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## Crippling Iran: The UN Security Council and the Tactic of Deliberate Ambiguity

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# CRIPPLING IRAN: THE U.N. SECURITY COUNCIL AND THE TACTIC OF DELIBERATE AMBIGUITY

JOY GORDON\*

*The U.N. sanctions on Iraq in the 1990s triggered a humanitarian crisis that lasted for over a decade. Since then, many would say that U.N. sanctions have been narrowly targeted to minimize human damage. It would seem that this is true of the U.N. Security Council sanctions imposed on Iran. However, the Security Council resolutions contain ambiguous terms which arguably authorize the much more extensive sanctions imposed by the European Union and others. These in turn have caused significant harm to the Iranian population as a whole, very much like the measures imposed on Iraq in the 1990s.*

I.	INTRODUCTION . . . . .	974
II.	THE HISTORY OF TARGETED SANCTIONS . . . . .	976
	A. <i>The Case of Iraq</i> . . . . .	976
	B. <i>The Emergence of Targeted Sanctions</i> . . . . .	979
III.	THE SANCTIONS ON IRAN . . . . .	981
	A. <i>The U.S. Sanctions on Iran</i> . . . . .	981
	B. <i>The U.N. Security Council Sanctions on Iran</i> . . . . .	984
	1. The Mandatory Provisions . . . . .	987
	2. The Voluntary Provisions . . . . .	989
IV.	THE ROLE OF DELIBERATE AMBIGUITY IN THE IRAN RESOLUTIONS . . . . .	991
	A. <i>The “Vigilance” Language</i> . . . . .	995
	B. <i>Financial Action Task Force</i> . . . . .	996
	C. <i>“Could”</i> . . . . .	997
	D. <i>Iran’s Energy Sector</i> . . . . .	998
	E. <i>Bank Melli and Bank Saderat</i> . . . . .	999
	F. <i>Central Bank of Iran</i> . . . . .	1000
V.	THE IMPLEMENTATION OF THE UNILATERAL MEASURES . . . . .	1000
VI.	THE HUMANITARIAN IMPACT ON THE IRANIAN POPULATION. . . . .	1002
VII.	CONCLUSION . . . . .	1004

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I. INTRODUCTION

Since the Iranian revolution of 1979, the United States has imposed economic sanctions on Iran. This was criticized by many, including U.S. allies, as extraterritorial—in that it interfered with Iran’s commercial relations with third countries. In 2006, in response to Iran’s development of its nuclear capacity, the United Nations Security Council (Security Council) imposed additional sanctions. Under Article 25 of the U.N. Charter, any measures imposed in accordance with Chapter VII of the U.N. Charter are binding upon all member states.<sup>1</sup> During this time, the United States has greatly expanded its measures against Iran, primarily through two statutes, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA)<sup>2</sup> and the Iran Threat Reduction and Syria Human Rights Act of 2012 (ITRSHA),<sup>3</sup> as well as through a series of executive orders, and by placing informal pressure on other nations and international institutions. These measures go well beyond those authorized by the Security Council resolutions, and have broad, indiscriminate effects on Iran’s economy, family remittances, education of Iranians abroad, and the availability and cost of imported goods. They also affect Iran’s energy sector, and consequently the cost and availability of transportation, as well as manufacturing in general. The United States has largely been alone in imposing measures on Iran and other nations that are extensive and indiscriminate. The use of broad trade sanctions with a blanket impact on the civilian population was criticized extensively in the 1990s, giving rise to the “smart sanctions” movement. Since then, Security Council sanctions regimes have been more narrowly drafted.

The Security Council resolutions regarding Iran appear to reflect this shift. In reality, they do not at all. The Security Council resolutions imposed on Iran since 2006—particularly Resolutions 1737,<sup>4</sup> 1803,<sup>5</sup> and 1929<sup>6</sup>—have essentially operated on two levels. The explicit, binding provisions are narrowly drafted to address imports, financial transactions, and other activities which are related to Iran’s development of nuclear weapons and ballistic missiles. There is also an

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1. U.N. Charter art. 25; *id.* arts. 39-51.

2. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, 22 U.S.C. §§ 8501-8551 (2012).

3. Iran Threat Reduction and Syria Human Rights Act of 2012, 22 U.S.C. §§ 8701-8795 (2012).

4. S.C. Res. 1737, U.N. Doc. S/RES/1737 (Dec. 23, 2006).

5. S.C. Res. 1803, U.N. Doc. S/RES/1803 (Mar. 3, 2008).

6. S.C. Res. 1929, U.N. Doc. S/RES/1929 (June 9, 2010).

evidentiary requirement: member states are required to implement these provisions only where they have reasonable grounds to believe a particular cargo, transaction, or person has ties to Iran's weapons program. Thus, on their face, it would seem that the sanctions are narrowly targeted and would have no bearing on Iran's civilian economy; and the evidentiary requirement seems to preclude member states from implementing them in a way would be overbroad and indiscriminate.

However, the voluntary provisions of the Security Council's sanctions on Iran also contain other terms which are vague and non-binding, but which have had enormous consequences. These resolutions ask member states to "exercise vigilance" or use "enhanced monitoring." They also include other language that is not operative, such as preambular provisions, which reference, for example, Iran's Central Bank, without requiring any particular action. For example, the preamble to Resolution 1929 contains the following: "*recalling* in particular the need to exercise vigilance over transactions involving Iranian banks, including the Central Bank of Iran . . ." <sup>7</sup> These oblique references have been invoked by the United States to exert pressure on the European Union, Canada, Australia, and other nations to adopt national measures against Iran that are far more extreme than those required by the Security Council; and this language is then cited by these countries when justifying these measures. This occurred, for example, when the European Union froze the assets of Iran's Central Bank, noting that "it is necessary to require enhanced vigilance in relation to the activities of Iran's credit and financial institutions." <sup>8</sup>

The end result is that the two sets of measures, both those imposed by the Security Council and those imposed unilaterally by these nations, in combination affect Iran's economy, infrastructure, and civilian population in a way that is deeply damaging and indiscriminate, affecting even food security, access to health care and education. Thus, while it seems that the Security Council sanctions are narrowly drafted to achieve only legitimate security goals without harming the population as a whole, in fact that is true only of the explicit provisions. But other language—that is non-binding or vague—is invoked by member states to justify measures that are as broad and indiscriminate in their effects as the extreme and damaging sanctions imposed on Iraq in the

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7. *Id.* at preamble.

8. Council Regulation 267/2012, Concerning Restrictive Measures Against Iran and Repealing Regulation No. 961/2010, 2012 O.J. (L 88) 17 (EU).

early 1990s. Furthermore, these effects then elude accountability: the nations imposing these measures cite the Security Council resolutions as authority for their actions; while the Security Council can maintain that its explicit measures conform fully with international humanitarian law.

## II. THE HISTORY OF TARGETED SANCTIONS

When the League of Nations was formed after World War I, the Covenant envisioned that aggression would be stopped with the “boycott,” a comprehensive set of global economic sanctions that would be devastating.

When you consider that the League is going to consist of every considerable nation in the world, except Germany—you can see what the boycott will mean. No goods can be shipped in or out, no telegraphic messages can be exchanged . . . there shall be no communication of any kind between the people of the other nations and the people of that nation. The nationals, the citizens of the member states will never enter their territory, until the matter is adjusted, and their citizens cannot leave their territory. It is the most complete boycott ever conceived in a public document . . . . There is not a nation that can stand that for six months.<sup>9</sup>

However, this did not take place, at least not within the context of global governance, until 1990, when U.N. sanctions were imposed on Iraq.

### A. *The Case of Iraq*

In the early 1990s, there were criticisms of a number of sanctions regimes on the grounds the U.N. sanctions were themselves triggering humanitarian crises. These criticisms were directed in part toward the sanctions imposed on Haiti and the former Yugoslavia.<sup>10</sup> However, the case of Iraq was the most extreme.

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9. WOODROW WILSON'S CASE FOR THE LEAGUE OF NATIONS 69 (Hamilton Foley ed., 1923).

10. See, e.g., Julia Devin & Jaleh Dashti-Gibson, *Sanctions in the Former Yugoslavia: Convolutioned Goals and Complicated Consequences*, in POLITICAL GAIN AND CIVILIAN PAIN 149-188 (Thomas G. Weiss et al. eds., 1997); Sarah Zaidi, *Humanitarian Effects of the Coup and Sanctions in Haiti*, in POLITICAL GAIN AND CIVILIAN PAIN, 189-214 (Thomas G. Weiss et al. eds., 1997).

*CRIPPLING IRAN: THE U.N. SECURITY COUNCIL*

In the wake of Iraq's invasion of Kuwait in August 1990, the Security Council imposed the most extensive sanctions in the history of global governance. All exports were prohibited, including oil, which accounted for 60% of Iraq's gross domestic product and 95% of its foreign currency earnings.<sup>11</sup> Iraq was initially prohibited from all imports except medicine, and, conditionally, food.<sup>12</sup> Beginning in March 1991, Iraq was permitted to import food and small amounts of other humanitarian goods.<sup>13</sup> However, there were few funds available for these imports, even where they were permitted, because oil sales were still prohibited.<sup>14</sup> Immediately after the sanctions were imposed, the Iraqi government began taking steps to compensate, putting in place a system of food rations and incentives for farmers to increase agricultural production.<sup>15</sup>

But while it may have been possible to compensate for the loss of food imports over time, import substitution was more difficult in other areas. Water treatment required chlorine, filters, and equipment that could not be manufactured domestically, at least not in sufficient quantities to meet the needs of the population.<sup>16</sup> Thus, even with efforts to compensate for the loss of income and imports, along with some amount of ongoing illicit trade,<sup>17</sup> Iraq's economy was affected very dramatically, and its infrastructure and public services began to show signs of deterioration.

The bombing campaign of the Persian Gulf War in the winter of 1991 introduced a catastrophic level of devastation. In March 1991, an envoy of the U.N. Secretary General described Iraq as "near-

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11. Letter from the Chairman of the Panels Established Pursuant to the Note by the President of the United Nations Security Council of 30 January 1999, to the President of the United Nations Security Council, Annex II ¶ 11, U.N. Doc. S/1999/356 (Mar. 27, 1999).

12. S.C. Res. 661, ¶ 3-4, U.N. Doc. S/RES/661 (Aug. 6, 1990).

13. "Decision of the Security Council Sanctions Committee regarding humanitarian assistance to Iraq," S/22400, March 22, 1991.

14. SC resolution 661 para. 3(a).

15. Rep. to the Secretary-General on Humanitarian Needs in Kuwait and Iraq, transmitted by letter dated 20 March 1991 from the Secretary-General addressed to the President of the Security Council, ¶ 29, U.N. Doc. S/22366, (Mar. 20, 1991) [hereinafter Report on Humanitarian Needs in Kuwait and Iraq].

16. DEFENSE INTELLIGENCE AGENCY, IRAQ WATER TREATMENT VULNERABILITIES AS OF 18 JAN. 91—KEY JUDGMENTS (1991).

17. The Volcker Committee estimated that Iraq's illicit trade over thirteen years, primarily with Jordan, Turkey, and Syria, totaled about \$10 billion. INDEPENDENT INQUIRY COMM. INTO THE UNITED NATIONS OIL-FOR-FOOD PROGRAMME, REPORT ON THE MANAGEMENT OF THE UNITED NATIONS OIL-FOR-FOOD PROGRAMME 32-33 (2005).

apocalyptic.”<sup>18</sup> He reported that “Iraq has, for some time to come, been relegated to a pre-industrial age.”<sup>19</sup> Much of Iraq’s electrical grid was destroyed,<sup>20</sup> and water and sewage treatment plants were crippled.<sup>21</sup> While hospitals were intact, the lack of electricity meant their ability to function was severely compromised.<sup>22</sup> Roads and bridges were destroyed, crippling food distribution and emergency transportation.<sup>23</sup> The lack of electricity in itself meant that

food that is imported cannot be preserved and distributed; water cannot be purified; sewage cannot be pumped away and cleansed; crops cannot be irrigated; medicaments cannot be conveyed where they are required; needs cannot even be effectively assessed. It is unmistakable that the Iraqi people may soon face a further imminent catastrophe, which could include epidemic and famine, if massive life-supporting needs are not rapidly met.<sup>24</sup>

In the face of this devastation, the sanctions took on new significance. There was no longer an industrial base that could be adapted to manufacture goods that had previously been imported. The reconstruction of Iraq’s infrastructure would have required not only massive quantities of imported goods, but also the construction of large-scale facilities involving sophisticated technology, such as electric plants.

The humanitarian consequences were immediate, severe and enduring. Epidemics of cholera and typhoid spread widely.<sup>25</sup> Even with the ration system, the World Food Program reported that “the sanctions have caused persistent deprivation,” including “severe hunger and malnutrition,”<sup>26</sup> and medical services declined precipitously.<sup>27</sup> Unem-

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18. Report on Humanitarian Needs in Kuwait and Iraq, *supra* note 15, ¶ 8.

19. *Id.*

20. *Id.* ¶ 9.

21. *Id.* ¶ 21.

22. *Id.* ¶ 10.

23. *Id.* ¶ 33.

24. *Id.* ¶ 37.

25. UNITED NATIONS CHILDREN’S FUND (UNICEF/IRAQ), SITUATION ANALYSIS OF CHILDREN AND WOMEN IN IRAQ 33 (1998).

26. UNITED NATIONS, FOOD AND AGRICULTURE ORGANIZATION/WORLD FOOD PROGRAMME, SPECIAL ALERT No. 237: FAO/WFP CROP AND FOOD SUPPLY ASSESSMENT MISSION TO IRAQ (1993).

27. As of April 1996, UNICEF reported that based on its survey, one-third of all hospital beds were closed; more than half of all diagnostic and therapeutic equipment was not working; all hospitals visited lacked proper illumination, hygiene, water supplies, or waste disposal; postopera-

ployment spiked as the economy collapsed.<sup>28</sup> Primary school attendance dropped as families sent their children to work instead of school.<sup>29</sup>

The sanctions on Iraq brought condemnation from many quarters. Typical of these concerns was an address to the U.N. General Assembly, where the president of the International Committee of the Red Cross asked

political leaders to take greater account of humanitarian criteria when taking decisions to impose economic and financial sanctions. Perhaps we should give special thought here to the grave effects on public health when water purification and pumping installations are paralyzed. Is it not incongruous to impose debilitating sanctions with one hand while with the other bringing in humanitarian aid to restore supplies vital to the population's survival?<sup>30</sup>

#### B. *The Emergence of Targeted Sanctions*

As the humanitarian harm from sanctions came under increasing criticism, a movement emerged among academics and practitioners to develop sanctions that would more directly affect the political and military leadership of the target state without causing harm to the civilian population. A 1996 report by the Carnegie Commission on Preventing Deadly Conflict maintained that “sanctions should be part of a broader influence strategy that puts maximum political and economic pressure on the offending parties—preferably regimes or specific leaders, rather than whole populations.”<sup>31</sup> A report by a consultant to the Security Council recommended monitoring public health indicators, such as malnutrition and child mortality, as well as economic indicators, such as the availability of essential goods.<sup>32</sup>

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tive care and pain management in some hospitals was limited to aspirin; and rural hospitals were unable to serve their populations because of a lack of ambulances. UNICEF/Iraq, *supra* note 25, at 41.

28. ERIC HOSKINS, UNITED NATIONS CHILDREN'S FUND (UNICEF) BAGHDAD, IRAQ: CHILDREN, WAR AND SANCTIONS 4 (1993).

29. SARAH GRAHAM-BROWN, SANCTIONING SADDAM: THE POLITICS OF INTERVENTION IN IRAQ 182 (1999).

30. U.N. GAOR, 49th Sess., 65th mtg. at 27, U.N. Doc. A/49/PV.65 (Nov. 23, 1994).

31. CARNEGIE COMMISSION ON PREVENTING DEADLY CONFLICT: FINAL REPORT 54-55 (1997).

32. LARRY MINEAR, ET AL., TOWARD MORE HUMANE AND EFFECTIVE SANCTIONS MANAGEMENT: ENHANCING THE CAPACITY OF THE UNITED NATIONS SYSTEM vi (1998).

Beginning in the late 1990s, workshops were held to develop targeted financial sanctions. These included round table discussions organized by Brown University's Watson Institute and the Council on Foreign Relations on banking, crime, and economic sanctions in May 1998,<sup>33</sup> as well as a set of meetings known as the Interlaken Process in 1998 and 1999, sponsored by the Swiss government.<sup>34</sup> Similarly, the Bonn-Berlin Process in 1999 and 2000 developed recommendations and model resolutions concerning arms embargoes and travel restrictions.<sup>35</sup> In 2000, the International Peace Academy held a conference entitled "Toward Smarter, More Effective U.N. Sanctions,"<sup>36</sup> as well as a policy forum the following year in conjunction with a special session of the Security Council on sanctions.<sup>37</sup> There were also other efforts specifically addressing the Security Council's use of targeted sanctions, including the Stockholm Process, a series of discussions in 2002 which involved over one hundred experts, from which the findings were presented to the Security Council in early 2003.<sup>38</sup> In 2006, a working group of the Security Council made recommendations regarding the use of sanctions, including the use of experts, methods for the design and implementation of sanctions, and evaluation of the sanctions' effectiveness.<sup>39</sup> In 2006, the Informal Working Group of the Security Council on General Issues of Sanctions produced a report with recommendations for the design and implementation of sanctions, and articulating standards for best practices. The report called for the Security Council, in drafting resolutions, to "give due consideration" to "the possible humanitarian, political, and economic impacts."<sup>40</sup> In imposing sanctions, the working group called for the Security Council

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33. Watson Inst. for Int'l Studies, *The Targeted Financial Sanctions Project at the Watson Institute*, <http://www.watson.institute/tfs/targetedfinsan.cfm>.

34. Thomas Biersteker, et al., *Consensus from the Bottom Up? Assessing the Influence of the Sanctions Reform Processes*, in INTERNATIONAL SANCTIONS: BETWEEN WORDS AND WARS IN THE GLOBAL SYSTEM 15, 17 (Peter Wallensteen & Carina Staibano eds., 2005).

35. DESIGN AND IMPLEMENTATION OF ARMS EMBARGOES AND TRAVEL AND AVIATION RELATED SANCTIONS: RESULTS OF THE BONN-BERLIN PROCESS (Michael Brzoska ed., 2001).

36. United Nations Secretariat, Department of Political Affairs, *The Experience of the United Nations in Administering Arms Embargoes and Travel Sanctions*, in DESIGN AND IMPLEMENTATION OF ARMS EMBARGOES AND TRAVEL AND AVIATION RELATED SANCTIONS: RESULTS OF THE BONN-BERLIN PROCESS 46 (Michael Brzoska ed., 2001).

37. Watson Inst. for Int'l Studies, *supra* note 33.

38. Uppsala Universitet, Dep't of Peace and Conflict Research, *The Sanctions Program Special Program on the International Targeted Sanctions (SPITS)*, <http://www.smartsanctions.se>.

39. U.N.S.C. Rep. of the Informal Working Group of the Security Council on General Issues of Sanctions, U.N. Doc. S/2006/997 (Dec. 18, 2006).

40. *Id.* at 4.

### CRIPPLING IRAN: THE U.N. SECURITY COUNCIL

to “[c]learly define the scope of the sanctions, as well as the conditions and criteria for their easing or lifting,”<sup>41</sup> and to “[s]tandardize humanitarian and other exemptions.”<sup>42</sup> Shortly after that, the United Nations began establishing panels of experts to monitor sanctions regimes, conducting extensive field visits, and drawing on the expertise of their members in the areas of weapons, illicit trade, and the particular regions involved.

Thus, considerable effort has gone into developing targeted sanctions that would be more effective in affecting the decision making of political leaders, or would more successfully prevent the flow of the goods that are themselves a source of conflict, while seeking to avoid harm to the civilian population of the target state.

### III. THE SANCTIONS ON IRAN

#### A. *The U.S. Sanctions on Iran*

U.S. sanctions on Iran do not even attempt to operate as targeted sanctions, despite the occasional rhetorical disclaimers. While the United States is the most extreme in its unilateral measures against Iran, U.S. officials have often claimed that the sanctions are narrowly targeted to affect only the political and military leadership, and that their intent is not to harm the Iranian people. At a press briefing in 2010, for example, a State Department official said that the United States is seeking to “target specific entities within the Iranian Government but not punish the Iranian people.”<sup>43</sup> Secretary of State Hillary Clinton said, “our efforts to apply pressure on Iran are not meant to punish the Iranian people, they are meant to change the approach that the Iranian Government has taken toward its nuclear program.”<sup>44</sup> A senior U.S. official said: “[w]e have never been attracted to the idea of trying to get the whole world to cordon off their economy.”<sup>45</sup> After the adoption of Resolution 1929, the White House issued a “fact sheet” which stated that “[t]hese sanctions have been carefully designed to target those individuals and entities that are most responsible for Iran’s nuclear program. They are not intended to

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41. *Id.*

42. *Id.*

43. Press Release, National Iranian American Council, Obama Administration Officials’ Statements on Iran Sanctions (Jan. 27, 2010).

44. *Id.*

45. *Id.*

hurt the people of Iran.”<sup>46</sup>

At the same time, officials sometimes acknowledge that, in fact, the U.S. sanctions systematically seek to cripple Iran’s energy sector, its access to global banking, its ability to generate revenue from oil sales, and its capacity to ship goods of any sort. As a White House spokesman noted in the summer of 2012, “[f]rom the beginning of the administration we have steadily built the most comprehensive and biting sanctions regime that the Iranian government has ever faced.”<sup>47</sup>

The United States has had sanctions in place against Iran since the 1979 revolution, when the Carter administration froze Iranian assets in the United States.<sup>48</sup> In the 1980s, under the Reagan administration, the sanctions were expanded to prohibit the import or export of a wide range of goods or services to Iran.<sup>49</sup> In 1996, Congress passed the Iran-Libya Sanctions Act,<sup>50</sup> which was criticized as extraterritorial for imposing penalties on foreign companies that invested in Iran’s energy sector.<sup>51</sup> In 1997, Iran signed a \$2 billion contract with three companies—Russia’s Gazprom, Malaysia’s Petronas, and France’s Total SA—to develop one of its natural gas fields. The United States declared the project to be in violation of U.S. law, triggering objections from the international community, including a complaint filed by the European Union with the World Trade Organization. The matter was ultimately resolved diplomatically, and the complaint was withdrawn.<sup>52</sup> After that, the United States did not declare a foreign company to be in violation of the U.S. sanctions against Iran for more than decade.<sup>53</sup>

Up through 2005, the United States did not have a great deal of international support for its measures against Iran. Between 2000 and 2005, in a series of decisions where the United States was outvoted by its allies, the World Bank approved \$1.4 billion in loans to Iran for water, environmental, and housing projects, as well as earthquake relief.<sup>54</sup>

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46. Press Release, White House, Office of the Press Secretary, Fact Sheet on the New U.N. Security Council Sanctions on Iran (June 9, 2010).

47. Press Release, Deputy National Security Advisor Ben Rhodes, On-the-Record Conference Call on Iran Sanctions (July 31, 2012).

48. Patrick Clawson, *Iran Primer: U.S. Sanctions*, UNITED STATES INSTITUTE OF PEACE (Mar. 30, 2013), available at <http://iranprimer.usip.org/resource/us-sanctions>.

49. *Id.*

50. The Act became known as the Iran Sanctions Act (ISA) after the removal of sanctions against Libya.

51. KENNETH KATZMAN, CONG. RESEARCH SERV., RS20871, IRAN SANCTIONS 7, 12 (2011).

52. *Id.*

53. *Id.* at 13.

54. *Id.*

*CRIPPLING IRAN: THE U.N. SECURITY COUNCIL*

In 2010, Congress passed CISADA,<sup>55</sup> which amended the Iran Sanctions Act (ISA), targeting the sale of gasoline and equipment for the production of gasoline, on the reasoning that Iran imported about 40% of the gasoline necessary to meet its needs, and undermining its ability to import or produce gasoline would put pressure on its leaders.<sup>56</sup> The ISA and CISADA established an array of penalties to be imposed on foreign companies that traded with Iran. These included the denial of U.S. bank loans, export-import bank loans or credits; licenses to export U.S. military technology; prohibiting foreign companies from acquiring, holding, or trading any U.S.-based property; and a prohibition on participating in foreign exchange transactions.<sup>57</sup> In 2010, the Obama administration began aggressively imposing penalties on foreign companies for trading with Iran and actively pressuring other companies to withdraw from Iran. Naftiran Intertrade Company, a company owned by Iranians but based in Switzerland, was denied Export-Import Bank credit, dual use export licensing, and bank loans of more than \$10 million. In addition, a number of major oil companies (Total, Norway's Statoil, Italy's ENI, and Royal Dutch Shell) that had investments in Iran agreed to terminate their business with Iran.<sup>58</sup> This was followed in 2011 with a sanctions determination against Belarusneft, a Belarusian company,<sup>59</sup> as well as several other companies involved in shipping or selling gasoline to Iran.<sup>60</sup>

The United States has also been aggressive in interfering with Iran's access to the international banking system. According to U.S. officials, between 2006 and 2011, the United States successfully pressured about eighty foreign banks to sever ties with Iran.<sup>61</sup> This is not surprising, given the magnitude of U.S. enforcement efforts against foreign banks. The Treasury Department has imposed enormous fines on foreign banks that engage in U.S. dollar denominated transactions with Iran, including a \$100 million fine of the Swiss bank UBS, and a \$536 million fine on Credit Suisse.<sup>62</sup>

The United States has repeatedly expanded its direct and indirect

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55. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, 22 U.S.C. § 8501 (2012).

56. KATZMAN, *supra* note 51, at 8.

57. *Id.* at 10.

58. *Id.* at 14.

59. *Id.*

60. *Id.* at 15.

61. *Id.* at 32.

62. *Id.* at 32-33.

measures against Iran, including penalties against foreign companies that engage in ordinary business with Iran, unrelated to its nuclear program or weapons systems. In November 2011, the Obama Administration issued an executive order imposing penalties on foreign companies with sales to Iran of more than \$1 million for equipment and services related to its oil industry, or sales of more than \$250,000 of goods or services for Iran's petrochemical production.<sup>63</sup> In July 2012, the Obama Administration issued an executive order applying extensive sanctions on any company that purchases oil or petrochemical products from Iran.<sup>64</sup> In August 2012, Congress passed the ITRSHA,<sup>65</sup> imposing sanctions in several additional situations, including owning a ship that is used to transport Iranian crude oil, participating in a joint venture with Iran related to mining, or participating in a joint venture with Iran for oil or gas development outside of Iran.<sup>66</sup> ITRSHA also imposes penalties on any company that provides insurance or re-insurance to Iran's national oil company or Iran's national tanker company.<sup>67</sup> In addition, ITRSHA imposes penalties on any person who engages in a "significant transaction" with the Islamic Revolutionary Guard Corps.<sup>68</sup> The National Defense Authorization Act for Fiscal Year 2013 also applies CISADA sanctions to foreign banks that facilitate transactions with Iran's energy sector shipping industry, including transactions with the National Iranian Oil Company (NIOC), National Iranian Tanker Company (NITC), and the Islamic Republic of Iran Shipping Lines (IRISL).<sup>69</sup>

B. *The U.N. Security Council Sanctions on Iran*

In contrast with the U.S. measures imposed on Iran under CISADA, ITRSHA, and various executive orders, the U.N. Security Council sanctions on Iran since 2006<sup>70</sup> are much narrower in scope. They

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63. Exec. Order No. 13,590, 3 C.F.R. § 284 (2012).

64. Exec. Order No. 13,622, 77 Fed. Reg. 45,897 (Aug. 2, 2012).

65. Iran Threat Reduction and Syria Human Rights Act of 2012, 22 U.S.C. § 8701 (2012).

66. KENNETH KATZMAN, CONG. RESEARCH SERV., RS20871, IRAN SANCTIONS 5-6 (2013).

67. *Id.* at 6.

68. *Id.*

69. *Id.* at 28.

70. S.C. Res. 1696, U.N. Doc. S/RES/1696 (July 31, 2000); S.C. Res. 1737, U.N. Doc. S/RES/1737 (Dec. 23, 2006), S.C. Res. 1747, U.N. Doc. S/RES/1747 (Mar. 24, 2007); S.C. Res. 1803, U.N. Doc. S/RES/1803 (Mar. 3, 2008), S.C. Res. 1929, U.N. Doc. S/RES/1929 (June 9, 2010); S.C. Res. 1984, U.N. Doc. S/RES/1984 (June 9, 2011); S.C. Res. 2049, U.N. Doc. S/RES/2049 (June 7, 2012).

appear to reflect the accumulated wisdom of the development of targeted sanctions over the last two decades. They do not explicitly prohibit member states from, for example, exporting food, medicine, or humanitarian goods to Iran. The Security Council's sanctions regime, at least on its face, is narrowly concerned with weapons proliferation, specifically ballistic missiles and nuclear weapons. The preamble to Resolution 1737 describes the Council as "*determined* to constrain Iran's development of sensitive technologies in support of its nuclear and missile programmes," and "[c]oncerned by the proliferation risks presented by the Iranian nuclear programme." The resolutions do not explicitly prohibit states from exporting commercial goods to Iran, or engaging in oil sales, financial transactions, or shipping, except insofar as they are tied in some way to acquiring or developing weapons.

In addition, the resolutions include references to humanitarian concerns in the context of religious obligations: Resolution 1803 provides that states shall "take into account humanitarian considerations, including religious obligations,"<sup>71</sup> and Resolution 1929 provides that the 1737 Committee (the committee established by the Security Council to oversee the sanctions on Iran) may decide on a case-by-case basis to permit listed individuals to travel to Iran, if the committee finds that "that such travel is justified on the grounds of humanitarian need, including religious obligations."<sup>72</sup> Individuals whose assets are frozen are allowed some limited funds for basic expenses, such as food, rent, and medical treatment.<sup>73</sup> Resolution 1737 provides that states shall "take into account humanitarian considerations." However, it provides no explicit guidance on what constitutes "humanitarian considerations," and requires only that states "take [them] into account," not that states actually limit their practices so as not to create humanitarian problems.<sup>74</sup> The resolutions do not envision the possibility that the sanctions may fundamentally compromise commerce,<sup>75</sup> and Iran's

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71. "All States shall, in the implementation of the above paragraph, take into account humanitarian considerations, including religious obligations." S.C. Res. 1803, *supra* note 68, ¶ 4.

72. S.C. Res. 1929, *supra* note 70, ¶ 10.

73. S.C. Res. 1737, *supra* note 70, ¶ 13.

74. "Calls upon all States to exercise vigilance regarding the entry into or transit through their territories of individuals who are engaged in, directly associated with or providing support for Iran's proliferation of sensitive nuclear activities or for the development of nuclear weapon delivery systems . . . that all States shall, in the implementation of the above paragraph, take into account humanitarian considerations" S.C. Res. 1737, *supra* note 70, ¶ 10-11.

75. One of the rare exceptions concerns the prohibition on providing services to cargo ships. Resolution 1929 "*underlines* that this paragraph is not intended to affect legal economic activities" (emphasis in original), although this provision is only a statement of the Council's intent, and

economy overall, to a degree that would itself constitute humanitarian harm.

There are two institutional bodies that would have been well-suited to provide oversight on the humanitarian consequences of the sanctions: the “1737 Committee,” the committee of the Security Council established by Resolution 1737 to oversee the implementation of the sanctions on Iran, and the panel of experts appointed by the United Nations to monitor the sanctions. The 1737 Committee instructs states to provide information regarding their enforcement efforts; to respond to violations of sanctions; to consider requests for exemptions; to determine whether other goods should be prohibited, and whether other individuals or companies should be sanctioned; to issue guidelines to states for implementation of the sanctions; and to provide quarterly reports to the Council.<sup>76</sup> However, the Committee is not mandated to monitor the humanitarian impact of the sanctions whose implementation it oversees. Nor is the panel of experts mandated or designed to monitor the humanitarian impact of sanctions. Although there are some sanctions regimes in which the corresponding panel of experts contains an individual with expertise in humanitarian issues,<sup>77</sup> in the case of Iran, no specialists are appointed to the panel with expertise in public health, or humanitarian or socioeconomic issues. All the members of the panel are specialists in weapons or logistics.<sup>78</sup> Nor is the panel of experts mandated to monitor or report on the humanitarian or socioeconomic effects of the sanctions. The panel is only mandated to assist the committee in enforcement of the sanctions, gather and analyze information related to implementation and non-compliance, recommend ways to improve implementation,

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provides no actual limitations on the sanctions in the event that they do affect legal commerce. S.C. Res. 1929, *supra* note 70, ¶ 18.

76. S.C. Res. 1737, *supra* note 70, ¶ 18.

77. For example, in 2010 a humanitarian expert was appointed to the panel of experts to monitor the sanctions regime imposed on Somalia. U.N. Monitoring Group on Somalia and Eritrea, Rep. of the Monitoring Group Pursuant to Security Council Resolution 1916 (2010), ¶ 14, U.N. Doc. S/2011/433 (July 18, 2011).

78. The members of the panel appointed in July 2012 are: Mr. Jonathan Brewer (finance and private sector); Kenichiro Matsubayashi (marine transport and immigration issues); Thomas Mazet (customs enforcement, export control and transport); Jacqueline W. Shire (nuclear issues); Elena G. Vodopolova (missile technology); Olaschinde Ishola Williams (conventional arms and related material and the financing of illicit arms transfers); Wenlei Xu (export control); and Salomé Zourabichvili (non-proliferation/nuclear and conventional disarmament). U.N. Secretary-General, Letter dated 5 July 2012 from the Secretary-General addressed to the President of the Security Council, U.N. Doc. S/2012/521 (July 6, 2012).

and report to the Council.<sup>79</sup> Thus, neither the 1737 Committee nor the panel of experts have the authority or qualifications to determine whether the sanctions are affecting Iran's civilian population or are triggering a humanitarian crisis, nor do they have the ability to monitor whether states are interpreting the sanctions so broadly as to cause humanitarian problems.

It would seem that there is no need for either group to have such a mandate. If the sanctions only prevent Iran from acquiring nuclear weapons and ballistic missiles, then depriving the country of those could hardly cause any harm to the population. Nevertheless, if we look closely at the language of the resolutions and of the ties between the Security Council resolutions and the unilateral measures of various states, a very different picture emerges. While the sanctions on Iran seem to be narrowly targeted, in fact they are systemic, indiscriminate, and cause widespread damage to the Iranian population.

### 1. The Mandatory Provisions

The mandatory provisions of the Security Council resolutions concerning Iran appear to be closely tied to ballistic missiles and nuclear weapons proliferation (or in Resolution 1929, large weapons systems). For example, Resolution 1737 “*Decides* that Iran shall not export any of the items in documents S/2006/814 and S/2006/815 and that all Member States shall prohibit the procurement of such items from Iran by their nationals, or using their flag vessels or aircraft, and whether or not originating in the territory of Iran.”<sup>80</sup> The documents cited, in turn, refer to lists of equipment and materials related to nuclear weapons and ballistic missiles, respectively.<sup>81</sup>

Resolution 1737 also provides for freezing the assets of persons or companies with ties to nuclear weapons proliferation, or other individuals or entities “directly associated with or providing support for Iran’s proliferation sensitive nuclear activities or the development of nuclear

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79. S.C. Res. 1929, *supra* note 70, ¶ 29.

80. S.C. Res. 1737, *supra* note 70, ¶ 7.

81. Permanent Representative of France to the United Nations, Annex to the Letter dated 13 October 2006 from the Permanent Representative of France to the United Nations Addressed to the President of the Security Council, List of Items, Materials, Equipment, Goods and Technology Related to Nuclear Programmes, U.N. Doc. S/2006/814 (October 13, 2006); Permanent Representative of France to the United Nations, Letter dated 13 October 2006 from the Permanent Representative of France to the United Nations Addressed to the President of the Security Council, List of Items, Materials, Equipment, Goods and Technology Related to Ballistic Missile Programmes, U.N. Doc. S/2006/815 (October 13, 2006).

weapon delivery systems.”<sup>82</sup> Member states are prohibited from granting entry or transit to such persons, or others who are “directly associated with or [are] providing support for Iran’s proliferation sensitive nuclear activities or for the development of nuclear weapon delivery systems.”<sup>83</sup> Resolution 1803 likewise requires states to take measures to prevent the supply, sale, or transfer of goods related to nuclear weapons or ballistic missiles.<sup>84</sup>

Resolution 1929 expands the sanctions substantially. It prohibits Iran from acquiring an interest in any commercial activity in any other state involving uranium mining, nuclear technology, or technology related to ballistic missiles capable of delivering nuclear weapons, and prohibits states from allowing Iranian investments in their territory in relation to these activities.<sup>85</sup> Resolution 1929 also requires that states prevent the transfer of technology, and that they take measures to block their nationals from providing Iraq with technical assistance relating to nuclear weapons or ballistic missiles.<sup>86</sup> In addition, the resolution instructs states to require that their nationals “exercise vigilance” when doing business with IRISL or the Iranian Revolutionary Guard Corps (IRGC), if they have reasonable grounds “to believe that such business could contribute to Iran’s proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.”<sup>87</sup> Finally, Resolution 1929 requires states to prevent their nationals from engaging in the sale or transit of large weapons systems, such as tanks, warships, attack helicopters, and missiles to Iran, and to prevent nationals from providing technical training, financial resources, or other services related to these goods.<sup>88</sup>

The resolutions also require states to implement sanctions against particular persons, companies, and foundations included in lists drawn up by the Council, which are annexed to the resolutions.<sup>89</sup> These lists, in turn, consist of persons and entities involved in Iran’s nuclear and ballistic programs, or particular persons or companies related to the

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82. S.C. Res. 1737, *supra* note 70, ¶ 12.

83. *Id.* at ¶ 10.

84. S.C. Res. 1803, *supra* note 70, ¶ 8.

85. S.C. Res. 1929, *supra* note 70, ¶ 7.

86. *Id.* at ¶ 9.

87. *Id.* ¶ 22.

88. *Id.* ¶ 8.

89. *See, e.g.*, S.C. Res. 1737, *supra* note 68, ¶ 12; S.C. Res. 1803, *supra* note 70, ¶¶ 5, 8; S.C. Res. 1929, *supra* note 70, ¶¶ 11-12, 19.

IRGC and IRISL<sup>90</sup>

The lists are relatively narrow. For example, they include two of Iran's banks, Bank Sepah and First East Export Bank, but none of its other significant banks, such as Bank Melli, Bank Saderat, or the Central Bank of Iran.<sup>91</sup> The lists include some of the units or companies owned by the Revolutionary Guard, but these are only a few out of the IRGC's vast economic network. They include three shipping companies,<sup>92</sup> but not Iran's major shipping lines—IRISL NIOC, NITC, or any other companies in their extensive network of subsidiaries.

In addition, the resolutions also contain an evidentiary requirement. Resolution 1929 prohibits states from providing fuel or services to ships that are owned or under contract to Iranians, "if they have information that provides reasonable grounds to believe" the ships are carrying prohibited goods.<sup>93</sup> Similarly, it provides that states shall require their nationals to exercise vigilance when dealing with Iranian companies "if they have information that provides reasonable grounds to believe that such business could contribute to Iran's proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems."<sup>94</sup> Resolution 1803 contains a comparable provision.<sup>95</sup>

Thus, it seems that the mandatory provisions of the resolutions are directly tied to nuclear concerns and missile systems (or, in the case of Resolution 1929, large weapons systems). The annexed lists target specific companies and individuals that purportedly have ties to nuclear weapons and ballistic missiles. In addition, it appears that the enforcement cannot be arbitrary or based upon speculation, since a state must have evidence that the cargo, technology, individual, or company has ties to these weapon systems in order to employ enforcement mechanisms against them.

## 2. The Voluntary Provisions

Like the mandatory measures, the voluntary measures invoke concerns with nuclear weapons or ballistic missiles. For example, Resolu-

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90. See, e.g., S.C. Res. 1737, *supra* note 68, Annex; S.C. Res. 1803, Annexes I-II; S.C. Res. 1929, Annexes I-III.

91. U.N. Security Council Committee Established Pursuant to Resolution 1737, *Individuals and Entities Designated as Subject to the Travel Ban and Assets Freeze*, THE UNITED NATIONS (2012), available at <http://www.un.org/sc/committees/1737/pdf/1737ConsolidatedList.pdf>.

92. S.C. Res. 1929, *supra* note 70, Annex III.

93. *Id.* ¶ 18.

94. *Id.* ¶ 22.

95. S.C. Res. 1803, *supra* note 70, ¶ 11.

tion 1803 asks (“calls upon”) states to exercise vigilance and restraint in granting entry or transit to individuals directly association with Iran’s nuclear weapons program,<sup>96</sup> and it also asks states to exercise vigilance in regard to public financing of trade with Iran, to avoid contributing to Iran’s nuclear weapons program.<sup>97</sup> It asks states to exercise vigilance over Iranian banks with branches in their jurisdiction to avoid financial activities contributing to Iran’s development of nuclear weapons.<sup>98</sup> Resolution 1929 asks states to exercise vigilance over transactions with the IRGC that could contribute to Iran’s nuclear weapons program.<sup>99</sup> It also asks states to prevent the provision of financial services to Iranian companies,<sup>100</sup> to prohibit Iranian banks from operating in their territory,<sup>101</sup> and to prohibit their financial institutions from operating in Iran,<sup>102</sup> where these activities contribute to Iran’s nuclear weapons program. The preamble to Resolution 1929 calls for vigilance over transactions involving Iranian banks, including the Central Bank of Iran, to prevent financial transactions from contributing to Iran’s nuclear weapons program.<sup>103</sup> In addition to prohibiting financial institutions from opening branches in Iran, and prohibiting Iranian banks from operating in their territories, Resolution 1929 includes a blanket provision that asks states to prevent their nationals from providing funds or financial services in general, to anyone, if the state has information that provides reasonable grounds to believe that these would contribute to Iran’s nuclear weapons program.<sup>104</sup>

Like the mandatory provisions, the voluntary terms often contain an evidentiary requirement, suggesting that the implementation of the measures will not be arbitrary. For example, Resolution 1929 calls upon states to 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 on the lists of prohibited goods.<sup>105</sup> Resolution 1929 also calls upon states to prohibit financial institutions within their jurisdiction from opening branches or bank accounts in Iran “if they have information that

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96. *Id.* ¶ 3.

97. *Id.* ¶ 9.

98. *Id.* ¶ 10.

99. S.C. Res. 1929, *supra* note 70, ¶ 12.

100. *Id.* ¶ 21.

101. *Id.* ¶ 23-24.

102. *Id.* ¶ 21.

103. *Id.* at preamble.

104. *Id.* ¶ 21.

105. *Id.* ¶ 14.

provides reasonable grounds to believe” that these financial services could contribute to Iran’s nuclear weapons program.<sup>106</sup> Additionally, Resolution 1929 calls on states to prohibit Iranian banks from opening branches or maintaining relationships with banks in their jurisdiction, “if they have information that provides reasonable grounds to believe” this could contribute to Iran’s nuclear weapons program.<sup>107</sup>

Thus, as with the mandatory provisions, it seems that the voluntary provisions are narrowly drafted to address legitimate concerns regarding nuclear proliferation, and it seems that the evidentiary requirement would preclude enforcement on arbitrary or speculative grounds. However, as we will see, that is not the case in practice.

#### IV. THE ROLE OF DELIBERATE AMBIGUITY IN THE IRAN RESOLUTIONS

The explicit and binding language of the resolutions is, for the most part, narrowly drafted. However, there are other non-binding terms, terms that are not part of the operative provisions at all, or terms that sound innocuous and vague. These terms include the use of vague and ambiguous language such as “exercising vigilance,” which is invoked by some nations as though they constitute an implied authorization to impose measures that go well beyond the explicit, binding provisions of the resolutions. The United States and its allies on this matter—the European Union, Canada, Australia, Japan, and South Korea—are known as the “like-minded” countries.<sup>108</sup> There are several different ways that they have invoked oblique, vague, or non-operative language

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106. “Calls upon States to take appropriate measures that 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 such financial services could contribute to Iran’s proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.” *Id.* ¶ 24.

107. “Calls upon States to take appropriate measures that prohibit in their territories the opening of new branches, subsidiaries, or representative offices of Iranian banks, and also that prohibit Iranian banks from establishing new joint ventures, taking an ownership interest in or establishing or maintaining correspondent relationships with banks in their jurisdiction to prevent the provision of financial services 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.” *Id.* ¶ 23.

108. “But importantly, we’ve also worked to build an international coalition as well, so that our own actions are amplified. So we were able to work through the U.N. Security Council to achieve Resolution 1929, which put in place the broadest and most comprehensive multilateral sanctions that Iran has ever faced. And then, working from that basis, we’ve worked with like-minded nations to continue to increase the pressure on the Iranians.” Press Release, On-the-Record Conference Call on Iran Sanctions, *supra* note 45.

from the Security Council resolutions to justify their own unilateral measures against Iran. The country that has been most aggressive in lobbying for these measures, and most extreme in imposing its own unilateral measures against Iran, has been the United States, and the Obama Administration has been considerably more aggressive in developing and enforcing sanctions than the Bush Administration, imposing penalties on banks on the order of half a billion dollars each.<sup>109</sup>

The Security Council has for the most part been unwilling to explicitly adopt the extreme measures against Iran for which the United States has consistently lobbied. Even the most extreme of the Iran resolutions, Resolution 1929, adopted by the Council in June 2010, “[fell] short of the Obama administration’s stated objective to impose ‘crippling sanctions’ on Iran . . .”<sup>110</sup> The United States “was unsuccessful in getting explicit support for many key provisions it sought to include,”<sup>111</sup> such as restrictions on investment or trading with Iran’s energy sector, a comprehensive arms embargo, a comprehensive ban on dealing with the IRGC, IRISL, or Iran Air cargo, a requirement (rather than a non-binding request) for states to inspect vessels suspected of carrying proliferation-related materials to Iran, and the blacklisting of Iran’s central bank.<sup>112</sup>

However, while Resolution 1929 imposed few additional mandatory measures, a number of new voluntary measures were “called for.” There was also preambular language concerning the “potential connection between Iran’s revenues derived from its energy sector and the funding of Iran’s proliferation sensitive nuclear activities” and language about “exercis[ing] vigilance and caution over transactions involving Iranian banks, including the Central Bank of Iran.”

This represented a compromise that arguably gave implied authorization to the United States and its allies to impose harsher measures, while allowing China and Russia to implement only the explicit, required ones.<sup>113</sup> Meanwhile, the “like-minded” nations developed and

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109. *Civil Penalties and Enforcement Information*, U.S. DEP’T OF TREASURY, <http://www.treasury.gov/resource-center/sanctions/CivPen/Pages/civpen-index2.aspx>.

110. Glenn Kessler & Colum Lynch, *U.S., Partners Agree to Sanctions on Iran*, WASHINGTON POST (May 19, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/18/AR2010051801988pf.html>.

111. Covington & Burling, LLP, *E-Alert: U.N. Security Council Approves New Sanctions Against Iran 1* (June 9, 2010).

112. *Id.* at 3-4.

113. U.N. Security Council Resolution 1929 was the first Resolution in two years to impose actual new sanctions against Iran. (The previous one was Resolution 1803 of March 3, 2008). The resolution was enacted after exhaustive U.S. diplomacy intended to overcome the objections of

coordinated sanctions measures that they imposed autonomously, while invoking the oblique terms of the Security Council resolutions as authority.<sup>114</sup> As one commentator noted, “[s]ome states (referred to by the United States and EU-3 as the ‘like-minded’) may use the call for vigilance as an opportunity to go beyond the resolution’s requirements and formally prohibit a given activity. It could also be used as an excuse for governments to exercise oversight of commercial matters in which they might otherwise be politically or legally constrained.”<sup>115</sup>

For example, in July 2010, Canada’s prime minister announced that Canada was imposing additional sanctions in Iran, beyond those required by Resolution 1929, “in close consultation with like-minded partners, including the United States and the European Union.”<sup>116</sup> Canada’s measures under the Special Economic Measures Act (SEMA) are quite broad. SEMA prohibits Canadian companies from exporting goods, services, or equipment for Iran’s energy or telecommunications sectors; prohibits companies from conducting financial transactions or importing oil from Iran.<sup>117</sup>

Canada’s report to the Security Council notes that Resolution 1929 requires states to impose sanctions on the three entities of IRISL designated by the resolution. But Canada expanded this provision to IRISL itself, prohibiting Canadian nationals from providing any services to IRISL vessels, regardless of whether their cargo is related to weapons, or only involves ordinary commercial goods. Canada imposed these measures even though Resolution 1929 contains explicit language to the contrary: the Security Council “*underlines* that this para-

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Russia and China to any U.N. sanctions that would harm Iran’s civilian economy or population. Resolution 1929 included a formula under which very few new sanctions against Iran were mandatory, but a great many new sanctions were authorized or called for. This structure enabled countries such as China and Russia to follow only the letter of the Resolution, while allowing the United States and its allies to go far further in imposing sweeping new bilateral and multilateral sanctions against Iran. KENNETH KATZMAN, ATLANTIC COUNCIL, ADDENDUM: U.S.-IRANIAN RELATIONS —COMPENDIUM OF U.S. POLICIES, LAWS, AND REGULATIONS 1-2 (2010).

114. “Participants were countries that have imposed bilateral sanctions on Iran over its nuclear program that go beyond U.N. Security Council sanctions. The group includes the United States, the European Union and several European nations, Australia, Japan, South Korea and other countries but it was not clear if all of them were represented. The United States attended.” Philip Pullella & Roberto Landucci, *Diplomats Agree to Increase Pressure on Iran*, REUTERS 1 (Dec. 20, 2011), <http://www.reuters.com/article/2011/12/20/us-iran-sanctions-meeting-idUSTRE7BJ1XJ20111220>.

115. *Id.* at 2-3.

116. *Iran: New Developments*, FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA, <http://www.international.gc.ca/sanctions/iran.aspx?lang=eng&view=d>.

117. *Id.*

graph is not intended to affect legal economic activities.”<sup>118</sup>

The same was true of the measures imposed by the European Union in 2010, to implement Resolution 1929, but also going well beyond it. The European Union imposed a ban on the sale of equipment and services for Iran’s energy sector, as well as a ban on financing energy projects, effectively blocking companies from involvement in oil and gas extraction in Iran.<sup>119</sup> EU member nations were prohibited from providing aid or loans to Iran, or from voting to support financial support from institutions such as the IMF and the World Bank.<sup>120</sup> European companies were prohibited from providing insurance or reinsurance to Iranian shipping companies, and European airports were prohibited from allowing Iran Air Cargo flights to land. No European banks were allowed to open new branches in Iran, and no Iranian banks were allowed to open new branches in the European Union.<sup>121</sup> Japan and South Korea imposed similar measures as well.<sup>122</sup>

In January 2012, the European Union imposed additional measures, banning oil imports from Iran, and freezing the assets of Iran’s Central Bank.<sup>123</sup> In March 2012, the EU Council adopted a decision to terminate Iran’s access to SWIFT, which is located in Brussels and subject to EU laws. SWIFT is the global system that provides secure communication of financial messaging among financial institutions throughout the world.<sup>124</sup>

Australia also imposed autonomous measures that went beyond the terms of the Security Council resolutions. It prohibited the export of equipment and technology for Iran’s oil and gas industry, blocked financing for companies involved in Iran’s petrochemical or energy

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118. S.C. Res. 1929, *supra* note 70, ¶ 18.

119. KATZMAN, *supra* note 51, at 45.

120. *Id.* at 44.

121. KATZMAN, *supra* note 113, at 2.

122. *Id.* at 2.

123. Justyna Pawlak & David Brunnstrom, *Here is an Outline of EU Sanctions Against Iran over its Nuclear Program*, REUTERS (Jan. 23, 2012), <http://www.reuters.com/article/2012/01/23/us-iran-eu-factbox-idUSTRE80M0JC20120123>.

124. “Terán explained that SWIFT, which connects entities in 212 countries and territories and ensures the secure exchange of financial messages, does not handle funds but does play a role in the sanctions regime. Following a March 2012 EU Council Decision, financial messaging bodies were required to discontinue services to EU-listed Iranian entities. SWIFT, which is headquartered in Brussels and therefore subject to EU regulation, then discontinued its communications services to Iranian financial institutions subject to EU sanctions.” *23 November 2012: Discussion Meeting—EU sanctions on Iran*, INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES, available at <http://www.iiss.org/events-calendar/2012-events-archive/november-2012/eu-sanctions-on-iran-an-explanation/>.

enterprises, prohibited opening branches of Australian financial institutions in Iran, and prohibited Iranian banks from opening branches in Australia.<sup>125</sup>

A. *The “Vigilance” Language*

There are numerous references to “exercising vigilance” in Resolutions 1737, 1803, and 1929. These include calls for “vigilance,” or “vigilance and restraint,” or “enhanced monitoring.” These are found in the context of both the mandatory and voluntary provisions of the resolutions, as well as in preambular language. For example, Resolution 1737 calls upon states “to exercise vigilance” in granting entry or transit to individuals associated with Iran’s weapons program<sup>126</sup> and also calls upon states “to exercise vigilance” in regard to providing training to Iranians which could contribute to Iran’s nuclear weapons program.<sup>127</sup> Resolution 1803 calls on states “to exercise vigilance and restraint” regarding the entry or transit of individuals associated with Iran’s weapons programs,<sup>128</sup> to “exercise vigilance” in regard to providing publicly funded financial support for trade with Iran,<sup>129</sup> and “to exercise vigilance” over the activities of all of their financial institutions with Iranian banks, in particular Bank Melli and Bank Saderat, two of Iran’s leading banks.<sup>130</sup> Resolution 1929 calls upon states “to exercise vigilance” over transactions involving the IRGC that could contribute to Iran’s nuclear program.<sup>131</sup> None of the resolutions explicitly say what would constitute “vigilance” or “restraint” or “enhanced monitoring.”

Even where the reference to “vigilance” is found in mandatory provisions, the term is vague and conveys little concrete guidance regarding actions or policies. As the Panel of Experts noted, “[t]here is no general understanding of the definition of ‘vigilance’” in paragraph 22 of Resolution 1929.<sup>132</sup> Some states used close supervision; some had licensing requirements; some required notification, while others re-

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125. Autonomous Sanctions Regulations 2011, Select Legislative Instrument 2011 No. 247 as amended (Australia).

126. S.C. Res. 1737, *supra* note 70, ¶ 10.

127. *Id.* ¶ 17.

128. S.C. Res. 1803, *supra* note 70, ¶ 3.

129. *Id.* ¶ 9.

130. *Id.* ¶ 10.

131. S.C. Res. 1929, *supra* note 68, ¶ 12.

132. U.N. Group of Experts on Iran, Final Rep. of the Panel of Experts Established Pursuant to Resolution 1929 (2010) ¶ 190, U.N. Doc. S/2012/395 (June 12, 2012).

quired prior authorization for permitted financial transactions.<sup>133</sup> This seems to have been deliberate. One commentator noted that “[i]n general, the ‘vigilance’ provisions represent compromises over activities that some of the P-5+1 states [the five permanent Security Council members plus Germany] would like to see prohibited but others would not.”<sup>134</sup> However, while the United States has long exceeded the scope of the Security Council measures, the “like-minded” countries have relied on this language in order to justify unilateral measures that exceed to scope of the clear terms of the resolutions themselves.

For example, in freezing the assets of Iran’s Central Bank, the European Union cited the “vigilance” provision as justification: “In consideration of Iran’s attempts at using its financial system for the purpose of circumventing the sanctions, it is necessary to require enhanced *vigilance* in relation to the activities of Iran’s credit and financial institutions so as to prevent circumvention of this Regulation, including the freezing of the assets of the Central Bank of Iran.”<sup>135</sup>

#### B. *Financial Action Task Force*

The preamble of Resolution 1803 “[w]elcomes the guidance issued by the Financial Actions Task Force (FATF) to assist States in implementing their financial obligations under [R]esolution 1737 (2006).”<sup>136</sup> The FATF, an intergovernmental body that develops policies concerning international financial crimes, has provided elaborate recommendations for the implementation of the Security Council sanctions. The FATF states that the recommendations are intended to “provide guidance to financial institutions whose products and services could lead to their direct or indirect involvement in the provision to Iran” of financial services or the transfer of prohibited goods.<sup>137</sup> However, the FATF recommendations provide a rationale for a very extreme interpretation of what compliance with the resolutions would entail. For example, in its analysis of Resolution 1737, the FATF states that “[j]urisdictions should encourage financial institutions to consider among others the following determinants of risk . . . to assist in identifying high-risk customers and transactions: i) customers and transactions associated

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133. U.N. Group of Experts on Iran, Final Rep. of the Panel of Experts Established Pursuant to Resolution 1929 (2010) ¶ 190, U.N. Doc. S/2012/395 (June 12, 2012).

134. Philip Püllella & Roberto Landucci, *supra* note 114, at 2.

135. Council Regulation no. 267/2012, *supra* note 8 (emphasis added).

136. S.C. Res. 1803, *supra* note 70, pmb1.

137. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, GUIDANCE REGARDING THE IMPLEMENTATION OF ACTIVITY-BASED FINANCIAL PROHIBITIONS OF U.N. S.C.R. 1737, 3 (2007).

with Iran.”<sup>138</sup> In regard to “high-risk customers and/or transactions,” the FATF suggests that financial institutions “may consider” taking steps “such as terminating the relationship with the relevant customer or account.”<sup>139</sup> Thus, the FATF guidance suggests that compliance with Resolution 1737 would entail that *all* financial institutions sever *all* relationships and transactions with Iran, even though the explicit language of the resolution requires only that member states take measures to prevent transactions relating to nuclear weapons and ballistic missiles.

In its recommendations issued in February 2012, the FATF maintained that “enhanced due diligence measures” should be taken in circumstances where there is a higher risk of money laundering or terrorist financing.<sup>140</sup> These risk factors, in turn, include countries subject to sanctions or embargoes issued by the United Nations, which includes Iran. The FATF suggests that the enhanced due diligence on the part of financial institutions could include refusing the establishment of branches or subsidiaries of financial institutions from the country concerned, and limiting business relationships or transactions with persons or institutions from that country.<sup>141</sup>

### C. “Could”

The United States has taken the view that the use of word “could” in Resolution 1929 should be interpreted broadly, so as to effectively vitiate the evidentiary requirement. In testimony before the House Committee on Oversight and Government Reform, Daniel Glaser, the Treasury Department’s Deputy Assistant Secretary for Terrorist Financing and Financial Crimes, maintained that Resolution 1929 “imposes systemic measures” which “go well beyond what was contained in previous resolutions.”<sup>142</sup> Resolution 1929 asks member states to “prevent the provision of financial services, including insurance or re-insurance . . . if they have information that provides reasonable grounds to believe that such services . . . *could* contribute to Iran’s proliferation-

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138. *Id.* at 5.

139. *Id.* at 6.

140. FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING, INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION—THE FATF RECOMMENDATIONS 19 (2012).

141. *Id.* at 63.

142. *Implementation of Iran Sanctions: Hearing Before the H. Comm. on Oversight and Gov’t Reform*, 111th Cong. 3 (2010) (statement of Daniel Glaser, Deputy Assistant for Terrorist Financing and Financial Crimes, U.S. Department of the Treasury).

sensitive nuclear activities.”<sup>143</sup> Glaser gives the same reading for parallel provisions with regard to shipping and trade.<sup>144</sup>

Glaser seems to read the resolution as asking states to take harsh measures against Iran not only where banking, trade, or shipping would certainly, or probably, contribute to Iran’s nuclear program, but also where it is merely *possible* that they *might* contribute. Thus, there would be no need for evidence to show that a particular cargo or transaction in fact contributes to Iran’s nuclear program, but only speculation that it “could” contribute.

#### D. *Iran’s Energy Sector*

While the Security Council did not approve measures that directly target Iran’s energy sector, the preamble to Resolution 1929 “not[es] the potential connection” between Iran’s oil revenues and the funding of its nuclear program, and also “notes” that some of the equipment used in the petrochemical industry can also be used with nuclear fuel.<sup>145</sup>

On its face, the preambular language seems to add little of value in preventing Iran’s nuclear activities, since multiple resolutions already contain extensive provisions targeting equipment and transactions relating to every aspect of Iran’s proliferation-sensitive activities. However, this preambular note provided language that could be invoked by the European Union and the “like-minded” countries to justify their measures blocking oil purchases from Iran, and prohibiting the export of equipment and materials for Iran’s oil industry.

For example, a decision of the Council of the European Union in January 2012 references this clause:

Recalling the potential connection between Iran’s revenues derived from its energy sector and the funding of Iran’s proliferation-sensitive nuclear activities and that chemical process equipment and materials required for the petrochemical industry have much in common with those required for certain sensitive nuclear fuel cycle activities, as underlined in [U.N. Security Council Resolution] 1929 (2010), the sale, supply or transfer to Iran of further key equipment and technology which could be used in key sectors in the oil and natural gas industry

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143. *Id.* (emphasis in the original).

144. *Id.* at 3-4.

145. Preamble, SCR 1929.

*CRIPPLING IRAN: THE U.N. SECURITY COUNCIL*

or, in the petrochemical industry, should be prohibited. Moreover, Member States should prohibit any new investment in the petrochemical sector in Iran.<sup>146</sup>

E. *Bank Melli and Bank Saderat*

Resolution 1803 asks member states to use “vigilance” in regard to two of Iran’s leading banks, Bank Melli, the largest commercial retail bank in Iran, and Bank Saderat, Iran’s export bank. Both are among the largest banks in the Middle East. The Security Council

*Calls upon* all States to exercise vigilance over the activities of financial institutions in their territories with all banks domiciled in Iran, in particular with Bank Melli and Bank Saderat, and their branches and subsidiaries abroad, in order to avoid such activities contributing to the proliferation sensitive nuclear activities, or to the development of nuclear weapon delivery systems, as referred to in [R]esolution 1737.<sup>147</sup>

In its commentary on Resolution 1803, the FATF maintained that

Competent authorities should consider transactions, accounts or relationships that their financial institutions may have with Iranian banks, and particularly Bank Melli and Bank Saderat, as high risk for purposes of enhanced supervision and monitoring . . . Due to the particular risks associated with Bank Melli and Bank Saderat as identified in S/RES/1803(2008), jurisdictions should consider adopting additional preventive measures with respect to these two Iranian banks.<sup>148</sup>

Although the “vigilance” language regarding the two banks was non-binding, as were the recommendations of the FATF, in 2012, the EU Council, citing the need for “vigilance,”<sup>149</sup> blacklisted and froze the

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146. Council Decision 2012/35/CFSP, Amending Decision 2010/413/CFSP Concerning Restrictive Measures Against Iran, 2012 O.J (L 19) 8.

147. S.C. Res. 1803, *supra* note 70, ¶ 10.

148. FINANCIAL ACTION TASK FORCE, GUIDANCE PAPER: THE IMPLEMENTATION OF FINANCIAL PROVISIONS OF U.N. SECURITY COUNCIL RESOLUTION 1803, 6 (2008).

149. “In consideration of Iran’s attempts at using its financial system for the purpose of circumventing the sanctions, it is necessary to require enhanced vigilance in relation to the activities of Iran’s credit and financial institutions so as to prevent circumvention of this Regulation, including the freezing of the assets of the Central Bank of Iran.” Council Regulation

assets of these two banks.<sup>150</sup>

F. *Central Bank of Iran*

The preamble of Resolution 1929 “recall[s] in particular the need to *exercise vigilance* over transactions involving Iranian banks, including the Central Bank of Iran, so as to prevent such transactions contributing to proliferation-sensitive nuclear activities, or to the development of nuclear weapon delivery systems.”<sup>151</sup> This language is ostensibly concerned only with transactions of the Central Bank related to Iran’s nuclear program. However, it served as a justification for freezing all assets of Iran’s Central Bank. The language of “vigilance” appears, for example, in the European Union’s legislation adopted in March 2012: “In consideration of Iran’s attempts at using its financial system for the purpose of circumventing the sanctions, it is necessary to require *enhanced vigilance* in relation to the activities of Iran’s credit and financial institutions so as to prevent circumvention of this Regulation, including the freezing of the assets of the Central Bank of Iran.”<sup>152</sup> Thus, the vague language of “vigilance,” contained in a clause found in the preamble rather than the operative provisions, concerning the development of a nuclear program, was invoked to justify terminating all transactions, for any purpose, with a financial institution critical to Iran’s entire economy.

V. THE IMPLEMENTATION OF THE UNILATERAL MEASURES

Given the many ways that the measures of the United States and its allies have broadly targeted Iran’s shipping, financial transactions, and energy sector, it is unsurprising that the effects of the sanctions go well beyond simply depriving Iran of the means to produce nuclear weapons. A number of foreign companies have severed their commercial ties with Iran, even where their business activities had no relation to nuclear proliferation, Iran’s military or the IRGC, or human rights violations by the regime, but were simply participating in Iran’s civilian economy. In 2007, the French bank BNP Paribas stopped pursuing any new business in Iran.<sup>153</sup> In 2010, the Swiss engineering company ABB

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267/2012, Concerning Restrictive Measures Against Iran and Repealing Regulation No 961/2010, 2012 O.J. (L 88) 17.

150. *Id.* at L 88/10, Annex IX.

151. S.C. Res. 1929, *supra* note 68, pmbl. (emphasis added).

152. Council Regulation 267/2012, *supra* note 145 (emphasis added).

153. KATZMAN, *supra* note 51, at 51.

stopped doing business with Iran, as did Germany's Siemens, which had been involved with Iran's telecommunications infrastructure.<sup>154</sup> Several major automobile manufacturers stopped selling cars to Iran, including Germany's Daimler, as well as Toyota, Hyundai, and Kia.<sup>155</sup> In 2011, the Danish shipping company Maersk announced that it would no longer use Iran's three largest ports.<sup>156</sup>

Treasury and State Departments officials said that they had persuaded at least eighty banks to stop doing business with Iranian banks.<sup>157</sup> A number of major European banks withdrew from Iran, including UBS, HSBC, Commerzbank AG, and Deutsche Bank AG.<sup>158</sup> In September, 2010, the Under-Secretary for the U.S. Treasury Department stated that "today, Iran is effectively unable to access financial services from reputable banks and is increasingly unable to conduct major transactions in dollars or Euros."<sup>159</sup>

Iran's energy sector has been affected in several ways. For example, in 2010, BP, citing the EU sanctions, cancelled a joint venture with an Iranian company, and the partners in the Trans-Adriatic Pipeline said that it would not be used to transport Iranian gas.<sup>160</sup> Schlumberger, the oil services giant, announced in 2010 that it would terminate its operations with Iran.<sup>161</sup> In response to the U.S. CISADA legislation, a number of companies stopped selling gasoline to Iran, including Russia's Lukoil, Royal Dutch Shell, France's Total, and Kuwait's Independent Petroleum Group.<sup>162</sup> The result was an estimated 75% reduction in Iran's gasoline imports.<sup>163</sup> In addition, there are shipping companies that refuse to ship gasoline to Iran, and at least two insurers, including the British company Lloyd's, will not provide insurance for gasoline shipments to Iran.<sup>164</sup>

These illustrate how the measures of the United States and the "like-minded" nations, often invoking the oblique and ambiguous provisions of the Security Council resolutions, have brought about an embargo of Iran that goes well beyond the explicit requirements of

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154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.* at 50.

158. *Id.*

159. *Id.*

160. *Id.* at 53.

161. *Id.*

162. *Id.* at 59.

163. *Id.* at 58.

164. *Id.* at 59.

the resolutions, fundamentally compromising Iran's energy sector, imports, exports, and international financial transactions.

VI. THE HUMANITARIAN IMPACT ON THE IRANIAN POPULATION

In August 2012, the U.N. Secretary-General reported that

The sanctions imposed on the Islamic Republic of Iran have had significant effects on the general population, including an escalation in inflation, a rise in commodities and energy costs, an increase in the rate of unemployment and a shortage of necessary items, including medicine. A number of Iranian non-governmental organizations and activists have expressed concerns about the growing impact of sanctions on the population and have noted that inflation, rising prices of commodities, subsidy cuts and sanctions are compounding each other and having far-reaching effects on the general population. They report, for instance, that people do not have access to lifesaving medicines. Furthermore, since the sanctions extend to banking transactions, many foreign banks have stopped doing business with the Islamic Republic of Iran altogether, which has made it considerably difficult for Iranians to transfer funds and for private business to obtain lines of credit.

The sanctions also appear to be affecting humanitarian operations in the country. Even companies that have obtained the requisite license to import food and medicine are facing difficulties in finding third-country banks to process the transactions. Owing to payment problems, several medical companies have [stopped] exporting medicines to the Islamic Republic of Iran, leading to a reported shortage of drugs used in the treatment of various illnesses, including cancer, heart and respiratory conditions, thalassemia and multiple sclerosis.<sup>165</sup>

It has been apparent for some time that the sanctions are doing indiscriminate harm to Iran's economy and its population as a whole. In July 2011, anecdotal reports suggested that merchants were having difficulty finding trade financing, insurance, and shipping availability, and their costs had increased by an estimated 40%, where they were

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165. U.N. Secretary-General, Situation of Human Rights in the Islamic Republic of Iran: Rep. of the Secretary-General, ¶ 42-43, U.N.Doc. A/67/327 (August 22, 2012).

even able at all to complete the transaction.<sup>166</sup> In May 2012, unemployment was estimated to be around 20%, and was closer to 30% for people under thirty years old.<sup>167</sup> Bankruptcies have increased substantially.<sup>168</sup>

Far from targeting the Iranian regime and the military, the sanctions are harming the political opposition to the regime, as well as women and other vulnerable groups. Medicines for chronic illnesses such as asthma, multiple sclerosis, and cancer are often no longer affordable, and sometimes cannot be found, even at very high prices. In January 2013, the *Guardian* reported on “the crisis [the sanctions] triggered in the Iranian pharmaceutical market, and the impact that it has had on millions of Iranians with chronic health problems.” Although U.S. and European companies are theoretically permitted to sell medicines to Iraq, because of the banking restrictions, it is difficult to find any banks that will handle the financial transactions.<sup>169</sup>

While the economic trends affect the population as a whole, they specifically increase the hardship on women. While women carry the larger burden of ensuring their families’ well-being, they are also

the most economically vulnerable. Women have a harder time finding jobs, are among the first to get laid off, and have fewer workplace protections. As those primarily responsible for running their households, women face increased loads of stress trying to feed their families, obtain needed medication, and buy necessary goods amidst skyrocketing levels of inflation.<sup>170</sup>

The sanctions have also triggered greater oppression by the regime, reducing the space for dissent and democratic opposition. The International Civil Society Action Network noted that “the sanctions and threat of war allow the state to invoke ‘a state of emergency’ and in so doing suppress critics and voices of dissent.”<sup>171</sup> One consequence of the

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166. KATZMAN, *supra* note 51, at 50.

167. *Sanctions Against Iran: A Duplicious ‘Alternative’ to War*, RAHA: IRANIAN FEMINIST COLLECTIVE (May 8, 2012), <http://rahacollective.org/articles-2/sanctions-against-iran-a-duplicious-alternative-to-war/>.

168. *Id.*

169. Julian Borger & Saeed Kamali Dehghan, *How life-saving drugs are caught up in Iranian sanctions*, THE GUARDIAN (Jan.13, 2013), <http://www.guardian.co.uk/world/2013/jan/13/iran-sanctions-tehran-uranium-enrichment>.

170. *Sanctions Against Iran: A Duplicious ‘Alternative’ to War*, *supra* note 167.

171. INTERNATIONAL CIVIL SOCIETY ACTION NETWORK (ICAN), *WHAT THE WOMEN SAY—KILLING THEM SOFTLY: THE STARK IMPACT OF SANCTIONS ON THE LIVES OF ORDINARY IRANIANS 2* (2012).

banking sanctions is that Iranian students are being denied access to British and other universities, because there is no legal way to make financial transfers to pay their school fees.<sup>172</sup>

Rather than starving the IRGC and the Iranian regime, the criminalization of normal international commerce means that much of the economy is now tied to the black market or gray market. For a private company to import equipment and materials for production requires ties to the IRGC or bribes to the regime, with the result that the IRGC and the regime hold far greater political power and far greater control over the economy. “The lack of access to normal banking has the effect of forcing a shift to a cash-based economy, making Iranians dependent on black marketeers to transfer funds to relatives abroad, or pay for educational or health costs.”<sup>173</sup> While the sanctions specifically target the Revolutionary Guards for their repressive tactics, the effect of the sanctions is that they permit the Guards “to behave like a mafia controlling lucrative black and grey markets.”<sup>174</sup> Thus, as sanctions criminalize ordinary commerce, systemic corruption becomes the norm for commerce. The result is that the regime and elite military units are not only insulated from the sanctions, but in fact stand to gain considerable profits.

## VII. CONCLUSION

To claim that the sanctions are targeting Iran’s regime, and that the sanctions are not intended or designed to affect the population as a whole, is flatly disingenuous. The calls for “vigilance” and the use of other oblique and ambiguous language deliberately provides a means for all the sanctioning parties to deny responsibility for the hardship caused by the measures: the Security Council can maintain that its resolutions are narrowly drafted to address only Iran’s access to nuclear weapons, while the United States and its allies can claim that they are only acting in accordance with the wishes of the Security Council. The calls for “vigilance” and the other vague and ambiguous provisions are an arrangement that serves to provide mutual plausible deniability.

The lack of attention to humanitarian effects is striking, coming on the heels of the disastrous damage done by sanctions to the population of Iraq.<sup>175</sup> But this is because the sanctions regimes imposed by the

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172. *Id.* at 3.

173. *Id.* at 4.

174. RAHA: IRANIAN FEMINIST COLLECTIVE, *supra* note 167.

175. *See supra* Part II.A.

*CRIPPLING IRAN: THE U.N. SECURITY COUNCIL*

Council since the 1990s have been viewed as targeted measures: preventing a state from acquiring materials for ballistic missiles, for example, will surely have nothing to do with the basic needs of the civilian population, so there is no need to monitor the economic or humanitarian effects.

If the member states implemented only the explicit and mandatory provisions of the resolutions, then the effects, for the most part, would have been limited to interfering in Iran's development of nuclear weapons. If the member states had implemented the voluntary provisions only to the extent that there were reasonable grounds to believe that cargo or financial transactions or other activities were in fact contributing to Iran's nuclear weapons program, then the sanctions would not have impacted Iran's economy as a whole. However, invoking the language of "vigilance" and "enhanced monitoring," the United States and its allies imposed measures that are so far reaching as to affect Iran's economy on a structural level, doing broad and indiscriminate harm to the economy and the population. These measures include blanket prohibitions on trade with IRISL and Iran's other major shipping lines, not just the particular subsidiaries listed in the Security Council Resolutions, and are not limited to circumstances where there is evidence of prohibited cargo. Similarly, the measures have blocked insurance and reinsurance for ships transporting legal cargo to and from Iran. The same is true of blanket prohibitions on financial transactions with Iranian banks, even where the bank is not listed in a Security Council resolution or engaged in transactions related to Iran's nuclear program. The same is true of the blanket requirement to freeze the assets of and block trade with the entire IRGC, a massive enterprise with major roles in Iran's telecommunications system, and infrastructure construction, even though Security Council resolutions identify only specific subsidiaries of the IRGC with ties to Iran's military and its nuclear program.

The results are not much different than extreme, harsh measures imposed on Iraq that, quite aside from the bombing campaign, did enormous harm to the population; all on the premise that if the suffering is great enough, the population will be desperate enough to bring down the state. Where the sanctions on Iraq explicitly prohibited almost all imports and exports, the sanctions on Iran, as implemented by the "like-minded" countries, achieve the same result by different means: cutting off gasoline sales to Iran and blocking goods and investment in Iran's energy sector; bankrupting the state by blocking oil exports; preventing cargo shipments by targeting Iran's national shipping lines, as well as denying access to ports, airports, and shipping

insurance; cutting off access of Iranian banks to SWIFT, the global hub used for all international commercial transactions; and prohibiting financial transactions with all of Iran's major banks, including the Central Bank. While neither the Security Council nor national sanctions explicitly state that their intent is to undermine food security or access to health care and education, these measures in fact compromise every sector of the economy and public services that are directly or indirectly necessary for well-being in a modern society, including electricity and transportation.

The United States, the Security Council, and the "like-minded nations" may invoke security as the reason for their policies. But from Weimar Germany to present-day Iraq, we should by now know that devastating an entire people, whether by bombs or by the relentless degradation of daily life, does not in the end bring greater security for anyone.