni_casopisi/arhiva/VD_2016-4/68-2016-4-06-Strbac.pdf)> accessed 10 October 2018; Rickard Becker, 'The role of sanctions in the destruction of Yugoslavia' In *NATO in the Balkans*, ed by Ramsey Clark et al (International Action Center 2011) <[iacenter.org/bosnia/becker.htm](http://iacenter.org/bosnia/becker.htm)> accessed 10 October 2018; Michael Palairat, 'The Economic Consequences of Slobodan Milošević' (2001) *Europe-Asia Studies* 53 (6) 903–19 <[www.jstor.org/stable/pdf/826446.pdf](http://www.jstor.org/stable/pdf/826446.pdf)> accessed 10 October 2018.

<sup>437</sup> UN ODC, 'Crime and Its Impact on the Balkans' (March 2008) Report <[www.unodc.org/documents/Balkan\\_study.pdf](http://www.unodc.org/documents/Balkan_study.pdf)> accessed 10 October 2018.

measures against the individuals factually responsible for the carnage in the Balkans would have been a more adequate solution than introducing the most comprehensive sanctions regime ever seen – causing a prolonged ordeal of millions of law-abiding civilians, who had little role in deciding the political and military strategies of their dictatorial officials. Yet, UN's failure regarding the second round of sanctions – introducing nothing more than an arms embargo – is yet another case showing its inability to prevent sanctions-breaches by its own members. Combined, those shortcomings left the Balkans with three sets of consequences, as relevant today as they were in the 1990s: rise of organized crime; rise of nationalism and rise of corruption. Those externalities have a detrimental effect on all sets of human rights of the people concerned – including civil and political, as well as economic and social rights. Nonetheless, for the purpose of this research, the sanctions' negative externalities need to necessarily be weighed against their political efficiency, since, as explained – sanctions' toll on human rights is rarely disputed, but it is justified with sanctions' perceived contribution towards international peace and security.

As mentioned, the first round of sanctions is praised due to its input towards what later became the Dayton Peace Agreement.<sup>438</sup> Yet, while the sanctions did heavily hurt the Serbian economy and therefore, could be argued to have partially diminished its capacity to wage war – this economic weakening was disproportionately paid by the civilian population, while state-supported war crimes continued uninterrupted – amid collusion between organized crime rings, the dictatorial government and war profiteers. The fact of the matter is that the most comprehensive sanctions regime in history was not able to prevent the deadliest case of ethnic cleansing in Europe after the Second World War – Srebrenica. The other fact is that the Bosnian Serb leadership agreed to the Dayton Accords in the aftermath of

<sup>438</sup> 'Cases where economic sanctions have obviously worked are rare. However, UN SC sanctions against Serbia and Montenegro between 1992 and 1995 may be such a case...they led to the signing of the Dayton Agreement and the end of the Bosnian War'. See: Victor Comras, 'Financial Pressure against Serbia and Montenegro, 1992-1995' (2011) Center for a New American Security <[web.archive.org/web/20160202090019/http://www.isn.ethz.ch/Digital-Library/Articles/Special-Feature/Detail/?lng=en&id=154572&tabid=1453376834&contextid774=154572&contextid775=154574](http://web.archive.org/web/20160202090019/http://www.isn.ethz.ch/Digital-Library/Articles/Special-Feature/Detail/?lng=en&id=154572&tabid=1453376834&contextid774=154572&contextid775=154574)> accessed 10 October 2018.

a military intervention. In this regard, the result of the contrasting of positive against the negative externalities of the first round of sanctions clearly points towards the sanctions' disproportionately larger negative consequences compared to their positive influence.

Regarding the second round of sanctions – while they did not have as serious an impact on civilians' economic and social rights – they did contribute towards smuggling and organized crime, while to this day, the arms embargo between 1998 and 2001 is not proven to have played any role in appeasement in Kosovo. Nonetheless, these externalities become irrelevant in light of Operation Allied Force – an illegal military campaign, criticized for its lack of respect of IHL<sup>439</sup> – amid civilian victims, and with wide international legal ramifications, considering it set the precedence for “humanitarian interventions”, meaning – illegal military invasions conducted without the approval of the SC – the sequels of which have devastated several Middle Eastern, Central Asian and African states. Moreover, the intervention was decisive in sealing the fate of yet another frozen conflict in the Balkans – the question of Kosovo's statehood. In such state of affairs, the second round of sanctions can be regarded as not having any positive implications to speak of.

All considering, Carisch et al conclude

With political and strategic decisions taken very early in the crisis, neither diplomatic nor UN sanctions were intended to support a peaceful outcome. The political interventions were simply mobilized as part of a Western decision to split away as many Yugoslav republics as possible and isolate Serbia. The resulting casualties—at least 130,000 deaths and 2,2 million displaced civilians – plus horrific human rights abuses that scarred the populations for years to come, are as much the tragic legacies of international politics as they are of Serbian aggression.<sup>440</sup>

<sup>439</sup> Sergey Alexeyevich Egorov, 'The Kosovo crisis and the law of armed conflicts' (31 March 2000) International Review of the Red Cross 837 <[www.icrc.org/eng/resources/documents/article/other/57jqcx.htm](http://www.icrc.org/eng/resources/documents/article/other/57jqcx.htm)> accessed 10 October 2018.

<sup>440</sup> Carisch et al (n 376) 213.

#### 4.5 CONCLUSION

The findings of the case-studies can be summed up in several major sets of conclusions.

Severe humanitarian impact and infringement upon economic and social rights due to the imposition of sanctions is evident in two of the case studies – the FRY and the DPRK. While in the case of the FRY that was something to be expected – considering the first sanctions regime is the most comprehensive one ever implemented – the DPRK was intended to be spared of such consequences by introducing a targeted sanctions regime. Nonetheless, over the years, the sanctions evolved into compressive and their detrimental effect on the deliveries of humanitarian aid by UN agencies points to discrepancies and legal and practical incoherence among UN bodies – a situation in which, nonetheless, the decisions of the SC essentially prevail over all other. Yet, the citizens of the FRY – besides paying a heavy economic and social price for the actions of their officials – in addition, experienced and still experience worsened civil and political rights due to the rise of organized crime and the phenomenon of state capture.

After the first sanctions regime targeting Libya, its citizens also had diminished civil and political rights and levels of democracy in general, accompanied with the rise of nationalism. Yet, after 2003, Gaddafi's regime was supported in various ways by the West, among them three P5 members – until their “hot and cold entanglement” finally broke down in 2011. UN's catastrophic failures in the country rising out of Resolution 1973 are nonetheless, yet to be fully scrutinized.

That is the toll on human rights UN's sanctions have left behind in these three states. The policy-results that need to be weighed against these negative implications, however, are as follows: the two types of violent conflicts the sanctions regimes targeting the FRY aimed at pacification were only halted after two military interventions, while regarding the first sanctions regime – UN's failure to act is evident in the case of Srebrenica; 12 years of more and more comprehensive sanctions against DPRK have not succeed in their non-proliferation purposes, yet, the one policy measure that could deliver that – a factual peace treaty between the two Koreas, is being sabotaged by one of the P5 for decades; while in the case of Libya – considering that the principle of evidentiary standards was violated when the sanctions were enacted – the policy-results of the enactment of sanctions can consequently be



regarded as completely irrelevant.

On the other side of the spectrum of criticism of UN's sanctions policies – a major problem of frequent violations in particular by some of the P5 is often overlooked in the literature. The arms embargo targeting the FRY between 1998 and 2001 was almost certainly violated by the United States, while China has – for a long time now – been severely criticized also in UN's own reports for supporting the DPRK regime in evading sanctions. In such state of affairs, selective compliance with self-voted resolutions by the P5 certainly obstructs endeavours to objectively analyse the levels of effectiveness of sanctions.

#### 4.6 POLICY-IMPLICATIONS

In regard to the wider international legacy these sanctions regimes have left behind in terms of changing behaviour, the first round of sanctions against the FYR, was, nevertheless, not a unique approach the UN had taken in the 1990s – as the sanctions regimes targeting Iraq and Haiti were of comparable (comprehensive) nature. Still, the civilian toll paid because of it, was indeed among the arguments used for UN's subsequent turn towards smart sanctions.

Those three tragic sanctions episodes – Iraq, Haiti and the FRY – therefore, paved the way for something that was supposed to deliver the policy-results expected of sanctions, yet, bypass the damage inflicted upon civilians. Smart or targeted sanctions were rarely employed in the 1990s (Libya, as mentioned was one of the first cases due to West's interests for Libyan oil), yet they became the normality in the 2000s; while comprehensive sanctions – a rare occurrence. That was, arguably, the only way for the UN to continue to employ sanctions without losing its legitimacy as an international body – among whose main purposes is also promotion and protection of human rights. Nonetheless – as explained with the example of the DPRK and the Iranian case (Second Chapter, Section 1.18) – these two states did and do suffer under what are, *de facto* comprehensive sanctions regimes.

Those regimes became such gradually, with the initial resolutions – both against Iran and the DPRK enacted in 2006 – introducing strictly targeted measures, yet, as the SC was not satisfied with the efficiency of the targeted sanctions – additional provisions were subsequently included that made those sanctions comprehensive. The policies

of expanding initial sanctions regimes over time are often justified with the targeted governments' non-compliance with international requests. In this regard, nothing has changed between the philosophy of comprehensive sanctions and what was intended to be a policy-evolution with smart sanctions. Civilian ordeal is still overlooked in the name of international peace and security, yet – as this study has shown on the basis of extensive practical and historical evidence; legal and academic arguments – sanctions, whether comprehensive or targeted, fail to make a contribution towards the accomplishment of UN's central purpose of promoting international peace and security; while they inevitably hurt millions of innocent people – consequently, their impact is, in various ways – detrimental instead of beneficial for international peace and security.

## CONCLUSION

UN's use of sanctions and the weighing of their positive against their negative effects was chosen as the primary topic of this study, yet, upon a deeper analysis, several other questions emerged and researching them added an increased value to this work – whose wider idea, nevertheless, was to bring about as much aspects of the institution of economic sanctions as possible. Even though an objective and balanced analysis (as much as it can be in the sphere of social sciences) – taking into consideration all sides of the majority of debates related to the question of sanctions – was always a leading principle in the way this research was conducted and presented; it is nonetheless, fairly difficult to state that attributed positive effects of UN-enacted sanctions – supposedly contributing towards international peace and security – can somehow justify the demise of the level of protection of human rights those sanctions regimes cause. This statement is premised upon findings of Subchapter 3.2 and most of all, the Fourth Chapter, which speak not only of sanctions' low levels of effectiveness in fulfilling their stated policy-goals, but besides the human rights violations they cause, in certain cases – their employment with the aim of appeasement, containing of crises and/or democratization – indeed causes reverse effects. In that regard, the main hypothesis which instituted and motivated the writing of this thesis has been confirmed in its entirety.

The second purpose of this research – examination of the effects of economic coercion on South-East Europe – showed that most of the negative externalities that sanctions are blamed of causing, have indeed been seen in this region, with the only exemption of enormous humanitarian catastrophes – featuring famines and populous victims

of lack of basic medical supplies – which are nonetheless, effects of sanctions primarily seen outside of Europe (in the DPRK, Iraq and Haiti). While South-East Europe has, to a large extent, been spared of millions of victims due to derogation of legally non-derogable rights under Articles 11 and 12 of the ICESCR; the humanitarian effects of the first round of UN sanctions against the FRY have, nonetheless, been severe – despite featuring a lesser number of direct victims. The rest of UN’s sanctions’ effects on this region have been: facilitation of the operating of paramilitary groups conducting war crimes in the 1990s – caused by sanctions regimes as much as they have been caused by the violation of those regimes; rise of the dictatorial powers of already dictatorial regimes – causing state capture whose consequences are still felt almost three decades later; and rise of trans-border organized crime – making this region the “criminal cradle” of Europe.

On the other hand, the case of Greece’s unilateral sanctions against Macedonia was inspected as to show several common features of economic coercion, enacted worldwide, but outside of UN’s framework. In this regard, besides having impaired credibility and legitimacy due to the controversies arising from the SC’s employment of Article 41; UN’s authority is additionally damaged by its inability and/or inaction when it comes to exercising universal jurisdiction on the issue of economic sanctions. Further legal and practical clarification on the part of the UN is necessary in order for the global organisation to be able to protect its member-states from disproportional effects of unilateral economic pressures – enacted in contravention to the principles of evidentiary standards and non-intervention. While the main damage Macedonia suffered due to the Greek embargo is related to a violation of its right to self-determination; in Yemen dying of starvation is at a current rate of one child per ten minutes.

Lack of international criteria for evidentiary standards is, however, not a problem inherent to unilateral methods of coercion, since – as the case-study on Libya shows – it comes to the fore also within the decision-making process of the SC – particularly in regard to the conduct of the P5. Subchapter 3.3 [pp84-87] brought about only some of the many controversies related to the P5’s activities in the field of international peace and security, featuring notorious selectivity on the working agenda of the SC – also seen in the case of the Yemeni disaster. The SC can be argued to undertake action only in two instances – either for conflicts that are insignificant for the individual members of the P5 to compile

a comprehensive national strategy, or when the political opposition of a non-P5 state is resilient enough to compel them to use the authority of the UN and the legitimacy of the Charter as their backup. At same time, however, violations of sanctions regimes on a spectacular scale have, in numerous cases, inflicted as much damage as the enactment of comprehensive sanctions regimes – the most blatant breaches featuring trade in blood diamonds and arms smuggling.

Besides only allowing the SC to respond to threats and breaches against the peace when such SC actions coincide with their own national interests, in numerous cases when they have granted the SC permission to act – all of the P5, still, to very different extents – have simultaneously sabotaged efforts for maintaining and/or restoring international peace and security – whether through violations of sanctions regimes; by prolonging civil wars and ethnic carnages by supporting one or more opposed sides in the same conflict – as seen in Rwanda; or have “choked” efforts for rapprochement – as in the case of the two Koreas. The P5’s “capture” of the UN – with their national interests being forwarded through the SC – further impedes the working of UN’s agencies in the field of human rights – thus producing mutually conflicting results – both from legal and practical aspects. In such state of affairs, it can be argued that the SC’s employment of Article 41 brings about some of the harshest criticism aimed towards the UN as a global organization – which rests upon the ideals of sovereign equality among states and promotion and respect for human rights; and is charged with preserving international peace and security.

All considering, it becomes evident that it is indeed difficult to find arguments – supported by factual evidence – compelling enough as to indicate that the UN should continue with the usage of economic sanctions in their current form – which also includes the “masking” of comprehensive sanctions into targeted regimes. Upon careful consideration of all of the above-mentioned findings, the final stance in regards to the institution of economic sanctions that this study takes comes in the form of two main policy-recommendations. The first one, as stated above – is the necessity for the UN to factually start regulating international affairs by taking a stance in regard to unilateral economic coercion. The second recommendation is related to UN’s employment of Article 41.

It argues that the current decision-making system – being inherently flawed – is unable to fairly and effectively introduce economic sanctions

and ensure that they indeed fulfil their role in facilitating international peace and security. Nonetheless – considering that human rights violations are rarely caused by enacting measures such as arms and blood diamond embargoes, asset freeze and travel ban (only in the case that those measures are not being breached) – their employment does not bring as much of negative externalities as other types of sanctions. With that in mind, this study suggests that the UN factually starts employing measures theoretically supported with the notion of smart or targeted sanctions – with no exceptions nor space for further developments of such regimes into comprehensive sanctions. Even with such practices, new system-policies – as part of a much needed wider reform within the UN – are necessary in order to oversee the conduct of the P5 and to introduce democratic and inclusive decision-making, aiming to ensure respect for enacted sanctions and to limit the currently unlimited capture of the UN by the SC.

The possible post-P5 arrangement in the functioning of the UN – as well as in regards to exercising global political influence – is undoubtedly an under-researched theme both in the literature and from the viewpoint of political and legal rhetoric – primarily due to the wide range of privileges provided to the victors of the Second World War within the UN Charter. Strong pressures coming from all sides – including the legal, political and academic communities – would surely be a colossal undertaking, in particular considering the P5's manifold influence in all spheres of international affairs. Nonetheless, such an impact is necessary for positive reforms to take place and address numerous issues currently detrimental to both human rights and international peace and security – with economic sanctions certainly being among the chief ones. In regard to sanctions in particular – although there is an abundance of literature showing their weak effectiveness – it is crucial for intellectuals, policy-makers and human rights advocates to take an even more unified stand and push for policy-reforms that would ensure that half a million children will never again die in agony due to the imposition of sanctions – regardless of the rationale behind them.

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