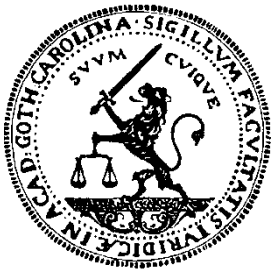

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United States extraterritorial application of economic sanctions and the new international sanctions against iran

Master thesis
30 credits

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Contents

Summary

Economic sanctions are defined as the exercise of pressure by one state to produce a change in the political behaviour of another state. Traditional economic sanctions are directed at the entire population of a state whilst targeted sanctions are directed at a state's individuals. This thesis discusses the application of economic sanctions against Iran by the UN, the EU and the United States. Economic sanctions are used frequently by the United States since economic sanctions are important tools of the country's foreign policy. The Office of Foreign Assets Control (OFAC) is the agency responsible for economic sanctions programmes in the United States.

The concept of jurisdiction in international law has to be considered when deciding the limitations of a state's sanctions programme. Most states recognize five principles of jurisdiction in international law but the United States has interpreted its jurisdictional authority much wider, especially regarding extraterritoriality. By interpreting its jurisdictional authority more widely than other states the United States can stretch its jurisdiction extraterritoriality to third state parties and make them subject to United States economic sanctions laws.

The United States uses economic sanctions to pressure Iran into changing its political behaviour regarding its development of nuclear weapons and the support of terrorism. The United States secondary sanctions under The Iran Sanctions Act (ISA) of 1996 are highly controversial and questionable under international law since the secondary sanctions under ISA apply extraterritorially to third state parties involved in business activities with Iran. The international community and the EU in particular harshly criticized the extraterritoriality of ISA claiming that secondary sanctions violate principles of international law regarding sovereignty and jurisdiction.

The knowledge and the concern that Iran is developing nuclear weapons and supporting terrorism has increased in recent years and as a result the UN Security Council adopted UN Security Council Resolution 1929 in June 2010. Furthermore the United States amended ISA into the Comprehensive Iran Sanctions and Accountability Act (CISADA) of 2010. Shortly thereafter the EU also imposed economic sanctions by its Decision of 26 July 2010. The new international sanctions target certain activities related to the Iranian petroleum industry. The possibility that Iran is financing its nuclear programme and terrorism through funds deriving from its petroleum industry has become apparent. By regulating Iran's petroleum industry it might be possible to diminish the flow of resources that fund the illegal activities. Responsible companies around the world are terminating their business engagements with Iran. As a result Iran is becoming isolated from international trade. Iran is clearly viewed as an outcast of the international community.

The new EU sanctions are very similar to the United States sanctions and as a result no discussion of extraterritoriality has arisen regarding CISADA. The new international economic sanctions are the toughest and broadest, which have ever been imposed against Iran and the sanctions highly influence international trade.

The thesis has predominantly focused on the United States extraterritorial application of economic sanctions under ISA and CISADA and whether they violate principles relating to sovereignty and jurisdiction in international law. The thesis shows that there are serious legal and political issues attached to secondary sanctions and that international law does not provide a clear answer. Perhaps political and diplomatic measures are the only means that can solve this legal uncertainty.

Sammanfattning

Ekonomiska sanktioner definieras som utövande av påtryckningar från en stat för att förändra en annan stats politiska beteende. Traditionella ekonomiska sanktioner är riktade mot en stats hela befolking medan riktade sanktioner drabbar en stats enskilda individer. I examensarbetet diskuteras FNs, EUs och USAs tillämpning av ekonomiska sanktioner mot Iran. USA använder ekonomiska sanktioner ofta eftersom ekonomiska sanktioner är viktiga redskap i landets utrikespolitik. The Office of Foreign Assets Control (OFAC) är den myndighet i USA som ansvarar för programmen som reglerar ekonomiska sanktioner.

Då man bestämmer begränsningarna för en stats program som reglerar ekonomiska sanktioner måste man ta hänsyn till begreppet jurisdiktion i internationell rätt. De flesta stater erkänner fem principer för jurisdiktion i internationell rätt men USA har tolkat sin jurisdiktionella auktoritet mycket vidare, speciellt avseende extraterritorialitet. Genom att tolka sin jurisdiktionella auktoritet mycket vidare än andra länder förlänger USA sin jurisdiktion extraterritoriellt till parter i en tredje stat och gör på så vis dem underställda USAs ekonomiska sanktioner.

USA använder ekonomiska sanktioner för att pressa fram en förändring hos Iran när det gäller landets politiska hållning till utveckling av kärnvapen och stödjande av terrorism. USAs sekundära sanktioner som återfinns i The Iran Sanctions Act (ISA) från 1996 är högst kontroversiella samt tvivelaktiga ur internationell rättssynpunkt eftersom sekundära sanktioner i ISA appliceras extraterritoriellt mot parter i en tredje stat som är inblandade i affärsaktiviteter med Iran. Det internationella samfundet och speciellt EU har med kraft kritiserat ISAs extraterritorialitet genom att hävda att sekundära sanktioner kränker de principer i internationell rätt som avser suveränitet och jurisdiktion.

Oron för och vetskapen om Irans utveckling av kärnvapen och landets stödjande av terrorism har ökat under de senaste åren och därför har FNs säkerhetsråd infört FNs säkerhetsråds resolution 1929 i juni 2010. Dessutom förändrade USA ISA genom Comprehensive Iran Sanctions and Accountability Act (CISADA) från 2010. Strax därefter införde EU också sanktioner genom sitt beslut från 26 Juli 2010. De nya internationella sanktionerna är riktade mot speciellt utvalda aktiviteter som är kopplade till Irans oljeindustri. Möjligheten att Iran finansierar sitt kärnvapenprogram och terrorism genom medel erhållna från landets oljeindustri har blivit uppenbar. Ett sätt att reducera resurserna som finansierar de olagliga aktiviteterna är att reglera Irans oljeindustri. Fler och fler ansvarsfulla företag runt om i världen avslutar sina affärsåtaganden med Iran. Detta leder till att Iran isoleras från internationell handel. Tydligt är att Iran betraktas som ett land utstött av nästan hela det internationella samfundet.

De nya EU sanktionerna är snarlika de amerikanska sanktionerna och därför har det inte uppstått någon diskussion om extraterritorialitet gällande CISADA. De nya internationella sanktionerna är de striktaste och mest omfattande sanktioner som någonsin har införts mot Iran och sanktionerna påverkar i allra högsta grad den internationella handeln.

Examensarbetet har till övervägande del fokuserat på USAs extraterritoriella tillämpning av ekonomiska sanktioner mot Iran i ISA och CISADA och huruvida dessa kränker principer vad avser suveränitet och jurisdiktion i internationell rätt. Examensarbetet påvisar att det finns påtagliga juridiska och politiska spörsmål knutna till sekundära sanktioner och att internationell rätt inte kan ge ett klart och tydligt svar. Kanske är det så att politiska och diplomatiska åtgärder är de enda redskap som kan lösa denna juridiska osäkerhet.

Preface

When I started writing the thesis in January I had a very vague idea of what the topic included and the direction I was aiming for and I never anticipated what the final result would be.

After four months of intensive work and after drinking more than two hundred cups of tea I have finally finished my master thesis and my five years in Lund have now passed. Being a student in Lund has been a fantastic experience filled with social events and fun memories.

The last two years at the Masters Programme in Maritime Law have been the highlight of my education and I would like to say a special thank you to my supervisor, professor Lars-Göran Malmberg for all your support and guidance. I would also like to take this opportunity to thank Stena Bulk and Michael Frevola, partner at Holland & Knight, New York for all your valuable advice when writing my thesis.

Most importantly I would like to thank my family and friends for all your support over the years and for making my years as a student in Lund unforgettable.

I hope you enjoy reading my thesis!

Kristina Larsson
Lund May 2011

Abbreviations

BIS	Bureau of Industry and Security
CISADA	Comprehensive Iran Sanctions, Accountability and Divestment Act
EAA	Export Administration Act
EU	European Union
FFC	Office of Foreign Funds Control
FTO	Foreign Terrorist Organization
IEEPA	International Emergency Economic Powers Act
ICJ	International Court of Justice
ISA	Iran Sanctions Act
IRGC	Islamic Revolutionary Guard Corps
IRISL	Islamic Republic of Iran Shipping Lines
ISA	Iran Sanctions Act
MODAFL	Iran's Ministry of Defense and Armed Forces Logistics
MOU	1997 Memorandum of Understanding
NICO	Naftiran Intertrade Company
NIOC	National Iranian Oil Company
NPWMDs	Specially Designated Persons Engaged In The Proliferation of Weapons of Mass Destruction
OFAC	Office of Foreign Assets Control
SDGT	Specially Designated Global Terrorist
SDN	Special Designated Nationals
SDGTs	Specially Designated International Terrorist Organizations and Terrorists
SDNs or SDNTKs	Specially Designated Narcotics Traffickers
SDTs	Specially Designated Global Terrorists
TWEA	Trading with the Enemy Act
UN	United Nations
UN Charter	United Nations Charter
UNITA	National Union for the Total Independence of Angola
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
US or U.S.	United States of America
WMD	Weapons of Mass Destruction
WTO	World Trade Organization

1 Introduction

1.1 Background

Economic sanctions are part of states foreign policy and are imposed by the sender state to pressure the target state into changing its political behaviour. Economic sanctions have existed for many years and the United Nations (UN), the European Union (EU) and the United States are all authorized to impose economic sanctions and have done so on various occasions. In the United States, the Office of Foreign Assets Control (OFAC) regulates sanctions programmes. OFAC has the ambition to ensure safer trade for the United States and the rest of the international community through economic sanctions and by controlling transactions and freezing assets. OFAC operates through existing United States laws and is constantly enforcing and authorizing new regulations. OFAC currently regulates economic sanctions programmes against United States targets such as states, companies and individuals known as Specially Designated Nationals (SDNs). All United States persons are subject to United States economic sanctions. The term United States person is extremely wide and even includes subsidiaries of US-companies and in some cases wholly owned and incorporated EU-companies. The United States economic sanctions practice is mainly based on unilateral sanctions and secondary sanctions. The international community has reacted strongly against the extraterritorial affect of secondary sanctions.

Iran has been a target of United States economic sanctions for many years. Secondary sanctions that affect third sate parties such as EU-companies are regulated under the Iran Sanctions Act (ISA) of 1996, which was amended into the Comprehensive Iran Sanctions and Accountability Act (CISADA) in 2010. ISA was harshly criticized by the international community and by the EU in particular as a breach of international law. However, in 2010 both the UN and the EU have imposed economic sanctions against Iran, which are similar to United States sanctions under CISADA. The new international sanctions target Iran's petroleum industry and as a result the sanctions influence international trade. The UN and the EU have become aware of the threat that Iran is developing nuclear weapons and supporting terrorism. By controlling activities related to Iran's petroleum industry the steady flow of Iranian funds that finance nuclear weapons and terrorism might be cut off.

1.2 Purpose and delimitation

The main purpose of this thesis is to examine the practice of economic sanctions in the United States, focusing on secondary sanctions against Iran

under ISA, which was amended into CISADA in 2010. The thesis will examine how United States secondary sanctions influence international trade by having extraterritorial affect against third state parties. The thesis will also discuss how the international community, in particular the EU, has reacted strongly against the United States practice.

The main question is:

1. Are secondary sanctions under ISA and CISADA violations of international law by applying extraterritorially to third state parties?

In order to answer the main question the thesis discusses:

1. What are economic sanctions?
2. How are economic sanctions adopted and enforced by the UN, the EU and the United States?
3. What is the difference between unilateral and secondary sanctions?
4. What is the link between OFAC and economic sanctions?
5. What is the concept of jurisdiction in international law?
5. How far does United States jurisdiction stretch under international law?
8. Does CISADA coincide with the UN and the EU sanctions?
7. How do the UN sanctions, the EU sanctions and CISADA influence international trade?

The thesis investigates United States economic sanctions against Iran. ISA was amended into CISADA in 2010 and therefore the thesis will not examine the individual sections of ISA but only the sections of CISADA. However, the thesis discusses the reaction ISA received from the international community, especially the EU, in 1996 compared to the reaction CISADA has received in 2010.

The thesis studies the key parts of CISADA, the UN sanctions and the EU sanctions in order to determine whether they correspond to each other or clash. The intention of comparing the new sanctions is to prove that the UN, the EU and the United States efforts are united, to examine the influence on international trade and to show that the reaction against CISADA differs from the attitude held against ISA.

In order to keep the scope of the thesis narrow, the effectiveness of economic sanctions has deliberately been excluded. The aim of the thesis is not to show whether the economic sanctions against Iran have worked or not. The main focus lies with the extraterritorial application of United States economic sanctions against Iran and discusses if secondary sanctions under ISA and CISADA are a breach of international law, how the international community has responded to the secondary sanctions under ISA and CISADA and how the secondary sanctions under ISA and CISADA affect third state parties.

1.3 Method and material

The thesis is descriptive, comparative and analytical in nature. The core of the thesis is the United States extraterritorial application of economic sanctions through ISA and CISADA and the response from the international community. The descriptive chapters give an overview of the United States approach and practice of economic sanctions versus the UN and the EU. As mentioned earlier the predominant part of the thesis focuses on the United States.

In order to communicate a descriptive overview of the legal problems at hand and before delivering a final analysis and conclusion, doctrinal texts such as books and articles have been consulted. Various governmental reports, research reports, statements, briefings and press releases have also been included. The materials from electronic resources have only been selected from well-known and established websites. There are very few cases that relate to the topic of the thesis and therefore other sources are predominant. However, the thesis includes examples of OFAC designations, OFAC settlements and foreign companies that have been sanctioned or that have not been sanctioned under ISA and CISADA.

The last part of the thesis contains an analysis and a conclusion. In the analysis the author tries to evaluate whether extraterritorial application of United States economic sanctions through ISA and CISADA violate international law and how the international community has reacted and responded differently to CISADA than it did to ISA. The conclusion contains a few final remarks on the topic.

1.4 Disposition

Chapter 2 examines economic sanctions versus targeted sanctions and their definition, development and purpose. The UN, the EU and the United States economic sanctions practice are also introduced.

Chapter 3 discusses how OFAC regulates economic sanctions and describes OFAC's history, mission and purpose. OFAC has various sanctions programmes in place and uses special tools such as the SDN list to blacklist for example targeted companies and individuals.

Chapter 4 examines and scrutinizes unilateral sanctions, secondary sanctions and the concept of jurisdiction in international law. The chapter continues by describing how the United States has interpreted its jurisdictional authority much wider than most states and how it extends its jurisdiction extraterritorially.

Chapter 5 discusses ISA and its amendment into CISADA. The chapter starts off by describing the extraterritorial affect of ISA and the fierce

criticism it received from the international community and in particular the EU. The key parts of the UN, the EU and the United States sanctions are studied and compared to determine whether or not their contents overlap. The chapter ends by discussing companies that have or have not been sanctioned under ISA and CISADA.

Chapter 6 contains an analysis based on the descriptive part of the thesis.

Chapter 7 contains final remarks on the topic.

1.5 Terminology

Traditional economic sanctions that target a whole state and its population are referred to as economic sanctions or traditional economic sanctions. The new narrow sanctions that target individuals or regime elites are referred to as targeted sanctions.

The thesis discusses the economic sanctions statue known as the Iran and Libya Sanctions Act of 1996. After a few years Libya was removed from the statue and the name was changed into Iran Sanctions Act. However, new literature refers to ISA and older literature refers to ILSA. In the thesis the term ISA is used to cover both.

2 Economic sanctions

2.1 Traditional economic sanctions

States use economic sanctions as powerful political tools in their foreign policy. Economic sanctions are the pressure by a single state or a group of states to change the political behaviour and conduct of another state or a group of states.[1] Economic sanctions aim at achieving political, economic or ideological objectives and their basic purpose is "restricting foreign trade and finance or withholding economic benefits such as state aid from targeted states or other targeted non-state actors to accomplish broader security or foreign policy objectives".[2] Economic sanctions are normally imposed to punish a state for acting in a certain way and to push the state into realizing that it has to rethink its actions. Economic sanctions are an alternative to warfare since economic sanctions do not pose the same threat to human lives.[3] Economic sanctions are usually sought as a last resort when a state has exhausted all means of diplomacy and the idea of warfare is not optimal.[4]

The state that imposes an economic sanction is known as the sender state and the state that the economic sanction is directed against is known as the target state. An economic sanction that is backed up by only one sender is known as a unilateral sanction and an economic sanction that is backed up by two or more senders is known as a multilateral sanction.[5]

Panos Koutrakos divides economic sanctions into three broad categories:

1. Trade sanctions - which involve the imposition of restrictions on imports from the target country and/or exports to the target state.

2. Financial sanctions - aiming to interrupt the flow of resources to the target state by banning lending and/or investment.

3. Sanctions on transport services - aiming at cutting off any transport communication between the sender state and the target state and, hence,

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[1] Koutrakos, *Trade, Foreign Policy and Defence in EU Constitutional Law The Legal Regulation of Sanctions, Exports of Dual-Use Goods and Armaments,* (2001), page 49-50.
[2] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 10-11.
[3] Koutrakos, *Trade, Foreign Policy and Defence in EU Constitutional Law The Legal Regulation of Sanctions, Exports of Dual-Use Goods and Armaments,* (2001), page 50-52.
[4] Selden, *Economic Sanctions as Instruments of American Foreign Policy*, (1999), page 6.
[5] Askari, Forrer, Teegen and Yang, *Case Studies of U.S. Economic Sanctions The Chinese, Cuban and Iranian Experience*, (2003), page 1.

depriving the latter of any benefit that communications with the former would normally bring.[6]

It has been said that customary international law requires proportionality, discrimination and necessity to be considered when imposing economic sanctions. The proportionality principle would require the economic, social and political effect of economic sanctions to be considered. The discrimination principle would require a certain precision to be considered when using economic sanctions. The necessity principle would require the balancing and weighing of economic sanctions in order to determine whether or not they will accomplish their intended purpose.[7]

The legal instruments that regulate economic sanctions vary from state to state but two examples are statues and legislation. States also choose different ways to apply economic sanctions in practice. Some states rely on extraterritorial jurisdiction to control parties operating in foreign jurisdictions whilst other states rely on territorial jurisdiction to control for example business transactions with targeted parties that take place in their own territories. States have also been known to synchronize the application of economic sanctions laws and policies against targeted states. The United Nations Security Council (UNSC) and regional bodies such as the EU are also authorized to impose economic sanctions.[8] The UN and the EU will be further discussed in chapter 2.3.

2.2 Targeted sanctions

When traditional economic sanctions are imposed they affect the entire population of the target state. Traditional economic sanctions are directed at a wide audience and most of the time the real offenders go unpunished. The purpose of targeted sanctions[9] is to aim the sanctions at the actual responsible offenders instead of punishing the overall population.[10] The responsible offenders are often the regime elite of a state,[11] specific officials or government functions. By aiming the targeted sanctions at the actual offenders the sender state can avoid letting the general public suffer and can also avoid harming the target states economy.[12] Targeted sanctions have not been as criticized as traditional economic sanctions since targeted sanctions

[6] Koutrakos, *Trade, Foreign Policy and Defence in EU Constitutional Law The Legal Regulation of Sanctions, Exports of Dual-Use Goods and Armaments*, (2001), page 69.
[7] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 63-65.
[8] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 11-12.
[9] Targeted sanctions are also referred to as smart sanctions or designer sanctions.
[10] Weiss, *Sanctions as Foreign Policy Tool: Weighing Humanitarian Impulses*, (1999), page 503-504.
[11] Amnéus and Svanberg-Torpman, *Peace and Security Current Challenges in International Law*, (2004), page 145.
[12] Hufbauer, Schott, Elliott and Oegg, *Economic Sanctions Reconsidered*, (2007), page 138.

are significantly more humanitarian and at the same time politically effective.[13]

The definition of traditional economic sanctions has been explained above but no such general definition exists for targeted sanctions. The following actions have been treated as targeted sanctions, "the freezing of financial assets of regime members and elites who support them; the suspension of credits and grant aid; the denial and limitation of access to foreign financial markets; trade embargoes on arms and luxurious goods; flight bans and the denial of international travel, visas and educational opportunities to regime members and their families".[14] Traditional economic sanctions have existed for many years but targeted sanctions are a new concept. By imposing targeted sanctions together with traditional economic sanctions, the most desirable results can be achieved. An example is trade sanctions, which are often used in combination with other targeted sanctions.[15]

The United States is known for using targeted financial sanctions to fight international lawlessness. The Office of Foreign Assets Control (OFAC) is the agency responsible for both unilateral and multilateral sanctions toward foreign regimes, terrorists and drug barons.[16] OFAC will be further discussed in chapter 3.

2.3 UN and EU economic sanctions

The United Nations Charter (UN Charter) does not include the word sanction or countermeasure[17] but in the field of economic sanctions the General Assembly is responsible for non-binding resolutions to adopt economic sanctions and the Security Council (UNSC) is responsible for non-binding recommendations and binding decisions that impose sanctions.[18] The UNSC may call upon a state to limit or prohibit economic relations with targeted states, entities or individuals. Apart from the UN Charter, the imposition of economic sanctions is also regulated under customary international law of state responsibility.[19]

It was first during the 1990s that the UNSC started imposing sanctions more frequently due to the change in the international political climate and due to the fact that the definition of collective peace and security evolved and expanded. Before this change the UNSC had only imposed mandatory

[13] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 2.
[14] Amnéus and Svanberg-Torpman, *Peace and Security Current Challenges in International Law*, (2004), page 149-150.
[15] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 181.
[16] Amnéus and Svanberg-Torpman, *Peace and Security Current Challenges in International Law*, (2004), page 155-156.
[17] Evans, *Aspects of Statehood and Institutionalism in Contemporary Europe*, (1997), page 190.
[18] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 24.
[19] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 55.

economic sanctions against the white minority regime in Rhodesia and an arms embargo against South Africa. After the change, the UN mandated economic sanctions against states such as Iraq, Liberia, Somalia, Sudan and Rwanda.[20]

The fact that the UN is universally recognized makes it the optimal body to impose economic sanctions. Economic sanctions are important tools that aid the UNSC to enforce its decisions and to preserve or reinstate international peace and security when diplomatic efforts have not been successful. By imposing economic sanctions the use of force can be avoided and the UNSC can ensure compliance from a targeted state or entity. The UN has imposed both traditional economic sanctions and targeted sanctions over the years. However, states and humanitarian organizations are worried about the negative impacts that economic sanctions have on the large population and on the economy of third states. The UNSC therefore sets high standards and requirements when it imposes sanctions.[21]

The EU is also entitled to impose economic sanctions either unilaterally or by implementing binding resolutions from the UNSC.[22] Each member state of the EU is free to decide how economic sanctions shall be implemented into national law and the member states also decide on penalties if community regulations are breached. Through measures such as intelligence gathering, customs control and banking supervision the EU Commission can ensure that all member states apply sanctions equally. Most of the EU sanctions in place are implemented decisions taken by the UNSC[23] and their purpose have been to pressure political regimes to stop disobeying UNSCR objectives. The unilateral sanctions imposed by the EU have mainly been targeted sanctions aimed at for example the heads of state of Belarus and Zimbabwe in the early 2000s and against Burma (Myanmar) in 2003.[24]

2.4 United States economic sanctions

The United States has imposed economic sanctions on several occasions throughout history. Economic sanctions are an important part of the United States foreign policy to restrict international trade with foreign countries, individuals, companies or even vessels.[25] Economic sanctions in the United States were originally part of common law principles but today economic sanctions can be found in statues and regulations. The United States Congress has several responsibilities under the United States Constitution such as regulating trade with foreign countries and to endorse and adjust

[20] Hufbauer, Schott, Elliott and Oegg, *Economic Sanctions Reconsidered*, (2007), page 132.
[21] UN Security Council Sanctions Committees, available at: www.un.org/sc/committees/ (last visited 4 April 2011).
[22] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 127-128.
[23] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 89.
[24] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 128.
[25] Razzano, *U.S. Economic Sanctions Laws: Practical Implications for European Companies*, (2010), page 128.

economic sanctions laws but Congress usually delegates the authority to the President to decide when economic sanctions shall be imposed in order to protect national interests. The Trading with the Enemy Act of 1917 (TWEA), the International Emergency Economic Powers Act of 1977 (IEEPA) and the Export Administration Act (EAA) 1979 are the three most important economic sanctions statues.[26] Under these three statues the President can for example impose economic sanctions in relation to matters of national security or foreign policy or the President can ban trade and financial transactions with third states, companies or individuals.[27]

The President is also entitled to delegate the authority to the United States Office of Foreign Assets Control (OFAC) to regulate economic sanctions. OFAC will be discussed separately in chapter 3.

Most states around the world have raised objections against the United States economic sanctions practice. The United States imposes unilateral economic sanctions on a regular basis and consequently most countries around the world have at some stage felt the affects of such actions. United States economic sanctions are often imposed extraterritorially against third state parties (secondary sanctions). The United States extraterritorial practice frustrates and angers the international community. Questions have arisen whether economic sanctions that have extraterritorial affect against third state parties (secondary sanctions) violate principles under international law that relate to state sovereignty and jurisdiction. The United States economic sanctions practice creates enormous confusion amongst individuals and companies involved in transactions and business activities in various jurisdictions. Such individuals and companies do not know if they are subject to national legislation, United States extraterritorial legislation or perhaps both.[28]

[26] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 92.
[27] Hufbauer, Schoot, Elliott and Oegg, *Economic Sanctions Reconsidered*, (2007), page 133-134.
[28] Westbrook, *What's In Your Portfolio? U.S. Investors Are Unknowingly Financing State Sponsors Of Terrorism*, (2010), page 1161-1163.

3 OFAC

3.1 History, mission and purpose

The United States Department of Treasury has dealt with sanctions for many years. Even before the War of 1812, the Secretary of Treasury handled sanctions against Great Britain for the harassment of American sailors.[29] The United States Department of Treasury established the Office of Foreign Funds Control (FFC) during World War II. FFC helped control finances of countries that had been occupied by the Nazis and former Russia, such as Norway and the Baltic states, by freezing and protecting their assets.[30] The work of the FFC also included preventing forced repatriation of funds belonging to nationals of the occupied countries. FFC was an important agency that complicated matters for the Nazis by blocking enemy assets and prohibiting foreign trade and financial transactions.[31]

When World War II ended the United States Department of Treasury created the Office of Foreign Assets Control (OFAC) that handles the freezing of financial assets. OFAC confiscated financial resources of North Korea and China in 1950, Iran 1979 and implemented credit and investment restrictions against South Africa in 1986. OFAC is also in charge of the financial aspects of UN sanctions against Iraq, Haiti, former Yugoslavia, the UNITA (National Union for the Total Independence of Angola) faction within Angola and the Taliban regime in Afghanistan.[32]

OFAC is the agency responsible for all economic sanctions programmes and derives its authority from the Presidential national emergency powers and from legislation that allows control of transactions and freezing of assets that are under United States jurisdiction. OFAC also cooperates with allied governments regarding multilateral sanctions that are based on UN or other international mandates.[33] OFAC deals with all aspects of economic sanctions such as preparing the text of the regulations that implement the sanctions, supervise that the regulations and laws are being followed, examine suspicion of violation and issue civil and criminal penalties when a violation has occurred.[34]

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[29] OFAC, History, available at: www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx (last visited 2 February 2011).
[30] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 24.
[31] OFAC, History, available at: www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx (last visited 2 February 2011).
[32] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 24.
[33] Razzano, *U.S. Economic Sanctions Laws: Practical Implications for European Companies*, (2010), page 128.
[34] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 72.

OFAC has the authority to, for example, block or freeze assets of a targeted state and assets belonging to nationals that act on behalf of the targeted state.[35] Once the targeted property is blocked or frozen OFAC controls it and the target will need authorization from OFAC to exercise privileges and powers that are normally associated with ownership. The only right that remains with the owner is the title to the targeted property.[36]

According to OFAC, any asset that possesses some sort of value can be subject to sanctions. Blocking or freezing means "the prohibition of all transfers, transactions, or other dealings with all real, personal, tangible, or intangible property, as well as the blocking of direct or indirect interests in property, whether present, future or contingent".[37] Prohibited transactions include for example trade or financial transactions that are prohibited for United States persons unless authorized by OFAC or explicitly exempted by statue.[38]

3.2 Specially Designated Nationals

OFAC sanctions programmes are aimed at countries, individuals and companies, which are considered as threats to national security or enemies of the United States. Such persons and companies are called Specially Designated Nationals (SDNs) and OFAC keeps a special list with all SDNs, called the SDN-list. There are different types of SDNs, such as Specially Designated International Terrorist Organizations and Terrorists (SDGTs), Specially Designated Global Terrorists (SDTs), Foreign Terrorist Organizations (FTOs), Specially Designated Persons Engaged In The Proliferation Of Weapons Of Mass Destruction (NPWMDs) and Specially Designated Narcotics Traffickers (SDNTs or SDNTKs).[39]

Transactions that involve sanctioned states or SDNs are prohibited for all "US persons (including US citizens, permanent residents and anyone physically present in the country, as well as US corporations)".[40] United States persons are also required to "review financial and commercial dealings and transactions and block or freeze assets in which a sanctioned country, government or SDN has any interest, even if that asset or property is owned or controlled by someone else".[41] United States persons are also prohibited from investing in a company that is a SDN or that is owned or

[35] Malloy, *United States Economic Sanctions: Theory and Practice*, (2001), page 11-12.
[36] OFAC, Frequently asked questions, available at: www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx"1 (last visited 10 February 2011).
[37] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2004), page 74.
[38] OFAC, Frequently asked questions, available at: www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx"1 (last visited 10 February 2011).
[39] Lee and Slear, *Beware of OFAC – A Little-Known Agency Poses Challenges to International Finance*, (2006), page 58.
[40] Lee and Slear, *Beware of OFAC – A Little-Known Agency Poses Challenges to International Finance*, (2006), page 58.
[41] Lee and Slear, *Beware of OFAC – A Little-Known Agency Poses Challenges to International Finance*, (2006), page 58.

controlled by a SDN or targeted country. United States investors are prohibited from investing in a foreign company that obtains the *predominant* part of its revenues from investments, projects or activities that United States persons are not allowed to engage in. Unfortunately OFAC has not explained what predominant means, which has lead to uncertainty amongst investors.[42]

The SDN system is an aid that helps the United States government to impose targeted financial sanctions against responsible offenders such as individuals and companies instead of imposing traditional economic sanctions against states and their populations. OFAC cooperates with government agencies such as the United States State Department and has access to information from open sources and banks. The SDN system is important since it helps to fight international lawlessness but it has its restrictions. SDNs can disguise their real identity and get away with prohibited transactions and the SDN system does not apply to most offshore transactions.[43]

In order to be added to the SDN list a designation has to take place. OFAC can designate a person if a relationship exists between the person and a sanctioned target, not a criminal act. According to OFAC the designated person is an extension of the sanctioned target and due to this relationship prohibitions are applied. The designation itself does not mean that criminal or civil violations of United States laws have taken place. However, if a United States person has actually been engaged in economic activity with for example a sanctioned target then the United States person will be subject to criminal or civil actions. OFAC designates persons that are "owned or controlled by, acting for or on behalf of, or materially or financially assisting the sanctioned target, a sanctioned class of persons, or another designated person".[44] If a person meets the requirements for designation, the person will be added to the SDN list and prohibitions will apply. If two persons or companies have the same name it is important to uniquely identify each designee to avoid misunderstandings.[45] United States persons are seldom identified as SDNs because United States persons are subject to United States economic sanctions laws and a breach leads to direct punishment. However, a United States person can be added to the SDN list if the United States person, who is added to the SDN list, is controlled by or associated with the targeted state or entity and becomes a means for United States authorities to enforce economic sanctions by closing down the particular business or freezing all assets associated with that person.[46]

SNDs transform and change location quite often, which makes them very hard to track down. OFAC programmes also constantly develop, which

[42] Lee and Slear, *Beware of OFAC – A Little-Known Agency Poses Challenges to International Finance*, (2006), page 58-59.
[43] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 35.
[44] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 54.
[45] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 54.
[46] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 151.

requires the SDN-list to stay updated. Despite such obstacles over six thousand names of companies and individuals that deal with United States targeted states, companies and individuals have so far been incorporated into the SDN list. Any interaction between a United States person and a SDN is strictly forbidden and all assets belonging to a SDN shall be blocked.[47]

3.3 Regulations and programmes

OFAC is responsible for the managing of all United States economic sanctions programmes such as comprehensive sanctions, non-comprehensive sanctions and targeted sanctions. Narcotics traffickers, terrorists and weapons of mass destruction (WMD) proliferators are usually the aim of targeted sanctions. States such as Burma (Myanmar), Cuba, Iran and Sudan are subject to comprehensive economic sanctions programmes whereas the Ivory Coast, Democratic Republic of the Congo, North Korea, Sierra Leone, Syria and Zimbabwe are subject to non-comprehensive economic sanctions programmes. Foreign policy objectives and national security goals constantly change and as a result the prohibitions and restrictions may vary for each OFAC programme. OFAC regulations sometimes provide general licences that authorize certain categories of transactions. If legislation does not object, OFAC can issue a general licence for a normally prohibited transaction and it is also possible to apply for a specific licence, if a general licence does not exist.[48]

Sanctions are given effect by the issuance or amendment of regulations. The regulations are prepared and issued by OFAC, registered in the Code of Federal Regulations and published in the Federal Register.[49] OFAC regulations are based on the requirements and purpose of executive orders and statues that decide the basic outline for each programme. As mentioned before OFAC programmes can be comprehensive or non-comprehensive and in some cases an import ban is sufficient. Restrictions and prohibitions are different for each programme. Depending on the programme criminal penalties can for example include fines between $50,000-$10,000,000 and imprisonment between ten to thirty years for wilful violations. Civil penalties vary between $250,000 (or twice the amount of each underlying transaction) to $1,075,000 for each violation.[50] When civil penalties are in order, OFAC will send the violator a pre-penalty notice to which the violator is entitled to file a written response. OFAC will not use an administrative judge or accord a hearing. If a violator does not pay the

[47] OFAC, Frequently asked questions, available at: www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#1 (last visited 10 February 2011).
[48] OFAC, Frequently asked questions, available at: www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx”1 (last visited 10 February 2011).
[49] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 73-74.
[50] OFAC, Frequently asked questions, available at: www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx#1 (last visited 10 February 2011).

penalty, the matter will be sent to the Department of Justice for recovery actions and the enforcement division of OFAC refers cases to Customs or the Federal Bureau of Investigation.[51]

In 2009, OFAC, the United States Department of Justice and the New York County District Attorney's Office reached a settlement with Credit Suisse AG, a Swiss company with its headquarters in Zurich. For over twenty years, Credit Suisse had violated United States economic sanctions laws by processing thousands of transactions through the United States concealing the involvement of United States sanctioned parties. Many of the transactions involved Iran and according to OFAC the actions were "egregious" due to substantial economic benefit to sanctioned parties, the scope and severity of the violations and the awareness of the conduct within the bank. Credit Suisse adopted methods so that United States banks involved in the transactions could not discover the involvement of sanctioned parties. The London affiliate even used code names to disguise the identities of sanctioned entities. The penalty of $536,000,000, the largest in the history of OFAC, would probably have been much higher unless Credit Suisse had decided to terminate all business with Iran and cooperate with United States government investigations.[52]

3.4 International cooperation

International cooperation, in the area of economic sanctions, is very limited and the reason for this is that there does not exist a homogenous international agency that has jurisdiction to fight all crimes, which makes international cooperation almost impossible. Instead most states have a special drug enforcement agency for narcotics enforcement and a special financial intelligence unit for money laundering. However, the United States practice in this area is quite unique since most United States agencies are authorized to regulate and enforce economic sanctions.[53] As mentioned before, OFAC is the agency that has the main responsibility for the regulation of economic sanctions but OFAC cooperates intensively with other government agencies and has enormous resources at its disposal. OFAC is the only agency in the world of its kind.[54]

In most states, government agencies struggle to impose financial sanctions since they do not have enough legal authority and institutional capability. In the United States the situation is completely different. OFAC has enormous resources, personnel and expertise to effectively implement sanctions. States

[51] Zagaris, *International White Collar Crime Cases and Materials*, (2010), page 186.
[52] OFAC, Press Center, *Treasury under Secretary for terrorism and financial intelligence Stuart Levy remarks at a press conference on joint $536 million settlement with Credit Suisse AG*, available at: www.treasury.gov/press-center/press-releases/Pages/tg451.aspx (last visited 26 April 2011).
[53] Zagaris, *International White Collar Crime Cases and Materials*, (2010), page 194-195.
[54] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 72.

around the world have become interested in the United States system and have started to examine if they can adopt something similar.[55]

[55] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 30-31.

4 The United States approach to economic sanctions

4.1 Unilateral sanctions

As mentioned at the beginning of the thesis in chapter 2, the definition of unilateral sanctions is when a single sender state unilaterally imposes sanctions against a single target state.

Economic sanctions can be found in customary international law and treaty law and both have influenced the development of how states apply economic sanctions in practice. Economic sanctions governed by treaty law can be found in for example the UN Charter or under regional bodies such as the EU. The economic sanctions under the UN Charter are generally multilateral in scope, meaning that the sender state consists of a group of states imposing sanctions against one target state or a group of target states. States may also impose economic sanctions under customary international law.[56] Under customary international law, the sender state is entitled to impose economic sanctions even if the target state has not breached an international obligation against the sender state. Economic sanctions have become a legitimate instrument in order to accomplish foreign policy or national security objectives. The only time states are prohibited from imposing unilateral economic sanctions, under customary international law, is when they would breach an already existing treaty.[57]

When the UNSC imposes economic sanctions, due to threat to peace and security, all member states are legally bound by this decision and all member states have to impose the same sanctions as the UNSC. No such legal obligation exists if a single sender state imposes unilateral sanctions against a target state. Third states are completely free to continue trading or investing in the targeted state and the targeted state can continue seeking business with third states as well.[58]

According to Alexander Kern unilateral sanctions can be divided into three categories:

1. *Retorsion:* The sender state can apply retortive measures when the target state disagrees with foreign policy objectives or has breached a legal obligation to the sender state. Retortive measures by the sender state shall never breach a legal obligation to the target state. Retortive measures are for

[56] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 56-57.
[57] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 63.
[58] Meyer, *Second Thoughts On Secondary Sanctions*, (2009), page 917.

instance restricting trade with the target state (that does not otherwise violate a treaty agreement), applying pressure on foreign companies in third countries not to do business with target states or suspend economic assistance or state aid to the target state.

2. *Countermeasures/ non-forcible reprisals:* Countermeasures or non-forcible reprisals are a response or remedy to a foreign state that has committed an unlawful act that results in non-compliance with international obligations. Breaches of treaties and customary international law may entitle a state to take reciprocal or equivalent countermeasures such as economic sanctions.

3. *Punitive sanctions:* Punitive sanctions are coercive because they consist of measures intended to prevent future misbehaviour and punitive because they seek compensation for past wrongs that can take the form of for example a penalty or a fine. The sender state can also impose punitive sanctions to punish a state for violating jus cogens[59] international norms. All states have a right to apply countermeasures against a state that has violated jus cogens international norms, not just the state that has a national that directly suffered from the violation.[60]

There are some observers that claim that unilateral sanctions are not legal under international law. According to them unilateral sanctions interfere with the sovereign independence that each state is entitled to.[61] Another reason why some observers oppose unilateral sanctions is because the sender state decides on its own whether or not they shall be imposed. The decision is not objective.[62] Despite such arguments, unilateral sanctions are often imposed. The United States, for example, has used unilateral sanctions on numerous occasions. On some occasions the United States acted alone and on other occasions their allies backed them up. The United States has imposed unilateral sanctions against for example Cuba after Castro took power and against Iran after the hostage situation in 1979.[63]

A sensible approach to unilateral sanctions would be if they were only imposed when the target state had in fact breached an obligation or duty to the sender state. Only when the target state has not exercised redress shall the sender state be allowed to impose unilateral sanctions. The proportionality principle shall also assure that the unilateral sanctions are comparative with the violation or breach suffered by the sender state. The difficult part is to determine if the unilateral sanctions imposed by the sender state were necessary and if the sender state had a right to do so. It can be said that the frequent imposition of unilateral sanctions by the United

[59] Compelling law and fundamental principle of international law, which is accepted by the international community and can never be violated by states.
[60] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 58-62.
[61] Malloy, *Economic Sanctions and U.S. Trade*, (1990), page 592.
[62] Evans, *Aspects of Statehood and Institutionalism in Contemporary Europe*, (1997), page 195.
[63] Evans, *Aspects of Statehood and Institutionalism in Contemporary Europe*, (1997), page 191-192.

States and other countries show that international law does not provide any clear rules for the imposition of unilateral sanctions.[64]

4.2 Secondary sanctions

Unilateral economic sanctions are imposed by the United States against various states, companies and individuals such as "evil dictatorial regimes, fanatical terrorists, nuclear weapons proliferators and international narcotics traffickers". United States unilateral sanctions can pressure the offender to change its behaviour and prohibit United States individuals and companies from dealing with the target state. However, third states are still free to do business with the target state, which causes problems for the United States and hence the United States has developed secondary sanctions. Secondary sanctions are economic sanctions with extraterritorial application against third state parties such as non-US companies and non-US citizens from jurisdictions outside the United States borders. Secondary sanctions simply prohibit third state parties from interacting with the target state. Secondary sanctions achieve what is not possible to achieve through unilateral or multilateral sanctions.[65]

What separates secondary sanctions from other sanctions is that secondary sanctions do not just punish the target state but also prohibits third state parties from interacting with the target state despite the fact that the sender state does not have jurisdiction to regulate such activities. It has been argued that secondary sanctions violate fundamental principles of customary international law that regulate non-forcible countermeasures.[66] The general view is that the United States uses secondary sanctions that have extraterritorial affect against third state parties to extend the far-reaching arm of United States jurisdiction to regulate conduct of non-US companies and non-US citizens that take place in the territories of third states. This interferes with the sovereignty of the state whose nationals are subject to United States secondary sanctions.[67] Secondary sanctions are the most severe sanctions that a state can impose and highly controversial since they are being applied extraterritorially.[68] United States secondary sanctions under the Cuban Liberty and Democratic Solidarity Act (Helms-Burton) and the Iran Sanctions Act (ISA) were subject to wild protests by the international community. The Helms-Burton and ISA have not been accepted by United States trading partners and are generally viewed upon as violations of international law since both intend to cut off target states by punishing third state parties that do business with the target state. The third

[64] Malloy, *Economic Sanctions and U.S. Trade*, (1990), page 593-594.
[65] Meyer, *Seconds Thoughts On Secondary Sanctions*, (2009), page 906-907.
[66] Malloy, *Economic Sanctions and U.S. Trade*, (1990), page 607-608.
[67] Meyer, *Second Thoughts On Secondary Sanctions*, (2009), page 932-933.
[68] Rodman, *Sanctions Beyond Borders Multinational Corporations and U.S. Economic Statecraft*, (2001), page 172.

state parties have no connection with the United States and therefore the United States has no jurisdiction over their actions.[69]

Ironically the United States has also been known to object to the use of secondary sanctions and has imposed legislation prohibiting domestic companies from complying with secondary sanctions. Under the Export Administration Act (EAA), US-companies and their subsidiaries are prohibited from following secondary sanctions if they are imposed against a country that has a good relationship with the United States. The fact that the United States has both objected to secondary sanctions and imposes them frequently is highly contradictory.[70]

4.3 The concept of jurisdiction in international law

All states are sovereign and are completely free to regulate the public order and legislation within its territory. Today, companies and individuals operate and engage in activities that stretch outside of a state's territory into another state's territory. Situations therefore arise where two or more states feel the desire to regulate the same conduct but under different laws.[71]

The perception of jurisdiction in international law influences how states regulate economic sanctions and affects the extent and capacity of their economic sanctions programmes. From state sovereignty, jurisdictional power follows to prescribe laws, adjudicate cases and enforce judgements. All states shall aim to respect legitimate interests of other states, international norms and jurisdictional principles in international law when they form their economic sanctions programmes. However, jurisdictional authority is not interpreted identically by all states, especially not when it comes to extraterritorial conduct.[72]

International law prescribes five generally accepted principles of jurisdiction.[73]

Territorial principle: Under the territorial principle each state is entitled to regulate conduct within its own territory. The territorial principle is recognized as the heart of all jurisdictional principles that regulates state sovereignty and independence.[74] The territorial principle can be divided into subjective or objective territoriality and sometimes the two occur at the

[69] Rodman, *Sanctions Beyond Borders Multinational Corporations and U.S. Economic Statecraft*, (2001), page 171.
[70] Shambaugh, *States, Firms and Power Successful Sanctions in United States Foreign Policy*, (1999), page 118.
[71] Evans, *International Law*, (2010), page 313.
[72] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 65-66.
[73] Özcayir, *Port State Control*, (2004), page 63.
[74] Evans, *Aspects of Statehood and Institutionalism in Contemporary Europe*, (1997), page 226.

same time. A state has the right to exercise subjective territoriality if some part of for example a crime has been committed in the state that claims to have the right to assert jurisdiction. A state is entitled to exercise objective territoriality if the actual effect or result of a crime affects the state that claims to have the right to assert jurisdiction, even if the crime might have been committed in a completely different state.[75] The modern society is built on multinational companies, electronic commerce and technology, which requires continuous modifications of the international system leaving the importance of the territorial principle rapidly reducing.[76]

The nationality principle: The nationality of the offender decides a state's right to assert jurisdiction. A state is allowed to prosecute and punish its nationals solely because of their nationality.[77]

The passive personality principle: State A can apply its criminal laws to an act committed by an offender that is a national of state B for a crime that was committed in state B's territory simply because the victim was a national of state A. The passive personality principle can for example apply when a terrorist attack is directed against a state's nationals just because of their nationality or if a state's ambassador or government official is assassinated. The United States is known to use the passive personality principle to fight terrorism.[78]

The protective principle: Under the protective principle state A is entitled to assert jurisdiction over an offender that is a national of state B for a crime that was committed in state B's territory but that threatens the security of state A.[79] The protective principle is what guarantees United States courts their most extensive powers.[80]

The universality principle: Certain crimes under international law are known as delict jure gentium and are regulated under the universality principle. These are crimes under international law that pose severe danger to the international community and are of great concern for all states. All states are entitled to assert jurisdiction over such crimes regardless of whether there exists a relationship between the asserting state and the offender. However, one requirement has to be fulfilled for a state to be able to prescribe universal jurisdiction, namely, the offender has to be present in the prescribing state's territory. Universal jurisdiction can be asserted for the following crimes, piracy, slave trade, attacks on or hijacks of aircraft, genocide, war crimes and possibly certain acts of terrorism.[81]

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[75] Zagaris, *International White Collar Crime Cases and Materials* (2010), page 221.
[76] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 68.
[77] Özcayir, *Port State Control*, (2004), page 63.
[78] Zagaris, *International White Collar Crime Cases and Materials*, (2010), page 237.
[79] Evans, *Aspects of Statehood and Institutionalism in Contemporary Europe*, (1997), page 226.
[80] Shambaugh, *States, Firms and Power Successful Sanctions in United States Foreign Policy*, (1999), page 217.
[81] Zagaris, *International White Collar Crime Cases and Materials*, (2010), page 237-238.

4.4 Extraterritorial jurisdiction

United States economic sanctions programmes apply to all United States persons no matter where they are located in the world. The definition of a United States person is "any U.S. citizen, permanent resident alien, juridical person organized under the laws of the United States, or any person in the United States".[82] Subsidiaries of United States entities located in foreign jurisdictions are also included in the definition of a United States person.[83] The fact that such subsidiaries are included in the definition of a United States person may result in conflicts with the foreign state where the subsidiary is incorporated and operates.[84]

Most states recognize the five jurisdictional principles under international law but the United States has interpreted its jurisdictional authority much wider. The United States applies its jurisdiction extraterritorially and regulates conduct by foreign residents, foreign businesses controlled by United States interests and transactions outside of the United States involving goods and technology of United States origin. The United States also applies its jurisdiction extraterritorially to conduct in foreign jurisdictions that have effects within the United States.[85] The general opinion is that a state is only entitled to apply extraterritorial jurisdiction to a conduct that has taken place outside of its territorial jurisdiction if such conduct violates fundamental norms of international law. The United States application of extraterritorial jurisdiction has therefore been viewed by most states as a violation of customary international law.[86]

Third state entities are especially affected by the United States extraterritorial jurisdiction since the United States interferes with whom they conduct business. The United States strives to prohibit third state entities from interacting with target states, entities or individuals that according to the United States have acted in a manner that is a violation of international law or have threaten the stability of the international system. The United States imposes economic sanctions against such targets, which have extraterritorial affect against third state parties. The United States application of extraterritorial economic sanctions against third state parties has been criticized by the international community as a violation of international law. In response the United States argues that due to the structure of worldwide markets and new developments in technology, foreign actions will have effects within the United States territory. The United States also tries to persuade foreign actors not to interact with United States targets and in exchange the foreign actors will have access to United States markets.[87]

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[82] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 75.
[83] Cortright and Lopez, *Smart Sanctions Targeting Economic Statecraft*, (2002), page 75.
[84] Malloy, *Economic Sanctions and U.S. Trade*, (1990), page 610-611.
[85] Davidson, *U.S. Secondary Sanctions: The U.K. and EU Response*, (1998), page 1426.
[86] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 56.
[87] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 91.

There is a significant difference between the United States and the EU in their practice of economic sanctions. The United States will apply economic sanctions extraterritorially to third state parties whereas the EU mainly applies targeted sanctions territorially and does not focus on third state parties. The fact remains that most states stay true to the traditional principles of jurisdiction, especially the territorial principle and apply extraterritorial jurisdiction restrictively. In general, there are two views of extraterritorial economic sanctions: a traditional territorial approach and an extraterritorial approach. According to the former, a state's economic sanctions shall only apply to the actual individuals and companies that operate or are registered in the state that imposes economic sanctions. The latter relies on the effects doctrine and a broad application of the nationality principle.[88] The United States has relied on all five jurisdictional principles recognized by international law to apply its economic sanctions laws extraterritorially.[89] Whenever the United States applies its laws and jurisdiction extraterritorially, as it does with economic sanctions, it affects other sovereign states.[90]

The United States imposes economic sanctions extraterritorially to third state parties by using the nationality principle. If OFAC determines that a certain business entity is controlled or owned by a national of a target state, the business entity will automatically have the same nationality as the individual and be subject to United States economic sanctions regulations. OFAC also blacklists third state persons that act on behalf of states and business entities that are targeted by the United States. This is one way to get third state persons within reach of United States economic sanctions regulations that would normally not apply to them and force the third state person to end its businesses with targeted states. The third state person will basically have to decide whether to have access to United States markets, technology and products or to maintain an economic relationship with a targeted country such as Iran or a SDT like Hamas. United States persons shall also be aware not to conduct business with a blacklisted individual or entity whilst present in a foreign country since such actions will be treated exactly the same as if the United States person conducts business directly with the target state. The United States person will be subject to criminal or civil liability even if such actions are not unlawful in the country where the conduct took place.[91]

Under the effects doctrine, United States courts are entitled to apply United States jurisdiction and laws extraterritorially to activities by a third state party in a foreign jurisdiction simply because such activities have effects

[88] Kern, *Economic Sanctions Law and Public Policy,* (2009), page 79-80.
[89] Shambaugh, *States, Firms and Power Successful Sanctions in United States Foreign Policy,* (1999), page 216-217.
[90] Kern, *Economic Sanctions Law and Public Policy,* (2009), page 74.
[91] Kern, *Economic Sanctions Law and Public Policy,* (2009), page 149-151.

within the United States territory. The effects doctrine is normally used in antitrust matters but also for economic sanctions.[92]

According to some governments and states the effects doctrine does not constitute one of the jurisdictional principles recognized under international law and as a result the effects doctrine has been subject to a lot of criticism. The fact that the United States regulates conduct of third state parties that take place outside of the United States territory is considered by some states and governments as a violation of the territorial principle. States have introduced all sorts of measures to avoid United States extraterritorial jurisdiction, such as enacting legislation that blocks United States legislation, also known as blocking-statues.[93] United States courts have responded by applying the balance to interest test to conflicts of jurisdiction. Basically the court will balance United States interests versus foreign states interests and consider aspects such as nationality and connections with the United States.[94] At some point a limit is reached where the foreign interests prevail over United States interest. However, international law has not specified when such a limit is reached and can therefore not provide a straight answer.[95] States and governments in favour of the effects doctrine claim that the effects doctrine is another way of expressing the objective territorial principle and therefore does not violate international law. So far the effects doctrine has not been recognized as an independent rule under customary international law.[96]

There is also another view in the United States regarding conflicts of jurisdiction, which was expressed in the Act of State Doctrine from the 1964 Sabbatino case and in the 1984 Laker Airways case.

In the expropriation case, *Banco Nacional de Cuba v. Sabbatino*[97] Judge John Harlan argued, "the Act of State Doctrine in its traditional formulation precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its territory".[98] The Act of State Doctrine is part of the United States Constitution and "arises out of the basic relationships between branches of government in a system of separation of powers".[99] In the Sabbatino case the Court further decided that "the (Judicial Branch) will not examine the validity of a taking of property within its own territory by a foreign sovereign government, extant and recognized by this country at the time of the suit, in the absence of a treaty or other unambiguous agreement

[92] Evans, *Aspects of Statehood and Institutionalism in Contemporary Europe*, (1997), page 215.
[93] Evans, *Aspects of Statehood and Institutionalism in Contemporary Europe*, (1997), page 216.
[94] Evans, *International Law*, (2010), page 334.
[95] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 74-75.
[96] Evans, *Aspects of Statehood and Institutionalism in Contemporary Europe*, (1997), page 226.
[97] 376 U.S. 398, 84 S.Ct. 923, U.S.N.Y. 1964.
[98] 376 U.S. 398, 84 S.Ct. 923, U.S.N.Y. 1964 page 401.
[99] 376 U.S. 398, 84 S.Ct. 923, U.S.N.Y. 1964 page 423.

regarding controlling legal principles, even if the complaint alleges that the taking violates customary international law".[100] The basic principle of the Act of State Doctrine was therefore maintained in the Sabbatino case.

In the antitrust matter, *Laker Airways Ltd. V Sabena, Belgian World Airlines,*[101] the court was of the opinion that the balance to interest test is inappropriate "when courts are forced to choose between a domestic law which is designed to protect domestic interests, and a foreign law which is calculated to thwart the implementation of domestic law in order to protect foreign interests threatened by the objectives of the domestic law".[102] The factors that are important when deciding between competing bases of jurisdiction and for the balance to interest test include political factors, "which the court is neither qualified to evaluate comparatively or capable of properly balancing".[103] Further, the balance to interest test has not been proven to be a rule of international law.[104] Domestic courts shall enforce national laws and therefore find it difficult to balance competing foreign interest objectively since "where there is any doubt, national interests will tend to be favoured over foreign interests".[105] It was further argued that "international law prohibits unreasonable assertions of prescriptive jurisdiction". However, there is no obligation for the forum with jurisdiction to actually exercise the jurisdiction to its full extent.[106] Instead diplomatic and political means shall solve conflicts of jurisdiction.[107]

Blocking statues are not the most efficient measures to solve a conflict of jurisdiction. When blocking statues are imposed it is generally the individual that suffers and does not know which law to follow. A suggestion that could eliminate extraterritorial application of laws would be if states try to harmonize their policies or consult with each other regarding each case that emerges.[108]

A situation arose a few years ago that led to a dispute over Mexican laws and United States economic sanctions laws. In 2006, Hotel Maria Isabel Sheraton in Mexico violated Mexican law when it expelled sixteen Cuban officials that were meeting with United States energy executives. The Hotel Maria Isabel Sheraton in Mexico is a subsidiary of the New York based Starwood Hotels & Resorts Worldwide. The hotel in Mexico had been advised by OFAC that it was violating United States law by providing services to Cuban officials. Mexico treated Sheraton's actions under Mexican law since the Mexican government does not accept application of foreign law in Mexico and consequently sanctioned the Starwood group under Mexican law. The United States claimed that the hotel was a

[100] 376 U.S. 398, 84 S.Ct. 923, U.S.N.Y. 1964 page 428.
[101] 731 F.2d 909 C.A.D.C, 1984.
[102] 731 F.2d 909 C.A.D.C, 1984, page 246.
[103] 731 F.2d 909 C.A.D.C, 1984, page 247.
[104] 731 F.2d 909 C.A.D.C, 1984, page 248.
[105] 731 F.2d 909 C.A.D.C, 1984, page 249.
[106] 731 F.2d 909 C.A.D.C, 1984, page 250.
[107] 731 F.2d 909 C.A.D.C, 1984, page 253.
[108] Evans, *International Law,* (2010), page 334.

subsidiary of a US-owned hotel group and hence subject to United States laws and regulations. OFAC representatives explained that all types of transactions are subject to OFAC regulations but that the purpose is to target large financial transactions. OFAC will examine the actual damage a transaction has caused United States sanctions policy in each individual case and act accordingly. The Sheraton incident clearly shows the problems associated with United States unilateral sanctions and has negatively influenced the relations between the two countries.[109]

Economic sanctions programmes do not only legally obligate US-companies and their subsidiaries, they might also apply to EU-companies. A wholly owned and incorporated EU-company is normally entitled to do business with states, companies and individuals that are subject to United States sanctions but not if the company is subject to United States jurisdiction. A wholly owned and incorporated EU-company is subject to United States jurisdiction if "(1) the company's senior management is compromised of U.S. Persons; (2) the company's senior management is based in the United States and essentially manages the company from the U.S.; (3) there are U.S. Persons working within the business that have dealings with sanctioned countries and have not properly recused themselves; or (4) foreign persons use the mail or wires to communicate with a U.S. Person regarding a dealing or transaction with a sanctioned country".[110] United States persons shall therefore never approve, finance, guarantee or facilitate a transaction by a third state party if the same transaction would be unlawful if undertaken by a United States person. Facilitate does not mean the same in each programme but could for example involve "using or authorizing the use of foreign forwarders, shipping agents or vessels that are banned under a particular sanctions program, such as the Islamic Republic of Iran Shipping Lines under the Weapons of Mass Destruction program".[111] Islamic Republic of Iran Shipping Lines (IRISL) will be further discussed in chapter 5.

EU-companies are highly recommended to stay updated with United States economic sanctions programmes since such programmes can potentially affect their business. Economic sanctions are an important part of the United States foreign policy and given that foreign policy objectives constantly change and adapt to real life situations, the contents and purposes of the economic sanctions programmes vary. By instigating measures like compliance policies and procedures EU-companies can prevent both deliberate and unintentional violations of United States economic sanctions laws. EU-companies shall be cautious when doing business with countries that are subject to United States economic sanctions laws. Iran for example is the aim of both United States economic sanctions and UN and EU

[109] Zagaris, *International White Collar Crime Cases and Materials,* (2010), page 197-198.
[110] Razzano, *U.S. Economic Sanctions Laws: Practical Implications for European Companies,* (2010), page 128.
[111] Razzano, *U.S. Economic Sanctions Laws: Practical Implications for European Companies,* (2010), page 128-129.

economic sanctions.[112] Economic sanctions against Iran are further discussed in chapter 5.

Multi-national corporate groups are also affected by United States economic sanctions. In Europe, Japan and the United States multi-national corporate groups are principally structured as "groups of corporate entities in hierarchical form with a parent corporation and numerous subsidiaries and branches collectively conducting the business of the group". For the main part, multi-national corporate groups based in the United States operate through wholly owned subsidiaries. In some cases the United States subsidiaries are partly owned by the parent company. Since multi-national corporate groups are involved in business activities in many jurisdictions it is difficult for law enforcement authorities and regulators to monitor and ensure that multi-national corporate groups are not breaking any economic sanctions laws. The fact that such multi-national corporate groups have a very complicated structure makes it even harder for law enforcement authorities and regulators since they have to control activities that take place internationally across several jurisdictions. So far there exists no unified and efficient practice amongst law enforcement authorities and regulators of how to apply economic sanctions controls to the activities of multi-national corporate groups. Instead the efforts have been incoherent and overlapping.[113]

A multi-national corporate group operates and has links with various jurisdictions, which complicates the process of identifying the corporation's nationality. According to the International Court of Justice (ICJ), in customary international law, the nationality of a corporation is either the state of incorporation or where the company has its principal place of business. The United States recognizes this approach but with a few statutory exceptions. The United States will apply its jurisdiction extraterritorially to a company that is incorporated under the laws of a foreign country, but is controlled by a United States person, by piercing the veil of the corporate nationality. Through the nationality principle the United States can restrict activities and impose its economic sanctions legislation extraterritorially to non-US businesses controlled by United States persons and to foreign branches or wholly owned affiliates of United States parent companies.[114]

[112] Razzano, *U.S. Economic Sanctions Laws: Practical Implications for European Companies*, (2010), page 131.
[113] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 139-141.
[114] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 76-77.

5 Economic sanctions against Iran

5.1 Background

Many years ago the United States and Iran used to be trading partners but today the relationship is damaged and almost irreparable due to amongst other things the hostage crisis that took place after the Iranian revolution in 1979 when a large group of Americans were held hostages at the United States Embassy in Teheran. The United States imposed economic sanctions against Iran in response to the hostage crisis and since that day the diplomatic relations between the two states has continued to depreciate rapidly.[115]

In 1995, the United States unilaterally ended its trading relations with Iran and listed Iran as a sponsor of international terrorism. Consequently, United States individuals and companies are prohibited from doing business with Iran.[116] Through economic sanctions the United States punishes Iran and tries to change Iranian government policies. Over the years the scope of the economic sanctions have changed [117] and currently the economic sanctions intend to prevent Iran from developing its nuclear programme, the supporting of terrorism and the abusing of human rights. The idea behind the economic sanctions is to prohibit both US-companies and non-US companies from trading and investing in Iran, prohibit the transhipping of United States goods to Iran and to control the Iranian petroleum industry and make it difficult for Iran to explore, extract, refine and transport petroleum resources.[118]

5.2 Secondary sanctions under ISA

The Iran Sanctions Act of 1996 (ISA) was initially called the Iran and Libya Sanctions Act but later on Libya was removed from the statue. Iran remained the target of the statue and ISA sought to prevent Iran from accessing resources that could potentially fund Iran's nuclear programme and to stop Iran from supporting terrorist organizations such as Hezbollah,

[115] Torbat, *Impacts of the US Trade and Financial Sanctions on Iran*, (2005), page 408-409.
[116] Shambaugh, *States, Firms and Power Successful Sanctions in United States Foreign Policy*, (1999), page 185.
[117] Askari, Forrer, Teegen and Yang, *Case Studies of U.S. Economic Sanctions the Chinese, Cuban, and Iranian Experience*, 2003, page 171.
[118] United States Government Accountability Office (GAO), *Iran Sanctions New Act Underscores Importance of Comprehensive Assessment of Sanction's Effectiveness*, (2010), page 1, available at: www.gao.gov/new.items/d10928t.pdf (last visited 19 April 2011).

Hamas and Palestine Islamic Jihad. The United States has enacted plenty of laws that restrict United States companies and individuals from trading or investing in Iran. ISA however, is extremely controversial since it does not apply to United States companies and individuals. It only applies extraterritorially to foreign companies that are incorporated and operate outside of the United States territory. ISA was an attempt by the United States Congress and the Clinton Administration to convince United States allies to also impose similar sanctions against Iran.[119] As will be describe below, the attempt was far from successful at that time.

The purpose of ISA is to target and sanction companies, entities or individuals that "export goods or technology that could enhance Iran's ability to explore for, extract, refine, or transport petroleum resources and for other related purposes".[120] It is important to remember that ISA does not apply to the state or nationals of Iran.[121] ISA only applies to third state parties.

The objectives of ISA are to minimize the flow of funds that help Iran finance terrorism and are important for the developing of Iran's nuclear programme. The President imposes sanctions for transactions that are unlawful under ISA such as for example if a third state company invests more than $20,000,000 in one year in Iran's energy sector. There are many sanctions available under ISA and if sanctions are imposed against a foreign firm, the prospects of future business opportunities in the United State will quickly vanish. As mentioned before ISA is directed toward foreign firms but there exists no liability under ISA that requires foreign states to act against a firm established under its own jurisdiction.[122]

5.3 Harsh reactions against ISA

Despite ISA, German, French and several Asian companies kept doing business with Iran during the 1990's, especially in the field of oil exploration and production. European governments even encouraged their companies to go after trade agreements with Iran that had been called off by US-companies. French, German and Russian oil companies bid to replace the US-company Conoco after the company withdrew its bid from an Iranian contract for petroleum exploration and production. The United States on the other hand, intended for ISA to make EU-companies choose to either do business with Iran or with the United States. The French oil

[119] Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions,* (2010), page 1-3, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf (last visited 19 April 2011).
[120] Shambaugh, *States, Firms and Power Successful Sanctions in United States Foreign Policy,* (1999), page 184.
[121] Malloy, *United States Economic Sanctions: Theory and Practice,* (2001), page 198.
[122] Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions,* (2010), page 2-3, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf (last visited 19 April 2011).

company Total SA was warned that if it continued with a $600,000,000 acquisition of two Iranian oil fields from Conoco, the company's chances of doing business in the United States could be threatened. The EU announced statements that it would retaliate, threatened to file a complaint with the World Trade Organization (WTO) and to enact legislation blocking ISA.[123] In the end, the United States government agreed not to impose economic sanctions against Total SA of France, Gazprom of Russia and Petronas of Malaysia for being involved in a $2,000,000,000 investment in Iran's South Pars gas filed. It was also decided that if the EU strengthened its proliferation rules and obstructed Iran's efforts to develop WMD, no future sanctions would be imposed. In March 1999, a consortium of French, Italian and Iranian oil companies signed a $998,000,000 contract for ten years to develop an oil field in Iran but the United States did not impose sanctions for any of the investments.[124]

In the United States, ISA had strong support from the American Israel Public Affairs Committee and other groups that regarded Iran as a threat. However, United States business lobbies, European, Russian and South Asian firms vigorously opposed ISA.[125] Particularly the EU criticized the extraterritorial affect of ISA and claimed that ISA was a breach of international law and international trade agreements.[126] Consequently the EU filed a formal complaint with the WTO and claimed that the extraterritorial application of ISA violated United States obligations under the WTO agreements. The EU was not the only part that was angered by the extraterritorial affect of ISA. According to Canada and Mexico ISA violated obligations under the North American Free Trade Agreement and as a result they also filed complaints against the United States.[127]

Apart from filing a complaint with the WTO, the EU also sought another measure to counterbalance the extraterritorial impact of United States economic sanctions by adopting Regulation 2271/96. The purpose of Regulation 2271/96 was to block the extraterritorial affect of for example ISA by prohibiting EU nationals or business entities from complying with a specific set of United States economic sanctions that can be found in the annex of the Regulation. Regulation 2271/96 is a binding part of the laws of the EU. Consequently EU-companies might be subject to two different laws that have completely opposite objectives and purposes. Regulation 2271/96 blocks ISA but was initially intended to block the Helms-Burton and the Cuban Assets Control Regulations. The EU was trading with Cuba and Iran and the Regulation strongly expressed the view of the EU that the United

[123] Shambaugh, *States, Firms and Power Successful Sanctions in United States Foreign Policy*, page 185-186.
[124] Shambaugh, *States, Firms and Power Successful Sanctions in United States Foreign Policy*, (1999), page 199-202.
[125] Shambaugh, *States, Firms and Power Successful Sanctions in United States Foreign Policy*, (1999), page 185.
[126] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 245.
[127] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 266.

States extraterritorial application of ISA and the Helms-Burton were illegal attempts to expand its jurisdiction to third state parties.[128]

Despite the fact that Regulation 2271/96 is part of EU law and was an effort to reject the extraterritorial affect of United States economic sanctions laws, it did not stop EU based multi-national companies from complying with United States economic sanctions laws. The companies have not only complied with the United States extraterritorial economic sanctions laws but have also reached special agreements with United States authorities that have reduced their liability and have allowed them to continue with certain transactions that involve targeted states.[129]

In April 1997 the United States and the EU/G7 states adopted the 1997 Memorandum of Understanding (MOU). The MOU included non-binding disciplines that provided a framework to resolve for example the conflict regarding extraterritoriality. In May 1998, the 1998 EU/US Mutual Assistance Agreement was adopted. Through this agreement the EU/G7 and the United States appear to have resolved their dispute concerning Helms-Burton and ISA. Even though the agreement had no legally binding effect it shows the ambition of the United States and the EU/G/ to resolve the political gridlock over extraterritorial United States sanctions.[130]

5.4 CISADA

5.4.1 Tightening the leash on activities related to Iran

The Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA) was enacted in the 111th congress and came into force on 1 July 2010 and targets Iran's refined petroleum products. CISADA amends ISA by expanding existing sanctions against Iran.[131] CISADA for example restricts the selling of gasoline to Iran, restricts services and equipment related to gasoline production to Iran and restricts international banking relationships with Iran. Since there was much debate over the extraterritorial affect of ISA, the Successive Administration controlled that the Congressional sanctions initiative did not negatively influence the cooperation with international states whose support is needed to adopt

[128] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 246-248.
[129] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 250.
[130] Kern, *Economic Sanctions Law and Public Policy*, (2009), page 266-268.
[131] CISADA.

stricter international sanctions. This concern was incorporated in CISADA.[132]

5.4.2 New UN and EU sanctions

The international community has become increasingly worried about Iran's nuclear weapons programme and has shown its support for economic sanctions. Lately, the UN and the EU have felt the need to impose economic sanctions against Iran in response to its continued uranium enrichment activities. Backed up by the United States, the UNSC approved its fourth round of sanctions against Iran's nuclear programme on June 9, 2010. The UNSC sanctions restrict for example military purchases, trade and financial transactions by the Islamic Revolutionary Guard Corps (IRGC), which controls Iran's nuclear programme. In response to the new UN sanctions, the EU also approved new sanctions against Iran on June 17, 2010. The new EU sanctions prohibit investments, technical assistance and technology transfers to the oil and gas industry in Iran.[133]

UNSCR 1929 was adopted by the Security Council at its 6335th meeting on 9 June, 2010.[134] UNSCR 1929 imposes new sanctions against Iran as well as reinforces and expands those that are already in place. UNSCR 1929 amplifies that the UN does not accept Iran's constant refusal to comply with the international community and that Iran shall peacefully resolve concerns about its nuclear programme. UNSCR 1929 reaffirms that Iran shall suspend its enrichment programme and nuclear activities and draws attention to the fact that Iran is obligated to enforce international safety measures for its nuclear programme.[135]

UNSCR1929 includes important prohibitions such as for example:

1. Iran shall not acquire an interest in any commercial activity in another state involving uranium mining, production or use of nuclear materials and technology such as uranium enrichment or reprocessing activities, all heavy-water activities or technology related to ballistic missiles capable of delivering nuclear weapons. States shall prohibit Iran from all such nuclear and missile investments in their territories.[136]

2. States shall prevent the direct or indirect supply, sale or transfer to Iran of battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems.

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[132] Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions*, (2010), page 1, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf (last visited 19 April 2011).
[133] Razzano, *U.S. Economic Sanctions Laws: Practical Implications for European Companies*, (2010), page 130.
[134] UNSCR 1929.
[135] United States Department of State, *New UN Security Council Sanctions on Iran*, (2010), available at: www.state.gov/p/nea/rls/142882.htm (last visited 15 March 2011).
[136] UNSCR 1929 article 7.

States shall prevent the provision to Iran of technical training, financial resources or services, advice, other services or assistance related to the supply, sale, transfer, provision, manufacture, maintenance or use of such arms and related materiel. States shall also exercise vigilance and restraint over the supply, sale, transfer, provisions, manufacture and use of all other arms and related materiel.[137]

3. Iran shall not undertake any activity related to ballistic missiles capable of delivering nuclear weapons, including launches using ballistic missile technology. States shall take all necessary measures to prevent the transfer of technology or technical assistance to Iran related to such activities.[138]

4. The technical list of items that are banned to and from Iran due to their relation with nuclear and missile proliferation has been expanded.[139]

5. States shall inspect all cargo to and from Iran, in their territory, including seaports and airports, if the state has information that provides reasonable grounds to believe the cargo contains items that are prohibited.[140] States may also request inspections of vessels on the high seas with the consent of the flag state and all states shall cooperate in such inspection if there is information that provides reasonable grounds to believe the vessel is carrying cargo containing prohibited items.[141]

6. States shall seize and dispose of items that have been found that are prohibited.[142]

7. States shall prohibit bunkering services such as fuel or supplies to Iranian vessels if they have information that provide reasonable grounds to believe that the vessel is carrying cargo containing prohibited items.[143]

8. States shall require that their nationals and entities exercise vigilance over those transactions involving the Islamic Republic of Iran Shipping Lines (IRISL).[144] States shall communicate any information available on transfers or activity by Iran Air's cargo division or vessels owned or operated by the IRGC.[145]

9. States shall prevent financial services, including insurance or re-insurance contributing to Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems including freezing financial or other assets.[146]

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[137] UNSCR 1929 article 8.
[138] UNSCR 1929 article 9.
[139] UNSCR 1929 article 13.
[140] UNSCR 1929 article 14.
[141] UNSCR 1929 article 15.
[142] UNSCR 1929 article 16.
[143] UNSCR 1929 article 18.
[144] UNSCR 1929 article 19.
[145] UNSCR 1929 article 20.
[146] UNSCR 1929 article 21.

10. States shall require their nationals, persons and firms to exercise vigilance when doing business with entities incorporated in Iran, including those of IRGC and IRISL if they have information that provides reasonable grounds to believe that such business could contribute to Iran's proliferation-sensitive nuclear activities or development of nuclear weapon delivery systems.[147]

11. States shall prohibit in their territories for example the opening of new branches, the establishing of joint ventures and the maintaining of correspondent relationships with Iranian banks if they have information that provides reasonable grounds to believe that these activities could contribute to Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.[148] States shall also prohibit financial institutions within their territories or under their jurisdiction from opening representative offices or subsidiaries or banking accounts in Iran if they have information that provides reasonable grounds to believe that these activities could contribute to Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.[149]

12. States shall require that their individuals or entities exercise vigilance over those transactions involving the Islamic Revolutionary Guard Corps (IRGC) that could contribute to Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.[150]

13. Individuals and entities can become subject to targeted sanctions.[151]

14. A UN panel consisting of eight experts will be created for the period of one year with the function to monitor the progress of the measures decided in this resolution.[152]

UNSCR 1929 is much tougher than its predecessors by prohibiting all arms transfers to Iran, by targeting IRGC and its activities related to proliferation, by for the first time banning all Iranian activities related to ballistic missiles that could potentially deliver nuclear weapons, by restricting Iran's access to the international financial system to fund and facilitate nuclear and missile proliferation and for the first time officially highlighting potential links between Iran's energy sector and its nuclear activities. After the passage of UNSCR 1929, Russia cancelled a missile sale to Iran and the new requirements relating to cargo inspection led to the Nigerian seizure of an unlawful Iranian arms shipment.[153] Shortly after the passage of UNSCR 1929 the EU also imposed sanctions against Iran.

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[147] UNSCR 1929 article 22.
[148] UNSCR 1929 article 23.
[149] UNSCR 1929 article 24.
[150] UNSCR 1929 article 12.
[151] UNSCR 1929 article 26.
[152] UNSCR 1929 article 29.
[153] United States Department of State, *Implementing Tougher Sanctions on Iran: A Progress Report*, available at: www.state.gov/p/us/rm/2010/152222.htm (last visited 15 March 2011).

The EU has a well-established trading relationship with Iran. A third of Iran's export is destined for the EU and virtually ninety percent of EU imports, which derive from Iran, relate to energy. Iran is ranked as the EU's sixth supplier of energy products. However, the constant concern relating to Iran's nuclear programme has harshly affected the trading relationship. The EU has therefore introduced restrictions regarded trade with Iran and the restrictions are regulated by Council Regulations 423/2007, 618/2007 and 1110/2008. Each regulation includes a list of products that are prohibited from being exported to Iran. On 26 July, 2010 a Decision was adopted with new economic sanctions against Iran.[154] The new EU sanctions exceed what was required by the UNSCR 1929.[155] Council Decision of 26 July, 2010 includes further restrictive measures against Iran within trade, financial services, energy and transport. The Council also adopted Regulation 668/2010, which amends Regulation 423/2007 and extends the list of persons and entities subject to an asset freeze.

Council Decision of 26 July, 2010 regulates for example:

Chapter 1: Regulates export and import restrictions on certain items, materials, equipment, goods and technology (both military and dual-use), to Iran and the sale, financing, or supply of key equipment, technology, or related services relating to oil and natural gas refining, exploration, or extraction to Iran or any Iranian owned entity (including the use of member state aircraft or vessels for such supply).[156]

Chapter 2: Regulates the financial sector and prohibits new investments or loans related to the Iranian oil or gas industry. The opening of new branches, subsidiaries or representative offices of Iranian banks in member states are prohibited. There is also a prohibition against provision of insurance or re-insurance to the government of Iran, to entities or individuals in Iran or outside of Iran controlled by Iranian entities.[157]

Chapter 3: Regulates the transport sector. Member states shall inspect all cargo to and from Iran in their territories including seaports and airports and may also inspect vessels on the high seas with the consent of the flag state if they have information that provides reasonable grounds to believe that the cargo contains items or the vessels carry items for the supply, sale, transfer or export of which is prohibited under this Decision. The provision by nationals of member states or from the territories under the jurisdiction of member states of bunkering or ship supply services, or other services of vessels, to Iranian-owned or contracted vessels, including chartered vessels shall be prohibited if they have information that provides reasonable

[154] European Commission, available at: ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/iran/index_en.htm (last visited 4 April 2011).
[155] Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions*, (2010), page 41, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf (last visited 18 April 2011).
[156] Council Decision of 26 July 2010 articles 1-8.
[157] Council Decision of 26 July 2010 articles 9-14.

grounds to believe that the vessels carry items for the supply, sale, transfer or export of which is prohibited under this Decision. Member states shall communicate to the Committee any information available on transfers or activity by Iran's Air's cargo division or vessels owned or operated by IRISL to other companies that may have been undertaken in order to evade the sanctions including renaming or re-registering of aircraft, vessels or ships. The access to airports of cargo flights operated by Iranian carriers or originating from Iran and the engineering and maintenance services to Iranian cargo aircraft are also regulated here.[158]

Chapter 4: Regulates restrictions on admission. Prevents the entry into or transit through member state territories of for example IRGC individuals or persons engaged in, directly associated with or providing for Iran's proliferation-sensitive nuclear activities. Member states may grant exceptions if the travel is justified on the grounds of for example urgent humanitarian need, including religious obligations or attending intergovernmental meetings.[159]

Chapter 5: Regulates freezing of funds and economic resources. All funds and economic resources that belong to, are owned, held or controlled, directly or indirectly by certain individuals or entities, such as the IRGC or IRISL, shall be frozen. Exemptions are made for funds and economic resources that are for example necessary to satisfy basic needs, including payment for foodstuffs, medicines or medical treatment.[160]

Chapter 6: Regulates other restrictive measures. Member states shall prevent specialized teaching or training of Iranian nationals regarding disciplines that could contribute to Iran's proliferation-sensitive nuclear activities and development of nuclear weapon delivery system.[161]

Chapter 7: Regulates general and final provisions.[162]

The new EU sanctions are extensive by prohibiting any new investments in Iran's energy sector, banning transfer of certain technology and restricting activities of Iranian banks and banking relationships. Also Canada, Australia, Norway, Japan and South Korea have imposed similar sanctions as the EU.[163] The sanctions under UNSCR 1929 and the sanctions under the EU Decision of 26 July are not as broad and inclusive as the sanctions under CISADA but there is a mutual understanding amongst all these sanctions[164]

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[158] Council Decision of 26 July 2010 articles 15-18.
[159] Council Decision of 26 July 2010 article 19.
[160] Council Decision of 26 July 2010 article 20.
[161] Council Decision of 26 July 2010 article 21.
[162] Council Decision of 26 July 2010 articles 22-28.
[163] United States Department of State, *Implementing Tougher Sanctions on Iran: A Progress Report*, available at: www.state.gov/p/us/rm/2010/152222.htm (last visited 15 March 2011).
[164] Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions*, (2010), page 39, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf (last visited 18 April 2011).

even though they are all built on different legal bases and authorities. UNSCR are binding for all UN member states. The United States government can punish a firm that goes against United States objectives or reward a firm that follows United States objectives but cannot mandate a foreign company to take any specific action. The EU sanctions against Iran do not ban importation of Iranian oil and gas, nor do they ban exports of gasoline to Iran but EU companies that do sell gasoline to Iran might be subject to United States penalties under ISA, as amended by CISADA.[165]

5.4.3 Important sections of CISADA

If the President has received plausible evidence that a person is involved in activities that are prohibited under CISADA, then CISADA requires the President to investigate the matter and to notify Congress in writing about whether or not such activities have taken place and either impose or waive sanctions.[166]

The President shall impose at least three sanctions out of nine against a firm that has violated CISADA. The President can choose between the following sanctions: "1. denial of Export-Import Bank loans, credits, or credit guarantees for U.S. exports to the sanctioned entity; 2. denial of licenses for the U.S. export of military or military useful technology to the entity; 3. denial of U.S. bank loans exceeding $10 million in one year to the entity; 4. if the entity is a financial institution, a prohibition on its service as a primary dealer in U.S. government bonds; and/or a prohibition on its servicing as a repository for U.S. government funds (each counts as one sanction); 5. prohibition on U.S. government procurement from the entity; 6. restrictions on import from the violating entity, in accordance with the International Emergency Economic Powers Act (IEEPA, 50 U.S.C. 1701); 7. prohibitions in transactions in foreign exchange by the entity; 8. prohibition on any credit or payments between the entity and any U.S. financial institution; 9. prohibition of the sanctioned entity from acquiring, holding or trading any U.S.-based property".[167] The President also has authority under CISADA to waive sanctions if required due to national interests.[168]

CISADA section 103 regulates prohibitions on import and export. Goods or services of Iranian origin may not be imported directly or indirectly into the

[165] Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions*, (2010), page 41, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf (last visited 18 April 2011).
[166] United States General Accountability Office (GAO), *Iran Sanctions New Act Underscores Importance of Comprehensive Assessment of Sanction's Effectiveness*, (2010), page 7, available at: http://www.gao.gov/new.items/d10928t.pdf (last visited 19 April 2011).
[167] CISADA section 6 and Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions*, (2010), page 4-5, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf (last visited 18 April 2011).
[168] CISADA section 102 "(7) (C) Presidential waiver.

United States. A United States person may not export goods, services or technology of United States origin to Iran from the United States. Certain products are exempted such as food, medicine and humanitarian assistance.[169]

CISADA section 104 regulates mandatory sanctions with respect to financial institutions that engage in certain transactions. This section covers both United States financial institutions and foreign financial institutions.[170] OFAC is promulgating the Iranian Financial Sanctions Regulations (31 CFR Par 561) to implement CISADA section 104, which require the Secretary of Treasury to prescribe certain regulations. The Iranian Financial Sanctions Regulations (31 CFR Part 561) consist of subpart A-I, which include a few regulations such as: prohibitions or strict conditions with respect to correspondent accounts or payable-through accounts of certain foreign financial institutions identified by the Secretary of Treasury,[171] prohibitions on persons owned or controlled by United States financial institutions,[172] regulations for licences, authorizations, statements of licensing policy[173] and regulations for penalties.[174]

As required in CISADA section 105,[175] on September 29, 2010 the President signed an executive order[176] that imposed United States sanctions on eight named Iranian officials determined to have committed serious human rights abuses.[177]

CISADA section 106 regulates prohibition on procurement contracts with persons that export sensitive technology. The term "sensitive technology" means hardware, software, telecommunications equipment, or any other technology that the President determines to be used specifically to restrict the free flow of unbiased information to Iran or to disrupt, monitor or otherwise restrict speech of the people of Iran.[178] Companies have to be able to assure the relevant United States government agency that the company is not violating CISADA in order to get a United States government contract

[169] CISADA section 103 economic sanctions relating to Iran.
[170] CISADA section 104 mandatory sanctions with respect to financial institutions that engage in certain activities.
[171] Iranian Financial Sanctions Regulations (31 CFR Part 561) subpart B §561.201.
[172] Iranian Financial Sanctions Regulations (31 CFR Part 561) subpart B §561.202.
[173] Iranian Financial Sanctions Regulations (31 CFR Part 561) subpart E.
[174] Iranian Financial Sanctions Regulations (31 CFR Part 561) subpart G.
[175] CISADA section 105 imposition of sanctions on certain persons who are responsible for or complicit in human rights abuses committed against citizens of Iran or their family members after the June 12, 2009, elections in Iran.
[176] Executive Order 13553 Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions of September 28, 2010.
[177] Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions*, (2010), page 1, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf (last visited 18 April 2011).
[178] CISADA section 106 prohibition on procurement contracts with persons that export sensitive technology to Iran.

and if the company has not been truthful the contract will be terminated and penalties will be imposed under CISADA.[179]

CISADA title II regulates divestment from certain companies that invest in Iran and provides a "safe harbor" for investment managers that sell shares of firms that invest in Iran's energy sector. Congress and several states require or call for divestment of shares of firms that have invested in Iran's energy sector and the purpose is to express the view that Iran is an outcast in the international community.[180] Investment activities described in CISADA section 202 are: investments of $20,000,000 or more in the energy sector of Iran, including investments in a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran or a financial institution that extends $20,000,000 or more in credit to another person, for forty-five days or more, if that person will use the credit for investment in the energy sector of Iran.[181]

CISADA title III regulates prevention of diversion[182] of certain goods, services and technologies to Iran.[183] As mentioned at the beginning of the chapter, the United States unilaterally banned nearly all trade and investments with Iran in 1995. The purpose was to make it difficult for Iran to obtain United States goods, services and technology, including those that could be used for terrorism and proliferation. In order to avoid the United States trade ban efforts have been made to ship United States exports through third countries. The United Arab Emirates (UAE), Malaysia, Australia, France and the United Kingdom are example of countries that have been identified as transhipment countries for both military and dual-use goods destined for Iran. The goods involved are for example United States military aircraft components, laboratory equipment and sensitive technologies sent to Iranian missile and nuclear entities. [184] CISADA requires that the Director of National Intelligence shall submit to the President, the Secretary of Defense, the Secretary of Commerce, the Secretary of State, the Secretary of Treasury and the appropriate Congressional Committees a report that identifies each country that the government of which the Director believes, based on all information

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[179] Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions*, (2010), page 5, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf (last visited 18 April 2011) and CISADA section 106 prohibition on procurement contract with persons that export sensitive technology to Iran.

[180] Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions*, (2010), page 36-37, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf (last visited 18 April 2011), and title II divestment from certain companies that invest in Iran.

[181] CISADA section 202 (C) investment activities described.

[182] CISADA section 301 (4). The terms "divert" and "diversion" refer to the transfer or release, directly or indirectly, of a good, service or technology to an end-user or an intermediary that is not an authorized recipient of the good, service or technology.

[183] CISADA title III prevention of diversion of certain goods, services, and technologies to Iran.

[184] United States General Accountability Office (GAO), *Iran Sanctions New Act Underscores Importance of Comprehensive Assessment of Sanction's Effectiveness*, page 4-5, available at: http://www.gao.gov/new.items/d10928t.pdf (last visited 19 April 2011).

available to the Director, is allowing the diversion of United States goods, services and technologies to Iranian end-users or Iranian intermediaries.[185] The President shall designate a country as a Destination of Diversion Concern if the President determines that the government of the country allows substantial diversion of specified United States goods, services or technologies through the country to Iranian end-users or Iranian intermediaries.[186] Upon designating a country as a Destination of Diversion Concern the President must submit to the appropriate Congressional Committees a report that includes the country and the items that are being diverted through that country.[187] Once the country has been designated as a Destination of Diversion Concern the President shall require a licence to export to that country the particular United States goods, services, or technologies.[188] The President may delay the imposition of the licensing requirement if the President for example determines that the government of the country is taking steps to institute an export control system or strengthen the export control system of the country.[189]

5.4.4 Exportation and production of refined petroleum products

CISADA section 102 (2) (A) and (B) regulates *production of refined petroleum products*[190] *to Iran.* This section might affect the shipping industry.

The President shall impose three or more sanctions with respect to a person if the President determines that the person knowingly, on or after the date of the enactment of CISADA, sells, leases or provides to Iran goods, services, technology, information or support described in subparagraph (B) that have a fair market value of $1,000,000 or more or that during a period of twelve months have an aggregated fair market value of $5,000,000 or more. Goods, services, technology, information or support described are goods, services, technology, information or support that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization or repair of petroleum refineries.[191]

[185] CISADA section 302 identification of countries of concern with respect to the diversion of certain goods, services, and technologies to or through Iran.
[186] CISADA section 303 destinations of diversion concern.
[187] CISADA section 303 (b) report on designation.
[188] CISADA section 303 (c) licensing requirement.
[189] CISADA section 3030 delay of imposition of licensing requirement.
[190] CISADA section 102 (16) refined petroleum products. The term" refined petroleum products" means diesel, gasoline, jet fuel (including naphtha-type and kerosene-type jet fuel) and aviation gasoline.
[191] CISADA section 102 (2) production of refined petroleum products.

CISADA section 102 (3) (A) and (B) regulates *exportation of refined petroleum products*[192] *to Iran.* This section affects the shipping industry by regulating exportation of refined petroleum products and by regulating the providing of ships or shipping services to deliver refined petroleum to Iran and by regulating underwriting, insurance and re-insurance.

The President shall impose three or more sanctions, on or after the date of the enactment of CISADA, to a person that knowingly sells or provides to Iran refined petroleum products or sells, leases or provides to Iran goods, services, technology, information or support that have a fair market value of $1,000,000 or more or that during a period of twelve months have an aggregate fair market value of $5,000,000 or more. The goods, services, technology, information or support described are goods, services, technology, information or support that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products, including underwriting or entering into a contract to provide insurance or reinsurance for the sale, lease or provision of such goods, services, technology, information or support, financing or brokering such sale, lease or provision or providing ships or shipping services to deliver refined petroleum products to Iran.[193]

CISADA section 102 (3) (C) includes an exception for underwriters and insurance providers exercising due diligence.

The President may not impose sanctions with respect to a person that provides underwriting or insurance or reinsurance if the President determines that the person has exercised due diligence in establishing and enforcing official policies, procedures and controls to ensure that the person does not underwrite or enter into a contract to provide insurance or reinsurance for the sale, lease, or provision of goods, services, technology, information or support described in subparagraph (B).[194]

CISADA section 102 applies to the sale or provision of refined petroleum products made for Iran on or after 1 July, 2010 when CISADA was enacted.

CISADA consists of threshold amounts that decide how much a foreign company can invest in Iran's energy sector or how much refined petroleum or refinery related equipment or services a foreign company can sell to Iran before being subject to sanctions under CISADA. UNSCR 1929 does not include a prohibition such as the one in CISADA but UNSCR 1929 recognizes the possible link between the revenues derived from Iran's petroleum industry and the funding of Iran's proliferation sensitive nuclear activities. According to some observers this might mean that the UN

[192] CISADA section 102 (16) refined petroleum products. The term "refined petroleum products" means diesel, gasoline, jet fuel (including naphtha-type and kerosene-type jet fuel) and aviation gasoline.
[193] CISADA section 102 (3) exportation of petroleum products to Iran.
[194] CISADA section 102 (3) (C) exception for underwriters and insurance providers exercising due diligence.

supports countries that want to ban their companies from investing in Iran's energy sector. The EU sanctions do not ban buying oil or gas from Iran or selling gasoline to Iran. However, the EU sanctions prohibit EU-companies from financing energy sector projects in Iran and ban sales to Iran of equipment on services for its energy sector, including projects outside Iran.[195]

5.4.5 The designation of IRISL and IRGC

In September 2005 the Islamic Republic of Shipping Lines (IRISL) was designated by OFAC in accordance with Executive Order 13382 for providing logistical services to Iran's Ministry of Defense and Armed Forces Logistics (MODAFL). All entities involved in Iran's ballistic missile research, development and production activities are controlled by MODAFL. The purpose of Executive Order 13382 is to freeze the assets of proliferators of WMD and their supporters. So far one hundred fifty-six IRISL ships have been blocked by OFAC and for two of the ships, OFAC added International Container Bureau-issued shipping identifier codes that help track the international movement of shipping containers. The codes can be identified on a number of shipping documents.[196]

IRISL is highly involved in Iran's missile programmes and transports Iranian military cargoes. Due to the new UN, EU and United States sanctions, IRISL has not been able to operate with a full fleet of ships. The sanctions have for example affected IRISL's ability to maintain proper insurance coverage for IRISL ships such as protection and indemnity (P&I) insurance. P&I Clubs around the world are denying insurance to IRISL ships. The United Kingdom set the precedent in 2009 by freezing all business engagements with IRISL under its counterterrorism authorities and as a result all United Kingdom based P&I Clubs stopped providing services and insurance coverage to IRISL ships. Shortly thereafter other European P&I Clubs followed the United Kingdom's actions. A P&I Club based in Bermuda provided insurance to IRISL until January 2010 when a new law was enforced in Bermuda that is similar to the law that was enforced in the United Kingdom. As a result of the new law the Bermuda based P&I Club stopped providing services to IRISL. An insurance company in Teheran was then approached by IRISL. The Teheran-based insurance company provided maritime insurance to IRISL vessels until it was designated by OFAC.[197]

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[195] Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions*, (2010), page 44, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf (last visited 18 April 2011).
[196] OFAC, SDN Update, available at: www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/03312011_irisl.pdf (last visited 13 April 2011).
[197] OFAC, Press Center, *Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL*, available at: www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx (last visited 13 April 2011).

The UN and the EU have joined the United States efforts to isolate IRISL. According to UNSCR 1803 and UNSCR 1929, all member states of the UN are entitled to inspect cargo that is carried by Iran Air or by IRISL. Member states are also entitled to inspect ships in national or international waters if there is a suspicion that the cargo is banned from export to Iran. The EU sanctions include banning Iran Air Cargo from access to EU-airports, freezing all EU-based assets of IRISL and its affiliates and banning insurance and re-insurance of Iranian companies.[198]

In response to the new international actions, IRISL has tried to hide any connection between vessels and IRISL by relying on front companies, falsifying shipping documents, changing the nominal ownership of vessels and repainting ships. Despite such attempts, the designation of IRISL has been successful and has isolated IRISL from the international business community.[199]

OFAC also targets the financial networks of the Islamic Revolutionary Guard Corps (IRGC). IRGC is targeted by UN, EU and United States sanctions due to illegal activities such as involvement in Iran's missile and nuclear programmes, its support for terrorism and its involvement in serious human rights abuses. Several companies are considered involved in the illegal activities of IRGC due to the fact that IRGC controls important parts of the Iranian economy such as Iran's oil and gas industries. In October 2007, the United States State Department designated IRGC in accordance with the Executive Order 13382 for having engaged or attempted to engage in proliferation activities and fourteen IRGC-affiliated individuals and entities have been designated by OFAC since June 2010.[200]

CISADA section 112 regulates the sense of Congress regarding IRGC and its affiliates. The United States shall persistently target IRGC and its affiliates with economic sanctions for its support of terrorism, its role in proliferation and its oppressive activities against the people of Iran.[201]

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[198] Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions*, (2010), page 46, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf (last visited 18 April 2011).
[199] OFAC, Press Center, *Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL*, available at: www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx (last visited 13 April 2011).
[200] OFAC, Press Center, *Fact Sheet: Treasury Designates Iranian Entities Tied to the IRGC and IRISL*, available at: www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx (last visited 13 April 2011).
[201] CISADA section 112 sense of Congress regarding Iran's Revolutionary Guard Corps and its affiliates.

5.5 Companies involved in sanctionable activities

According to open sources, between 2005 and 2009, forty-one firms had commercial activity in the Iranian energy sector involving the exploration and development of oil and gas, petroleum refining or petrochemicals, including the construction of pipelines and tankers for the transport of oil and gas. Seven out of the forty-one firms had contracts with the United States government.[202] During the period between January 1, 2009 and June 30, 2010, sixteen firms were identified in open sources as having sold refined petroleum products to Iran but there has been no effort by the Government Accountability Office to decide if the firms meet the legal criteria specified in ISA as amended by CISADA or if sales were conducted on or after July 1, 2010 the date of the enactment of CISADA. It is possible that the passage of CISADA has led to some of the companies terminating their activities in order to avoid sanctions.[203]

Sanctions were recently imposed under ISA against Naftiran Intertrade Company (NICO), based in Switzerland, for its investments in the Iranian petroleum sector. NICO is an international trading company and a wholly owned subsidiary of the National Iranian Oil Company. NICO has invested huge amounts of money to finance the development of projects in Iran's petroleum industry. The purpose of sanctioning NICO is to detach the company from the international business community.[204] NICO is the first company to have ever been sanctioned under ISA.[205]

If a firm can assure that it has ended all business activities with Iran and that it will not engage in such activities in the future, sanctions can be avoided due to the special rule[206] that CISADA provides. According to the special rule, the Administration does not have to make a determination of sanctionability against a firm that provides such assurance.[207] The special rule is a very influential tool that has convinced firms in Europe and Asia, including the four international oil companies Shell, Statoil, ENI and Total to end sanctionable activities in Iran and assure that they would not engage

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[202] United States General Accountability Office (GAO), *Iran Sanctions New Act Underscores Importance of Comprehensive Assessment of Sanction's Effectiveness*, page 6-7, available at: http://www.gao.gov/new.items/d10928t.pdf (last visited 19 April 2011).
[203] United States General Accountability Office (GAO), *Firms Reported in Open Sources to Have Sold Iran Refined Petroleum Products between January 1, 2009, and June 30, 2010*, page 3, available at: http://www.gao.gov/new.items/d10967r.pdf (last visited 19 April 2011).
[204] United States Department of State, *Briefing on Iran Sanctions Act Implementation*, available at: www.state.gov/s/d/2010/148479.htm (last visited 15 March 2011).
[205] United States Department of State, *Implementing Tougher Sanctions on Iran: A progress Report*, available at: www.state.gov/p/us/rm/2010/152222.htm (last visited 15 March 2011).
[206] CISADA section 102 "(3) special rule.
[207] Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions*, (2010), page 5-6, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf (last visited 18 April 2011).

in such activities in the future.[208] The special rule was also applied against Inpex Corporation, which is a Japanese energy company, after the company announced its withdrawal from a $2,000,000,000 project in Iran's South Azadegan oil field and after assuring that the company would not engage in any energy related activity in Iran in the future.[209]

Companies around the world are terminating their business activities in Iran due to new international sanctions and due to the choice between doing business with Iran or the United States. Energy traders like Lukoil, Reliance, Vitol, Glencore, IPG, Tupras and Trafigura have stopped sales of refined petroleum products to Iran. Shipping companies such as Hong Kong based NYK are withdrawing from the Iranian market and Lloyd's has stopped insuring Iranian shipping. Daimler, Toyota and Kia have stopped exporting cars to Iran and HSBC and Deutsche Bank have terminated their activities.[210] The EU sanctions might also terminate a BP-NIOC joint venture in the Rhum gas field, two hundred miles off the coast of Scotland. It will be up to BP to end the venture, but not doing so might lead to sanctions under ISA.[211]

The UNSCR 1929 recognizes the potential link between Iran's energy sector and Iran's proliferation-sensitive activities. The funds from Iran's energy sectors are possibly used to develop Iran's nuclear programme. The new sanctions by the United States, the UN and the EU are effective tools that may encourage companies to withdraw from Iran. Many responsible companies have decided that the risk of doing business with Iran is too high until Iran fulfils its international obligations and negotiates regarding its nuclear programme.[212] Some oil companies have continued their activities in Iran's petroleum sector and as a result investigations are initiated against such companies by the United States State Department. The United States State Department will also continue to assist and implement CISADA.[213]

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[208] United States Department of State, *Implementing Tougher Sanctions on Iran: A progress Report*, available at: www.state.gov/p/us/rm/2010/152222.htm (last visited 15 March 2011).
[209] United States Department of State, *INPEX CORPORATION Decision*, available at: www.state.gov/r/pa/prs/ps/2010/11/151099.htm (last visited 15 March 2011).
[210] United States Department of State, *Implementing Tougher Sanctions on Iran: A Progress Report*, available at: www.state.gov/p/us/rm/2010/152222.htm (last visited 15 March 2011).
[211] Katzman, Congress Research Service, CRS Report for Congress: *Iran Sanctions*, (2010), page 41-42, available at: assets.opencrs.com/rpts/RS20871_20101213.pdf. (last visited 18 April 2011).
[212] United States Department of State, *INPEX CORPORATION Decision*, available at: www.state.gov/r/pa/prs/ps/2010/11/151099.htm (last visited 15 March 2011).
[213] United States Department of State, *Briefing on Iran Sanctions Act Implementation*, available at: www.state.gov/s/d/2010/148479.htm (last visited 15 March 2011).

6 Analysis

6.1 UN, EU and United States economic sanctions overview

From the descriptive overview its is clear that the theoretical and practical part of economic sanctions such as the legal bases for enforcing sanctions, the legal bases for imposing sanctions and the monitoring of sanctions vary between the UN, the EU and the United States. UN sanctions are legally binding for all UN member states and sanctions are generally imposed due to severe threats to international peace and security. EU sanctions are binding for EU member states. The majority of EU sanctions are mainly implemented UNSCR but some are unilateral sanctions. EU unilateral sanctions are generally targeted sanctions aimed at for example regime elites. The United States on the other hand imposes all types of sanctions: UNSCR mandated by the UNSC, targeted sanctions, unilateral sanctions and secondary sanctions. Economic sanctions are an important part of the United States foreign policy and economic sanctions are imposed frequently. The United States economic sanctions policy strives to regulate both the conduct of its own nationals (unilateral sanctions) and the conduct of third state nationals (secondary sanctions).

In the United States, OFAC is the agency that has the main responsibility to regulate economic sanctions. OFAC specializes in targeted financial sanctions and blocks and freezes the assets belonging to United States targets. OFAC designates persons that do business with a United States target and if OFAC can establish that such a relationship exists and if all requirements are met, the person will be designated and put on the SDN list. Through the SDN list OFAC can keep track of SDNs located all over the world that are engaged in illegal activities such as for example proliferation of WMD, narcotics trafficking or the support of terrorism. OFAC constantly develops at a fast pace and the agency has broad powers, unique personnel, experience and resources, which makes it hard for other states to keep up. However, many states are interested in establishing something similar to OFAC in their own territories.

6.2 The legality of United States extraterritorial jurisdiction and secondary sanctions

The United States, like most states, recognizes the five principles of jurisdiction under international law but interprets its own jurisdictional

authority much wider than most states, especially regarding extraterritoriality. The United States consequently extends its economic sanctions laws to third state parties. Most states believe that a state is only allowed to extend its jurisdiction extraterritorially if another state has breached fundamental norms of international law. Regarding extraterritoriality most states also claim that the territorial principle only permits the regulating of a state's own nationals. The United States however, interprets its extraterritorial jurisdiction differently and relies heavily on the nationality principle and the effects doctrine to extend its economic sanctions laws extraterritorially. The United States effects doctrine has not been recognized as an individual jurisdictional principle by international law, even though some observers claim that it is an extension of the objective territorial principle. Within the United States there is also a second approach to conflicts of laws that has been expressed in the Act of State Doctrine in the Sabbatino Case and through the balance to interest test in the Laker Airways Case. Finally, the United States also pierces the veil of the corporate nationality. According to the ICJ, under customary international law, the nationality of a company is either where the company is registered and incorporated or where the company has its principal place of business. The United States agrees with this principle in most cases, unless there is an exception in a statue and then the United States will pierce the veil of the corporate nationality. The purpose of piercing the veil of the corporate nationality is to ensure that United States economic sanctions laws are not violated by multi-national companies that operate in several jurisdictions.

The United States also depends on the definition of United States persons in order to extend its economic sanctions laws to foreign companies. The definition of a United States person is extremely wide and does not only include subsidiaries of US-companies but can also include for example EU-companies. If a EU-company meets certain requirements it will be defined as a United States person and the company will automatically be subject to United States economic sanctions laws.

The Sheraton case is a good example of what can happen to US-companies with subsidiaries in foreign countries due to United States unilateral sanctions and due to the definition of a United States person. The fact that subsidiaries of US-companies that are incorporated and operate in foreign countries are considered to be United States persons make them subject to two laws at the same time, the domestic law of the foreign country where they are incorporated and operate and the law of the United States. Being subject to two laws with completely different objectives and purposes at the same time creates huge problems. Basically by complying with United States law a breach will take place of the domestic law and legitimate companies will suffer due to United States wide jurisdictional authority.

Apart from interpreting its jurisdictional authority much wider than other states, the United States also relies heavily on its strong position in the international market to extend its economic sanctions laws extraterritorially

to third state parties. The international business community consists of multi-national corporate groups that operate in several jurisdictions and such companies depend on their access to international markets including the markets in the United States. In the case with the ISA the United States intended to make foreign companies choose between doing business with the United States or Iran. The EU enforced blocking legislation, Regulation 2271/96, which is a binding part of the laws of the EU and consequently EU-companies doing business in the United States were potentially subject to two competing laws at the same time. However, many EU-companies decided to comply with ISA and in some cases even reached special agreements with the United States government and as a result EU Regulation 2271/96 did not accomplish its purpose.

The reason why many foreign companies decided to comply with ISA and also in the future will decide to comply with United States secondary sanctions is because the United States is one of the largest trading nations in the world and foreign companies rely heavily on access to United States suppliers and markets. Most foreign companies cannot afford to pay the price of being isolated from the United States for dealing with a target state such as Iran. However, the introduction of blocking legislation, such as EU Regulation 2271/96, is not the best way to deal with United States secondary sanctions. When blocking legislation is enacted companies suffer by potentially being subject to two competing laws at the same time. Instead it is recommended for states with conflicting jurisdictional claims to use diplomatic means to find a solution without complicating matters for international companies.

Unilateral sanctions can be imposed under a treaty or under customary international law but they shall not be imposed under customary international law if they breach an already existing treaty. Some consider unilateral sanctions as violations of international law and that they interfere with state sovereignty. The fact that they are imposed on subjective grounds is also another argument against their use. The objections against secondary sanctions are quite similar. Secondary sanctions are considered by some observers to violate fundamental principles of customary international law that regulate non-forcible countermeasures and as interferers with the sovereignty of the state of whose nationals the conduct regulates. The common opinion is that the United States imposes secondary sanctions to stretch its jurisdiction and laws to third states parties. Unfortunately their exists no clear answer under international law and therefore the United States keeps imposing unilateral and secondary sanctions frequently. However, what is clear is that both unilateral and secondary sanctions regulate extraterritorial conduct that takes place outside the sender states territory and regulate the actions of the sender state’s nationals.

Secondary sanctions are generally described as having extraterritorial affect but essentially all sanctions, whether unilateral or secondary, aim to “effect

an extraterritorial change in conduct".[214] By imposing unilateral sanctions, the United States also acts extraterritorially, since unilateral sanctions also aim to affect conduct that takes place outside of the United States borders. Observers that claim that unilateral sanctions are a regulation of a state's own nationals and that secondary sanctions are not, have clearly misunderstood this point. An example to prove this point is a sanctions law that prohibits United States citizens from trading with Myanmar (unilateral sanctions) or with any third-country that does business with Myanmar (secondary sanctions). The conduct of United States nationals are equally regulated by the unilateral and the secondary sanctions. It is not possible to argue that secondary sanctions are illegal and only base the argument on the fact that the purpose or intent of secondary sanctions is to affect extraterritorial conduct because it has been shown that all types of sanctions regulate extraterritorial conduct.[215]

Secondary sanctions also raise questions such as: how important is the jurisdictional legality of secondary sanctions? If an international tribunal decides that secondary sanctions are a breach of international law then how shall such a decision be enforced against the United States? Will such a decision be given effect under United States law? Even though there might not exist any enforceable limits under international law, the legality of secondary sanctions has an important symbolic value that influences the decision whether or not to use them. If secondary sanctions are considered not only politically problematic but actually illegal it will be less probable for secondary sanctions to be considered as a policy option and other countries will not accept them without retaliation measures like the measures that followed due to ISA.[216]

The main part of United States controversial secondary sanctions and extraterritorial application of its laws has intended to emphasize and maintain important values of the international legal order like human rights and treaty compliance. According to international scholars domestic legal instruments must match international legal restrictions in order to strengthen international norms. Statues containing secondary sanctions or extraterritorial applications of United States laws must find balance.[217]

6.3 International reactions on CISADA versus ISA

The economic sanctions that the United States has imposed against Iran over the years have aimed to regulate the conduct of its own nationals and gradually also the conduct of third state nationals. The extraterritorial affect

[214] Meyer, *Second Thoughts On Secondary Sanctions,* (2009), page 935.
[215] Meyer, *Second Thoughts On Secondary Sanctions,* (2009), page 935-936.
[216] Meyer, *Second Thoughts On Secondary Sanctions,* (2009), page 934-935.
[217] 124 HVLR 1280, *Extraterritorial Law and International Norm Internalization,* (2011), page 1280.

of ISA was harshly criticized by the international community and in particular the EU. However, in 2010, the reactions against CISADA have been quite different.

The EU has not raised a legal objection against CISADA like it did with ISA and the conflict over extraterritoriality is not likely to rise again due to the fact that the new EU sanctions largely correspond with CISADA.[218]

There are many similarities between CISADA and ISA. CISADA is just as provocative as ISA, United States extraterritorial sanctions have been significantly expanded by CISADA and the legality of CISADA under international law is just as questionable as ISA. Despite such facts the new EU sanctions are extremely similar to those in CISADA and consequently the issue of whether United States restrictions apply to EU nationals is avoided since the restrictions under both laws are almost identical.[219]

CISADA and the EU sanctions contain similar prohibitions and restrictions for oil companies and financial institutions apart from the prohibition of direct sale of refined petroleum to Iran, which is only restricted by CISADA. However, it is uncertain if EU-companies will engage in transactions that are only restricted by CISADA. Apart from the prohibition of direct sale of refined petroleum to Iran, which is only restricted by CISADA, it is very unlikely that other transactions will get caught between EU sanctions and CISADA and be subject to conflicts over United States extraterritorial enforcement.[220]

There are three main reasons why the EU has adopted similar sanctions as the United States sanctions in CISADA. First, when ISA was enacted many EU-companies were involved in development projects in the Iranian petroleum industry with lucrative prospects and the ISA with its extraterritorial affect threatened such business opportunities. The restrictions and extraterritorial application of CISADA however, will not have the same affect on EU-companies since most EU-companies have already terminated or are about to terminate their business activities with Iran. Second, the EU's concern for Iran from a security point of view is different today from what it was when ISA was enacted. The ISA was partly enacted because of concerns about terrorism and the EU though that the United States concern was exaggerated. Today, the EU considers Iran as a huge threat and part of the EU's foreign policy goals is to stop Iran's nuclear programme since there is a possibility that Iran would potentially aim nuclear weapons at Europe. Third, the United States used to have an aggressive approach regarding extraterritoriality. In 2010, the United States aimed for a "transatlantic partnership", which the EU accepted. The United States

[218] 124 HVLR 1246, *Responding to Extraterritorial Legislation: the European Union and Secondary Sanctions,* (2011), page 1247.
[219] 124 HVLR 1246, *Responding to Extraterritorial Legislation: the European Union and Secondary Sanctions,* (2011), page 1250.
[220] 124 HVLR 1246, *Responding to Extraterritorial Legislation: the European Union and Secondary Sanctions,* (2011), page 1252.

respected the EU agenda, enacted CISADA after the UN had adopted UNSCR 1929 and following the EU approval of the concept of stricter sanctions. Even though the facts described are specifically related to the situation with Iran, perhaps the EU is ready to in certain circumstances raise specific policy objectives higher than specific commitments to international law.[221]

What has been said confirms that the international community and in particular the EU have changed their opinion of Iran over the past years since ISA was enacted in 1996. Iran poses a huge threat due to its irresponsible and illegal nuclear activities. United international efforts, such as the new international sanctions, are clearly required in order to produce a change in Iran's behaviour.

Another illegal activity that has become of great concern for the international community over the last years is piracy in maritime law. Few treaties or agreements exist between states that regulate piracy. Instead piracy is one of the international crimes subject to the principle of universal jurisdiction under international law. Piracy is regulated under the principle of universal jurisdiction in international law meaning that all states are free to arrest pirates on the high seas and to punish them irrespective of nationality or the place of the commission of the crime. [222]

So far the possession or development of nuclear weapons is not regulated under universal jurisdiction. However, the new UN, EU and United States sanctions show that an international consensus exists that Iran's development of nuclear weapons is contrary to the interest of the international community and shall perhaps be treated as delict jure gentium where all states are entitled punish the offender. Iran's developing of nuclear weapons is clearly contrary to the interests of the international community and a threat to all and such actions shall not go unpunished.

6.4 Regulating Iranian activites and the affect on international trade

The new UN, EU and United States sanctions regulate trade and investment of certain activities related to Iran's petroleum industry. The international sanctions might not prohibit the exact same conduct or to the same degree but there exists a mutual understanding. The international sanctions aim to control the Iranian petroleum industry since Iran is potentially using funds deriving from its petroleum sectors to finance its nuclear programme. The UN, the EU and the United States have all targeted for example IRISL and IRCG and their affiliates. IRISL and IRGC are key players in the Iranian

[221] 124 HVLR 1246, *Responding to Extraterritorial Legislation: the European Union and Secondary Sanctions*, (2011), page 1252-1254.
[222] Özcayir, *Port State Control*, (2004), page 64-65.

economy and use funds that derive from the Iranian oil industry to help finance Iran's nuclear programme and terrorism.

CISADA impacts the shipping industry by regulating exportation of refined petroleum products, underwriting, insurance and re-insurance and the providing of ships or shipping services and the delivery of refined petroleum products to Iran.

CISADA section 102 (2) (A) and (B) may affect certain types of cargo onboard ships depending on what type of goods that shall be included in the section. The section discusses goods, services, technology, information or support that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including assistance with respect to the construction, modernization, or repair of petroleum refineries. This section might affect cargo onboard a ship that could be used for maintaining or constructing refineries but on the other hand could also be intended for a completely different purpose. Shipowners and charterers shall therefore look into this section carefully.

CISADA 102 (C) provides an exception for underwriters and insurance providers that exercise due diligence. This section might apply to P&I Clubs that have exercised due diligence and that unknowingly provided insurance to a ship that is part of IRISL or is involved in other types of prohibited Iranian activities.

Even though CISADA is broader and tougher than the UN and the EU sanctions, by for example including threshold amounts that decide how much a foreign company can invest in Iran's energy sector or how much refined petroleum or refinery related equipment or services a foreign company can sell to Iran before being subject to sanctions under CISADA, the international sanctions are united in their purposes. After examining the new UN, EU and United States sanctions it is clear that international trade is almost equally affected by all the new international sanctions apart from a few minor differences between the three in certain areas.

By controlling Iran's lucrative oil industry and regulating certain activities related to refined petroleum products the international community cuts off the steady flow of resources funding the Iranian development of its nuclear programme and terrorism. Responsible international companies have pulled out of different projects and developments and aim to terminate all business involvements with Iran. The special rule in CISADA is a powerful tool that the United States uses to encourage companies to stop their business activities in Iran and avoid sanctions. The international sanctions that were enacted in 2010 show a united international community that is willing to completely isolate Iran until international requirements are met.

7 Conclusion

There are noticeably plenty of legal and political issues attached with secondary sanctions that negatively affect the relationship between the United States and third states. The United States efforts to extend its jurisdiction and economic sanctions laws extraterritorially to third state parties may violate principles of state sovereignty and principles of jurisdiction in international law. However, international law does not provide a clear answer. The fact that the United States also interprets its jurisdictional authority much wider than most states, especially regarding extraterritoriality, has not been received well by all states.

Despite the issues associated with the extraterritoriality of ISA, the United States continues to extend its economic sanctions laws to third state parties through CISADA, which is just as controversial and questionable under international law as ISA. However, the issue of extraterritoriality that was heavily debated when ISA was enacted has almost been eliminated since the EU has implemented similar sanctions as the United States. The new UN, EU and United States sanctions can only be interpreted as a unified international approach against Iran that strongly aims at regulating Iran's petroleum industry. The possibility that Iran is financing its nuclear programme with funds deriving from its petroleum industry is becoming apparent. The new sanctions clearly show that the international community does not accept or support Iran's behaviour and until Iran agrees to discuss or suspend its nuclear programme and recognize its international nuclear obligations, Iran will be isolated from international trade. Companies that decide to continue doing business with Iran will be cut off from the international business community. The new sanctions clearly demonstrate that Iran is an outcast of the international community.

Essentially, there is no straight answer to the question of whether United States secondary sanctions under ISA and CISADA are a violation of international law. In 1996, ISA was considered illegal and extraterritorial by almost the entire international community but in 2010, the international community has adopted similar sanctions, which almost eliminates the question of extraterritoriality under CISADA. If the international community had not imposed similar sanctions as in CISADA, perhaps the question of extraterritoriality and the illegality of secondary sanctions would have been brought up again and would perhaps have forced international law into taking a stand. Evidentially international law can only provide answers and guidance to a certain extent and after that, political tools and diplomatic measures take over.

Bibliography

Literature

Amnéus Diana and Svanberg-Torpman Katinka (eds.)	*Peace and Security Current Challenges in International Law*, 2004, Studentlitteratur, Lund, Sweden
Askari Hossein G, Forrer John, Teegen Hildy and Yang Jiawen	*Case Studies of U.S. Economic Sanctions the Chinese, Cuban, and Iranian Experience*, First edition, 2003, United States of America
Cortright David and Lopez George A (eds.)	*Smart Sanctions Targeting Economic Statecraft*, 2002, United States of America
Evans Malcolm D (ed.)	*International Law*, Third edition, 2010, Ashford Colour Press Ltd, Gosport, Hampshire, Great Britain
Evans Malcolm D (ed.)	*Aspects of Statehood and Institutionalism in Contemporary Europe*, 1997, Athenaeum Press, Ltd., Gateshead, Tyne & Wear
Hufbauer Gary Clyde, Schoot Jeffrey J, Elliott Kimberly Ann and Oegg Barbara	*Economic Sanctions Reconsidered*, Third edition, 2007, United Book Press, Inc, United States of America
Kern Alexander	*Economic Sanctions Law and Public Policy*, First edition, 2009, CPI Antony Rowe, Chippenham and Eastbourne, Great Britain

Koutrakos Panos	*Trade, Foreign Policy and Defence in EU Constitutional Law, The Legal Regulation of Sanctions, Exports of Dual-Use Goods and Armaments,* 2001, Biddles Ltd, Great Britain
Malloy Michael P	*United States Economic Sanctions, Theory and Practice,* 2001, United States of America
Malloy Michael P	*Economic Sanctions and U.S. Trade,* 1990, United States of America
Rodman Kenneth Aron	*Sanctions Beyond Borders: Multinational Corporations and U.S. Economic Statecraft*, 2001, United States of America
Shambaugh George E	*States, Firms and Power Successful Sanctions in United States Foreign Policy,* 1999, United States of America
Selden Zachary	*Economic Sanctions as Instruments of American Foreign Policy*, First edition, 1991, United States of America
Zagaris Bruce	*International White Collar Crime Cases and Materials,* First edition, 2010, United States of America
Özcayir, Dr Z Oya	*Port State Control*, Second edition, 2004, MPG Books Bodmin, Cornwall, Great Britain

Articles

Davidson Nicholas, *"Secondary Sanctions: The U.K. And EU Response"*, in Stetson Law Review, Vol. 27, Issue 4, Spring 1998, pages. 1425-1436

"*Extraterritorial Law and International Norm Internalization*", Developments in the law – extraterritoriality, in 124 Harvard Law Review 1280, March 2011, pages. 1280-1292

Lee Judith and Slear James, *"Beware of OFAC – A Little-Known Agency Poses Challenges to International Finance"* in International Financial Law review, Vol. 25, Issue 9, September 2006, pages. 58-59

Meyer Jeffrey A, *"Second Thoughts On Secondary Sanctions"*, in University of Pennsylvania Journal of International Law, Vol. 30, Issue 3, Spring 2009, pages. 905-968

Catherine L Razzano, *"U.S. Economic Sanctions Laws: Practical Implications for European Companies"*, in DAJV Newsletter, Vol. 35, September 2010, pages. 128-131

"*Responding to Extraterritorial Legislation: the European Union and Secondary Sanctions"* Developments in the law – extraterritoriality, in 124 Harvard Law Review 1246, March 2011, pages. 1246-1257

Torbat Akbar E, *"Impacts of US Trade and Financial Sanctions on Iran"*, in The World Economy, Vol. 28, Issue 3, 14 March 2005, pages. 407-437

Weiss Thomas G, *"Sanctions as Foreign Policy Tool: Weighing Humanitarian Impulses"*, in Journal of Peace Research, Vol. 36, No. 5, 1999, pages. 499-509

Westbrook Amy Deen, *"What's In Your Portfolio? U.S. Investors Are Unknowingly Financing State Sponsors Of Terrorism"*, in DePaul Law Review, Vol. 59, Issue 4, Summer 2010, pages. 1151-1222

United States Legislation

Statues

Comprehensive Iran Sanctions, Accountability and Divestment Act of 1 July 2010 (CISADA) (H.R. 2149/P.L. 111-195)

Iran Sanctions Act of 5 August 1996 (ISA) (H.R. 3107/P.L. 104-172)

Cuban Liberty and Democratic Solidarity (Libertad) Act of March 12 1996 (Helms-Burton) (P.L. 104-114, 110 Stat. 785)

Cuban Democracy Act of October 23 1992 (P.L. 102-484, 106 Stat. 2575)

Export Administration Act of 1979 (P.L. 96-72)

International Emergency Economic Powers Act of 1977 (IEEPA) (P.L. 95-223, 91 Stat. 1626)

Trading With The Enemy Act of October 6 1917 (TWEA) (CH. 106, 40 Stat. 411)

Executive Orders from the President

Executive Order 13553 of September 28 2010, Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions
Federal Register, Vol. 75, No. 190, Friday, October 1 2010

Executive Order 13382 of June 28 2005, Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters
Federal Register, Vol. 70, No. 126, Friday July 1 2005

Code of Federal Regulations

Iranian Financial Sanctions Regulations (31 CFR Part 561)
Federal Register, Vol. 75, No. 157
Monday August 16 2010/Rules and Regulations

Cuban Assets Control Regulations (31 CFR Part 515)
of July 8 1963, Title 31 -- Money and Finance: Treasury
Chapter V -- Office of Foreign Assets Control, Department of the Treasury

Electronic materials from the United States

United States Department of State

Statement before the House Foreign Affairs Committee, William J Burns, *Implementing Tougher Sanctions on Iran: A Progress Report*, December 1 2010, Washington DC,
Available at: www.state.gov/p/us/rm/2010/152222.htm
(last visited 15 March 2011)

Office of the Spokesman, *INPEX CORPORATION Decision*, November 17 2010, Washington DC,
Available at: www.state.gov/r/pa/prs/ps/2010/11/151099.htm
(last visited 15 March 2011)

Special Briefing James. B Steinberg, *Briefing on Iran Sanctions Act Implementation*, September 30 2010, Washington DC,
Available at: www.state.gov/s/d/2010/148479.htm
(last visited 15 March 2011)

Fact Sheet, U.S. mission to the United Nations,
New UN Security Council Sanctions on Iran, June 9 2010, New York City,
Available at: www.state.gov/p/nea/rls/142882.htm
(last visited 15 March 2011)

United States Department of the Treasury (OFAC)

OFAC, History, available at:
www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx
(last visited 2 February)

OFAC, Frequently asked questions, available at: www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx”1
(last visited 10 February)

OFAC, Press Center, *Treasury under Secretary for terrorism and financial intelligence Stuart Levy remarks at a press conference on joint $536 million settlement with Credit Suisse AG*, available at: www.treasury.gov/press-center/press-releases/Pages/tg451.aspx
(last visited 26 April 2011)

OFAC, SDN Update, available at: www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/03312011_irisl.pdf
(last visited 13 April 2011)

OFAC, Press Center, Fact Sheet: *Treasury Designates Iranian Entities Tied to the IRGC and IRISL*, available at: www.treasury.gov/press-center/press-releases/Pages/tg1010.aspx
(last visited 13 April 2011)

Congressional Research Report

Katzman, Kenneth, Congress Research Service, CRS Report for Congress: *Iran Sanctions*, RS20871, 7-57000, December 13 2010, Available at: assets.opencrs.com/rpts/RS20871_20101213.pdf
(last visited 18 April 2011)

United States General Accountability Office

GAO Report-10-928T, Statement of Joseph A Christoff, Director International Affairs and Trade, Testimony Before the Committee on Oversight and Government Reform, House of Representatives, *Iran Sanctions New Act Underscores Importance of Comprehensive Assessments of Sanction’s Effectiveness*, July 29 2010,

Available at: www.gao.gov/new.items/d10928t.pdf
(last visited 19 April 2011)

GAO Report-10-967R, Joseph I Lieberman, Susan Collins and Jon Kyl, *Firms Reported in Open Sources to Have Sold Iran Refined Petroleum Products between January 1, 2009, and June 30, 2010*, September 3 2010,
Available at: www.gao.gov/new.items/d10967r.pdf
(last visited 19 April 2011)

The UN Security Council

Security Council Resolutions

(Available at the UN server www.un.org/documents)

Security Council Resolution 1929 adopted by the Security Council at its 6335th meeting, on 9 June 2010

Security Council Resolution 1803 adopted by the Security Council at its 5848th meeting, on 3 March 2008

UN Security Council Sanctions Committees

(Available at the UN server www.un.org/sc/committees)

The Council of the European Union

(Available at the EU server europa.eu/documentation/legislation/index_en.htm)

Council Decision

Council Decision of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position of 2007/140/CFSP *(Official Journal of the European Union No L 195 of 27 July 2010 pages. 39-73)*

Council Regulations

Council implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran
(Official Journal of the European Union No L 195 of 27 July 2010 pages. 25-36)

Council Regulation (EC) No 1110/2008 of 10 November 2008 amending Regulation (EC) No 423/2007 concerning restrictive measures against Iran
(Official Journal of the European Union No L 300 of 11 November 2008 pages. 1-28)

Council Regulation (EC) No 618/2007 of 5 June 2007 amending regulation (EC) No 423/2007 concerning restrictive measures against Iran
(Official Journal of the European Union No L 143 of 6 June 2007 pages. 1-2)

Council Regulation (EC) No 423/2007 of 19 April 2007 concerning restrictive measures against Iran
(Official Journal of the European Union No L 103 of 20 April 2007 pages. 1-23)

Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom
(Official Journal of the European Union No L 309 of 29 November 1996 pages. 1-6)

European Commission

(Available at EU server ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/iran/index_en.htm)

The European Union/G7 states agreements with the United States

Memorandum of Understanding (MOU) of April 1997

Mutual Assistance Agreement of May 1998

Table of Cases

United States Supreme Court

Banco Nacional de Cuba v. Sabbatino,
376 U.S. 398, 84 S.Ct. 923, U.S.N.Y. March 23 1964

United States District Court for the District of Colombia

Laker Airways Ltd. V. Sabena, Belgian World Airlines
731 F.2d 909, C.A.D.C., 1984