LUISS

Master's Degree in Security Studies

Chair in Security Law and Constitutional Protection

Economic Sanctions as a Tool of War From the Historical Origins to the Current Use against Russia

Prof. Elena Griglio
Supervisor

Prof. Domenico Pauciulo
Co-Supervisor

Rebecca Perugia – 648082
Candidate

Academic Year: 2022/2023

TABLE OF CONTENTS

LIST OF FIGURES

INTRODUCTION

Is it possible to eliminate war from the face of the earth? The desire for world peace has persisted throughout modern history but it has also been among the hardest to find. The rise of a conflict produces both pessimists and optimists. The former sustains that war is an inevitable component of the human existence whilst the latter sees increased prosperity as a catalyst for moral improvement, expanding self-government and developing technology. Among these various viewpoints and opinions, economic sanctions could manifest as an instrument at the disposal of countries in their efforts to bring about international peace. By enforcing limitations on finances and trade, the measures are used to apply pressure, change the conduct of the targeted entities and attain diplomatic or strategic objectives. Within the domain of international relations, economic warfare is increasingly used as it constitutes an alternative to armed conflict and advance peaceful outcomes. The desire and interest to analyze one of the conflicts that has directly or indirectly involved the entire globe, and that has been debated in the newspapers and social media for the past two years, is the main reason why this research was undertaken. Indeed, the Russian-Ukrainian War constitutes an unprecedent event in terms of the far-reaching consequences that it has caused. For this very reason, a coordinated effort among various states and organizations has developed to condemn Russia for threats to international peace and security that it has brought about. Prominent among the various measures that have been taken are economic sanctions against the country and Russian oligarchs. The analysis of these constitutes the main subject of the work which sets out to answer the following question:

Have the economic sanctions adopted been too stringent, consequently leading to an infringement of the fundamental human rights of those affected, or do they conform to the standards and rules set by recent case law and are therefore to be deemed lawful?

The work will be articulated as follows. The introductory chapter provides a comprehensive contextualization of economic sanctions, delving into all the historical and legal issues surrounding these means. The analysis departs from the earliest known application of restrictive measures in the Middle Ages up to the First World War, stressing that during that period blockades, embargoes and trade restrictions were employed to undermine adversaries and gain the upper hand in conflicts. Subsequently, insight is provided over the international standards and legal advancements that influenced the employment of sanctions and their codification as a legal instrument. The focus then shifts to the utilization of economic warfare in the unfolding of two major wars, World War II and the Cold War, in order to highlight the complex interaction of geopolitical factors and economic

pressure. Moving forward, the potential undesirable effect of punitive measures are exposed, most notably their negative repercussions over the civilian population, proposing to the reader a critical evaluation of the challenges of certain penalty regimes. Subsequently, a reconceptualization of economic sanctions in the 21st century, along with the changes it has brought, such as the introduction of coercive measures directed at individuals, is exposed. Ultimately, a framework for deeper investigation of economic sanctions is established, with a view to understanding their underlying typologies and purposes. The final portion of the chapter is aimed at exploring the potential consequences of economic warfare, both from a juridical and economic perspective.

The second chapter of the thesis begins from the transnational nature acquired by terrorism in the aftermath of 9/11, introducing the first policy tool that was devised to counter them, namely financial sanctions. The work then focuses on the regulation of economic sanctions from a legal point of view, establishing a parallelism between the sanctions' mechanism operating at the level of the United Nations and that of the European Union. In both regimes the legal basis, the requirements that must be in place in order for the sanctions to be legal and their human rights consequences are outlined. The relationship and hierarchy between international and European law has been established precisely by a legal case involving a peculiar form of economic sanctions: the well-known Kadi Saga. This represents the most solid and recent case law on multilateral coercion. The remainder of the chapter discusses in depth the most important issues in the case, the conclusions of which will form the conceptual basis for the third chapter.

The final section of the paper is the most complex and experimental one, as it sets out to answer the research question that gave rise to the desire to explore this topic more in depth. The chapter starts from examining the sanction regimes imposed on Russia since 2014, following the annexation of Crimea and the resulting crisis in Western Ukraine. Proceeding in the course of the writing, the reactions, mainly in the form of sanctions, that the Russian-Ukrainian War provoked are described, focusing on three main levels: the measures adopted by the United Nations and the Security Council along with their limitations, the European reaction to the conflict, and the national retaliation, examining in particular the policies adopted by the United States and Australia. Next, the jurisdictional protections that are offered to individuals subject to the sanctions are analyzed, first from an international and European perspective and then from a national perspective, specifically considering what happens in Italy. The last part of the thesis is the evaluative part, in which an attempt is made to draw conclusions about economic sanctions as a whole. First, it is asked whether economic sanctions are effective in achieving their objectives, through a cost-benefit analysis. Secondly, an

attempt is made to give a response to the original question that gave rise to the work, assessing whether sanctions are compatible with the well-known Kadi jurisprudence that established the requirements for sanctions or, at the contrary, whether they are detrimental to the rights of the individuals affected by them. In essence, the question asked is the following:

Should coordination be devised in formulating more efficient sanction mechanisms, inviting more and more states and entities to adopt them, or should other methodologies be used in order to loosen Russia's grip?

CHAPTER I – The use of economic sanctions as a tool of war: historical trends and legal issues

1.1 The origins of economic warfare: from the Middle Ages to the First World War

Throughout history, humans have used several 'physical' means to influence, convince, and pressure one another in political settings and to defend their own polity. Traditionally, the defense of an organized territory and community has taken place through the use of force. During the fifteenth century, wars were waged not only by sovereign states but also by a number of independent political bodies. The social system of warfare was only to a restricted degree comprised by long-term state-controlled organizations. The latter were relatively simple and only a few qualified administrators were needed for their management. Certain states possessed a small number of warships, others infantry or cavalry troops organized in small permanent units and the majority had started to obtain artillery. Armed guards and garrisons were placed in the rulers' households and castles as well as in feudal lords' and bishops' mansions. Fortifications were constructed by those who had the financial means to bear the expense as a form of defense against both internal and foreign opponents as well as local uprisings. Military power was dispersed and it was a component of various locally-based institutions. The social structures for war have undergone significant alteration by late seventeenth century. The organization of the armed forces followed centralized notions regarding uniformity in equipment, training and division into different administrative and operational departments, such as regiments, battalions and companies. Great adjustments were also made to military tactics and strategy. On the battlefield, infantry overtook cavalry in importance, gunpowder-based weapons predominated and siege warfare underwent significant changes as heavy guns and new construction techniques were widely used. Gun-equipped vessels attained supremacy at sea. The capability to navigate and engage in combat from a distance also allowed to infiltrate the maritime trade network and participate in disputes involving trade and colonies. One of the most apparent transformations in society was that the quantity of individuals working in specialized armed forces drastically increased from roughly tens of thousands in 1500 to several hundreds of thousands by 1700[1].

The above analysis demonstrated that with the passage of time there has been an evolution in the methodology of waging war through the use force. However, at the same time, other techniques have been developed in order to make enemies yield to one's demands, which do not necessarily

[1] Jan Glete, *War and the State in Early Modern Europe – Spain, the Dutch Republic and Sweden as Fiscal-Military States* (Routeledge, 2002);

involve the use of force and in some cases even constitute an alternative to war. Among these appear the means of economic warfare.

Economic sanctions have deep historical roots. The first recorded use of this foreign policy tool in international relations dates to the 5th century, precisely around 432 B.C, with the Megarian Decree. As a revenge for the abduction of three women, Athens' governor Pericles banned the sale and importation of goods from Megara in the city's markets. Another example of economic asphyxiation in ancient times occurred in the 1760s during the rivalry between the British mother country and the American colonies. The latter made use of economic warfare through boycotts against English merchants in order to alter the laws governing taxation and trade that were strangling their marketplaces[2]. The application of sanctions in that period relied on two conditions. In the first place, the imposition of a blockade had to be obligatorily preceded by a formal declaration of war. This means that they did not constitute a minor administrative act, rather they were an actual combat strategy. If a state of war was present, it was considered acceptable to exert severe and harsh pressure over civilians. Nonetheless, once the conclusion of a peace treaty was reached, all economic barriers had to be removed and liberty of trade had to be re-established. The second necessary requirement of sanctions in that age was material. In fact, the main objective of economic weapons was reducing the income and basic provisions of competing states, leading to the starvation of the population which caused considerable damage. At that time, however, existing polities were not sufficiently interdependent in terms of trade, which explains why economic pressure did not always suffice to win a war[3].

The birth of modern sanctions, indeed, is strictly tied to the emergence of globalization, corresponding according to historians to the years between the 1840s and the 1914s[4]. Although economic sanctions emerged very early in antiquity, it was in the twentieth century - notably in the World War I (WWI) era - that they gained prominence and were more clearly conceptualized. In that period the international system was dominated by a handful of major powers and operated according to European legal principles. As a result, the penalties imposed were meant to defend civilization against barbarism. Whilst the Central Powers were expanding their reach in France, Belgium, Russia and the Balkan area, the Allied powers had not completely isolated their adversaries' economies by

[2] Masahiko Asada, *Economic Sanctions in International Law and Practice* (Routledge, 2020) 84;
[3] Nicholas Mulder, *The Economic Weapon: The Rise of Sanctions as a Tool of Modern War* (Yale University Press, 2022) 15;
[4] Ronald Findlay and Kevin O'Rourke, *Power and Plenty: Trade, War and the World Economy in the Second Millennium* (Princeton University Press, 2007) 365-428;

late 1915. For this reason, they were constantly blamed of not possessing the adequate resources to deal with the conflict in an efficient manner.

To overcome this problem, the Entente Powers, directed by Great Britain and France, waged an unparalleled economic warfare against the Central Powers, namely the German, Austro-Hungarian and Ottoman Empires. Economic sanctions were initially intended to disrupt the flow of goods, energy, food, and information to their enemies. This damaged particularly Central European and Middle Eastern countries, where it is estimated that around 900.000 individuals perished due to malnutrition and disease. The system of economic sanctions was eventually centralized in the hands of a single institution, the Ministry of Blockade, chaired in England by prominent Lord Robert Cecil. The resulting blockade apparatus comprised a licence system for imports and exports, a physical maritime barrier and a scheme for restricting the imports from neutral nations. At a later stage, blacklists including the names of firms engaging in commerce with the enemies were inserted. These tools have worked in cutting off the Reich's pre-war supplies. The Allied and Associated Powers had, by 1918, fully engaged in a conflict aimed not only at military defeat of their opponents, but also at the reformation of their political systems[5]. The United States, on a similar vein, also endorsed a major political and ideological transformation among their objectives[6]. The then-in-office President Woodrow Wilson was at first reluctant to measures of economic coercion as he associated them with the common practice of "European imperialism" and "gunboat diplomacy"[7]. He was a firm supporter of the US foreign policy tradition known as "Monroe Doctrine", postulating for an active isolationism of the country and condemning Western Hemisphere colonization by Europeans[8]. In accordance with his liberal philosophy, expressed in February 1917, any prospective peace should have been based on four guiding ideas: independence in governance, geographical integrity, economic peace and limitation over the use of force. Economic peace required a protection against restrictive policies attempting to stifle a nation's industrial life[9]. Nevertheless, such a prohibition presented a clear issue: the perception of economic sanctions is frequently subjective. The US itself had levied tariffs throughout the nineteenth century and warranted their application based on the existence of comparable policies in other nations. Consequently, Wilson changed his conceptualization and approved economic warfare solely over entities denying equitable and impartial trading opportunities

[5] Mulder (n.3) 68;
[6] *Ibid;*
[7] Mulder (n.3) 69;
[8] Monroe Doctrine (2 December 1823), National Archives, https://www.archives.gov/milestone-documents/monroe-doctrine. Accessed 2 May, 2023;
[9] Mulder (n. 3) 69;

to others. Germany was identified as one of such nations and Wilson began to enforce impediments to trade, including embargoes, boycotts and blockades.

In the President's words', economic sanctions are:

> *"Something more tremendous than war": there was the consciousness that the threat was "an absolute isolation . . . that brings a nation to its senses just as suffocation removes from the individual all inclinations to fight ... Apply this economic, peaceful, silent, deadly remedy and there will be no need for force. It is a terrible remedy. It does not cost a life outside of the nation boycotted, but it brings a pressure upon that nation which, in my judgment, no modern nation could resist."*[10]

Wilson believed that the menace of economic warfare was an alternative to war, forcing a nation to move to a peace agreement because economic conditions cannot be prolonged too much. A boycott could seriously impair the standard of living of a contemporary country engaged in commerce. Wilson placed more emphasis on the psychological effects of being isolated from world trade rather than on the most tangible ones of having to close down manufacturing plans because of the inability to procure the necessary raw materials. Economic sanctions are more a threat than an actual means of imposition. Whilst the French and European allies were concerned about Germany's rivalry in strategic and economic sphere, the US went a step further, attaching these tools the potential of bringing about democratization among states[11]. Wilson eventually incorporated sanctions in his renowned 14 Points speech to Congress on 8 January 1918.

1.2 The codification of economic sanctions in the League of Nations and the interwar years

Following the severe damage brought about by WW1, the vacillation between hope and despair acquired a new urgency[12]. For the purpose of maintaining peace and developing international economic and social cooperation as well as settling controversies through negotiation, the war-winning powers established the League of Nations in 1920. Indeed, as World War I was ending, a new solution emerged to the longstanding question of how to prevent war without using military force - organized material pressure. The 'economic weapon' used by the victors of the Great War was later adopted by the League of Nations to coerce noncompliant states into submission. In the aftermath of the conflict, international institutions adopted economic war tactics and redefined them as a deterrent

[10] Woodrow Wilson, *Woodrow Wllson's Case for the League of Nations* (Princeton University Press, 1923) 67, 69, 71;
[11] Mulder (n.3) 72;
[12] Mulder (n.3) 1;

to future wars. The post-war years witnessed the emergence of a distinctly liberal approach to the international conflict, including new tactics and means to map and control the structure of the global economy. This brought about a change in the connotation of war and peace: a policy of coercion that was previously exclusive to wartime, which involved cutting off human communities from global exchange through commercial and financial blockades, was for the first time applied in a broader range of scenarios. A widespread belief spread that the conduits of global trade and finance could potentially function as a disincentive to the occurrence of a large-scale conflict. The resort to sanctions gained prevalence among the international arbitration movement, an association of legal experts in Europe and the United States, seeking to avert wars by referring all inter-state disputes to an impartial arbitrator, preferably a global court.

The practice of economic sanctions was subsequently legally codified by Article 16, para. 1, of the Covenant of the League of Nations which reads as follows:

> *"Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not"*[13].

Quoting a German diplomat, the purpose of this Article is to permit "the war of all against war"[14]. In August 1921, the League instituted an advisory body tasked with the interpretation of this provision, the International Blockade Committee (IBC). This concluded that the sanction regime was activated following the prerequisites enshrined in Article 10 of the Covenant: "external aggression" against the "territorial integrity" or "political independence" of a member state[15]. It punished the breach of inter-state peace between independent states, saving minor instances of domestic uprisings, military coups and civil wars. The League Council was the body entrusted with the administration of sanctions. Publicity played a crucial role in the deterrent effect of sanctions. Their efficacy was dependent upon the public announcement of the Council's sanction decision to stimulate the public opinion of the

[13] League of Nations, *Covenant of the League of Nations*, 28 April 2019;
[14] Letter from Ludwig Meyr to Konni Ziliacus, (March 1925);
[15] League of Nations, *Covenant of the League of Nations*, 28 April 2019;

targeted country to take action and possibly restore the *status quo ante* without implementing sanctions. This mechanism constituted a blend between democratic ideals and the pursuit of peace.

To some extent, economic pressure fulfilled its role as a precautionary measure. Due to the fear of Article 16-based retaliation, Yugoslavia in 1921 was discouraged from invading Albania and the same happened for Greek dictator Thedoros Pangalos in 1925 in his intention of taking military action against Bulgaria. These two episodes are considered *causes celebres* in the League's peace literature. The imposition of sanctions averted a potential escalation into the fourth Balkan conflict within ten years.

Nonetheless, it ought to be pointed out that the success in the implementation of economic sanctions is not automatically guaranteed, because it is determined by the presence of several conditions: economic sanctions work in cases where there are liberal economies interconnected with one another, while in isolated systems they are not able to fulfil the expected outcome. Sanctions need to be agreed by a large group of countries and need to be executed in the same way by the whole group. Moreover, their success also depends on whether the targeted country has the internal resources for contrasting the application of these means or not. Whilst smaller states might be intimidated by the menace of economic warfare, this might backfire when dealing with more powerful countries able to defy the League. The Italo-Ethiopian War of 1935 clearly epitomized this limitation and it is often portrayed as the beginning of the "greatest experiment in modern history"[16]. Indeed, following the invasion of Ethiopia by Mussolini, the League rapidly declared it to be an aggressor and 52 out of the 58 members applied sanctions against Italy through an exceptional cross-border cooperation. Article 16 was triggered and the economic blockades envisioned were applied in the form of embargoes on crucial exports and imports that sought to cut off Italy's access to foreign exchange, a ban on weapons and a financial freeze. Nevertheless, these pressures did not prevent Italy from invading Ethiopia. Italy's swift and forceful attack, which involved the use of chemical weapons, thwarted a gradual economic counterattack that relied on building up pressure over time. Britain and France were hesitant to take further action because they were concerned that Italy might retaliate against their respective empires, whereas the United States maintained a neutral stance. Generally speaking, the League was always hampered by the absence of the US, one of its founders, in cordoning some economies. The US were not involved in the process of sanctions enactment, they were not following them in a rigorous manner. Italy's economy underwent severe setbacks and it was only able to protect itself from a major breakdown through harsh measures like rationing and

[16] League of Nations, Sean Lester Archives, Diary (1935-1947), vol. 1, entry for 17 November 1935, pp. 24-25 in Mulder (n.3)

deflation. Despite this, Italy completed the invasion of Ethiopia and Abyssinia. The confrontation between Italy and Ethiopia is often regarded as a triumph of fascism and imperialism over internationalism. At the same time, from a strategic point of view, it is identified as the momentum that mostly contributed to shed light on the risk associated with the use of sanctions as means to preserve global stability. One of the main shortcomings of economic warfare during the interwar years was the failure of states to cooperate among each other when enforcing sanctions and the lack of common legal standards for liability and regulatory procedures. Inadequate control by League members and ineffective incorporation of sanctions into national regulation and administrative law was due to the presence of different laws, regulations and political will among the various states[17].

1.3 The role of the 'economic weapon' at the onset of the Second World War and under the Cold War

At the outbreak of World War II (WWII), the positive value of the 'economic weapon' was once again recognized. The system of economic sanctions in this period was much more efficient than the previous one, mainly due to a centralized decision-making process and the integration within the edifice of collective security, already comprised by Great Britain and France, of two new great powers: the United States and the Soviet Union. The initial phase of the European war questioned the common understanding of sanctions as a disciplinary action. The principal novelty at that time, indeed, was the delayed implementation of the positive assistance measures enshrined in Article 16 of the League of Nations on a grand scale[18]. Through the US's lead, notably during Roosevelt's presidency – which allocated funds in support of Latin America and China in 1938-1939 to counterbalance the growing influence of Germany and Japan – an extensive global logistics network, known as 'Lend-Lease', was conceptualized in order to fight against Axis aggression[19]. The US began to lend or lease war supplies to any nation deemed vital to the country, officially maintaining a neutral stance. What counted for a state to be eligible for aid under the policy was not whether it was democratic but rather on whether it was a victim of, or at risk of, international aggression. The British Ministry of Economic Warfare, even prior to the entry of the US in the war in 1941, had already undertaken a blockade plan together with the French Ministère du Blocus, aimed at keeping crucial resources, including for instance Turkish chrome and German Petroleum, away from German control, giving rise to an internationalist project. German exports to the UK were cut by 80% in two months due to British import restrictions. The Ministry's activities might be divided into three clusters. First of all, the proclamation of legislation, such as the 'Trading with the Enemy Act', limiting as far as

[17] Alexander Kern, *Economic Sanctions – Law and Public Policy* (Palgrave Macmillan, 2009) 16-17;
[18] Mulder (n. 3) 261;
[19] *Ibid;*

possible the relationship between British businesses and foreign businesses that operate under British law in Germany. The Board of Trade published a blacklist with over 650 names of banks and organizations that were considered as adversaries[20]. Secondly, "diplomatic action" included export bans and purchase agreements for neutrals. Lastly, the Ministry intercepted commercial ships and examined their cargo. In the summer of 1941, economic sanctions performed a dual function: on the one hand they were punitive measures, while on the other hand they constituted a positive assistance weapon. Alongside the provision of Lend-Lease to the Soviets, the US escalated in the implementation of coercive policies towards Japan and established a comprehensive economic warfare framework. Three major themes in the history of economic sanctions through the interwar period were brought together in the chaotic events of 1941: the simultaneous employment of assistance and isolation to deter aggression, the challenge of engaging with economic constraints in an effective way but without ending up in war and the impact of fear or aversion towards blockades in a society in which sanctions have become a norm[21]. By 1943, the "United Nations blockade" emerged as the expression to denote the economic pressure on Europe. The UN's involvement in the war developed in two strands: economic and air warfare tailoring enemy civilians and these same individuals received material assistance thanks to administrative planning. In the Moscow Declaration, which was released on October 30, 1943, the foreign Ministers of the US, Britain, Soviet Union and China set up a postwar security organization, collaborating to achieve a common purpose[22].

Economic sanctions were codified within the United Nations Organization at its birth in 1945, creating the foundation for something that the League has failed to establish: a differentiation between the employment of force that represents an actual war and techniques of coercion, among others economic warfare, that do not reach the level of war and keep peace in theoretical terms[23]. When the Allies met at Dumbarton Oaks in August through October 1944, the arrangement of economic sanctions of the League was revised. Sanctions were acknowledged as a tool for both halting and controlling the outbreak of war. The incorporation of economic sanctions in the UN Charter illustrated the accomplishment of a novel type of internationalism and a transformation in long-standing international law[24]. In the aftermath of World War I (WWI), many denounced sanctions on the ground that they were an illegal way to wage war at a time of peace. In 1945, however, fortunes have changed in favor of the sanctionists, which now predominated over the neutralists. The rationale behind this

[20] Trading with the Enemy (Specified Persons) Order of 13th September 1939 (S.R. & O., 1939, No. 1166);
[21] Mulder (n.3) 276;
[22] *Ivi,* 284;
[23] *Ivi*, 286;
[24] *Ivi*, 288;

shift was not given by a change in the nature of sanctions, whose perception was not anymore as coercive. Instead, following a period of intense violence, leading up to the atrocities of Auschwitz and the destruction of Hiroshima, the threshold of violence had increased to such an extent that sanctions appeared relatively insignificant by contrast. By 1945, the circumstances were in place for the concept of putting an end to violence to firmly take root[25]. A substantial coalition of nations was for the first time in history capable and eager to cooperate and arrange resources for solidarity, in addition to condemning the aggressor's wrondoings'. The intent of the economic warfare tools, however, changed together with the changing priorities in international relations. If the main scope of interwar sanctions was preventing hostilities between states, since the aftermath of World War II unilateral and multilateral sanctions have been more internal-oriented, with a focus on tackling major breaches of fundamental human rights, persuading authoritarian regimes to transition towards democratic systems, punishing criminals and combatting international terrorism. The period between the two World Wars was marked by an increasing sanctioning activity conducted primarily European and American countries, with a minor participation of the non-Western world. Throughout the remainder of the century, the practice became universal and was adopted world-wide. The United States assumed a leading role, whereas the Eastern bloc of socialist countries and newly established nations in the Third World either rejected or seized upon the instruments of economic constrain[26].

The political, ideological and military confrontation which unfolded from 1947 between the two powers that emerged victorious from World War II gave rise to the Cold War, pitching the capitalist United States against the Communist Soviet Union. As in previous wars, economic sanctions have assumed a predominant role in this conflict. In the early years of the rivalry, ranging from about 1950 to 1975, approximately 1/3 of financial restrictions were levied by the United States, mostly in the form of trade and arms embargoes[27]. The purpose of the sanctions was that of undermining the stability of political regimes and controlling the course of military hostilities, either by forcing combatants to cease animosities or advocating for the territorial claims of sending parties'[28] . They served as a precursor to nuclear strategy and the major powers targeted were characterized by socialist regimes, such as the Soviet Union, Cuba, Vietnam, Communist China and North Korea. One relevant enactment in this regard is the 1949 Export Control Act (ECA), a consolidation of earlier regulations concerning export controls that were implemented during World War II (WWII), possessing three main justifications according to the Congress: 1) To hinder the export of basic elementary supplies

[25] *Ivi*, 289;
[26] *Ivi*, 290;
[27] T. Clifton Morgan, Constantinos Syropoulos, and Yoto V. Yotov, 'Economic Sanctions: Evolution, Consequences, anche Challenges' (2023) 1 Journal of Economic Perspectives 6;
[28] *Ivi,* 7;

from the US as the world was recovering from the war and undergoing severe scarcities of numerous resources; 2) To direct exports to nations to which the US wanted to prioritize aid through initiatives like the Marshall Plan; 3) To preclude the Soviet Union and the Communist Chinese government from acquiring any commodities or technologies which could improve their ability to disseminate communist values and enhance their military capability, given the Czechoslovakia's communist takeover and Berlin's 1948 blockade[29]. In 1977 there was the promulgation of the International Emergency Economic Power Act, granting a vast mandate to the US President in governing various forms of economic transactions after a national emergency has been announced. This legislation was recognized as the universal law regulating US economic sanctions, oftentimes in conflict with then-current customary international law[30]. Despite the United States remained the most prolific sanctioner, European countries also started to employ economic warfare, defying the economic dominance of the USA. The European Economic Community (EEC) was starting to fulfil its potential of enabling its members to speak and act unitarily and jointly. The United States, for its part, started to manifest the first vulnerabilities, among which the War in Vietnam and President Richard Nixon's determination to authorize the US dollar's exchange rate to fluctuate unilaterally as well as the 1974-1975 Organization of the Petroleum Exporting Countries (OPEC) oil embargo, which caused oil prices to rise, strengthening Soviet power and possibly resulting in more aggressive behavior elsewhere in the world[31].

1.4 The 1990s sanctions decade: a watershed moment for the regime of comprehensive economic sanctions

Throughout the 1990s there was a widespread optimism that the international community was about to enter into a "New World Order", characterized by the spread of democracy and liberal economic ties, a significant decline in interstate warfare and a greater management of conflicts and cooperation by international organizations[32]. The culmination of the Cold War with the disintegration of the Soviet Union in 1991 gave rise to an increase in the use of these tools, to such an extent that the 1990s were given the label of "sanctions decade". This deterrence and punishment tool has been increasingly exploited with the conviction that it could successfully reinforce compliance with international laws and standards as well as avert conflict without resorting to force. From this period onwards, the United Nations began to adopt a series of sanctions in reaction to wars and humanitarian

[29] Kern (supra n. 17), 98;
[30] T. Clifton Morgan, Constantinos Syropoulos, and Yoto V. Yotov, 'Economic Sanctions: Evolution, Consequences, anche Challenges' (2023) 1 Journal of Economic Perspectives, 9;
[31] *Ibid;*
[32] Michael N. Barnett, 'Bringing in the New World Order: Liberalism, Legitimacy and the United Nations' (1997), 49 World Politics, 526;

emergencies occurring across the globe. Their goal was to put pressure on nations or organizations that were involved in a conflict or committed human rights violations to hinder the transfer of weapons and other commodities that could make the matters even worse. Nevertheless, the early enthusiasm quickly turned pessimistic, as UN sanctions did not accomplish the role they had set out for themselves, namely ceasing conflicts in disparate locations, such as Rwanda, Angola, Somalia, Liberia and the Balkans. Skeptics argued that restrictive measures were inefficient and destructive since they frequently reinforced authoritarian regimes by igniting nationalism and aiding those political systems in organizing domestic opposition to external pressure, rather than weakening them. On top of all, a number of concerns have emerged regarding the destructive humanitarian consequences that these means have brought about[33].

The straw that broke the camel's back proved to be the set of comprehensive sanctions enforced against Iraq four days after its invasion of Kuwait, via the United Nations Security Council Resolution 661 adopted on August 6th 1990, in the form of a total financial and trade embargo. In the aftermath of the first Gulf War in 1991, restrictive measures were even intensified through the subsequent UNSC Resolution 687, which amounted to provisions for the removal of weapons of mass destruction. Moreover, Iraq's possessions abroad were frozen and financial transactions with the country were barred. Economic sanctions have been very long lasting, being eventually removed only in 2003, after the invasion of Iraq led by the United States. The rationale behind the senders of economic warfare, notably the Security Council, the United States and Great Britain, was that of depriving Iraq of the resources required to sustain the conflict and affecting the Iraqi leadership on future policies. The sanctions at the time had the desired effects and managed to severely damage an economy based on the export of raw materials as well as halting the Iraqi war machine. However, at the same time, they had a number of spillover effects which were not initially considered by the international community. Indeed, those who have shouldered the most negative aspects of sanctions were the Iraqi civilians, which experienced severe malnutrition, increasing levels of child mortality, a reduction in the literacy rates and various other socio-economic problems. Although sanctions have brought the country to its knees, they have not achieved their princely mission of bringing about a change in the Iraqi political system and reducing the influence of the tyrant Saddam Hussein. On the contrary, sanctions resulted in a further enrichment of the regime, which continued to trample on the population's rights, leveraging on their weakness and isolation from the rest of the international

[33] Ranj Alaaldin, 'Economic Sanctions: Past & Future', (16 April 2009), LSE Department of International History Blog, https://blogs.lse.ac.uk/lseih/2015/04/16/economic-sanctions-past-future/ Accessed 1 May 2023;

community[34]. In the 1990s there have been numerous other sanctions mechanisms beside the one towards Iraq, particularly renowned are the ones towards the Federal Republic of Yugoslavia in 1992.

1.5 Reconceptualizing the economic sanctions system: the birth of "smart" or targeted sanctions in the 21st century

This situation brought about a reconsideration in the mechanism of economic sanctions, leading to the emergence of the so-called "smart" or targeted sanctions, emphasizing the necessity to design economic warfare in a way that only those people and organizations that committed the wrongful acts are tailored, whilst civilians are protected from any harm. Using sanctions towards individuals, not states, is a fairly recent innovation for international law and the United Nations system. The idea behind this new type of sanctions is that, by applying pressure on the key players in the decision-making process, the conduct of an individual or group will alter. They can "isolate the arena of economic coercion to a specific micro-level activity that can be identified as contributing to increasing human rights violations"[35] to condemn those accountable for the wrongful acts as well as the elites who encourage them. More tailored sanctions are also able to prevent side effects on third countries[36]. Smart sanctions can be directed at different entities – against a single person, a corporate body (such as a firm), a criminal organization, against a particular good and industry inside the economy (for example, a prohibition on the import of weapons or the sale of expensive goods) and/or against a specific area of a nation (import restrictions on merchandise made in an occupied territory)[37].

"Rather than a single tool, sanctions can now more properly be seen as a whole drawer in the Security Council toolbox, in which a wide range of tools are available for use in a variety of situations against a variety of targets"[38].

These restrictive measures are considered an evolution from the Cold War and early post-Cold War era, in which the only means that the Security Council had at its disposal was a practically comprehensive severance of all economic connections with a nation.

---

[34] G. R. Popal, 'Impact of Sanctions on the Population of Iraq' (2009) 6(4) Eastern Mediterranean Health Journal, 791-795;
[35] G Lopez, "Enforcing Human Rights Through Economic Sanctions", in D. Shelton (ed), *The Oxford Handbook of International Human Rights Law* (OUP 2013), 772-794;
[36]M. Bossuyt, "The Adverse Consequences of Economic Sanctions on the Enjoyment of Human Rights" (2000), Report for the ECOSOC Commission on Human Rights, E/CN.4/Sub.2/2000/33, pp. 1-49;
[37] Thomas Biersteker, 'Targeted sanctions and individual human rights', (2009) 65 International Journal, 99-117;
[38] J. Boulden and A. Charron, ' Evaluating UN sanctions: New ground, new dilemmas, and unintended consequences' (2009), 65 International Journal, 1-11;

Since their conceptualization, these means have been employed by the Security Council to address a variety of threats to international peace and security, including terrorism and political violence, strengthening peacebuilding efforts and agreements, reducing the spread of nuclear weapons and guarding citizens in accordance with the "Responsibility to Protect" doctrine[39]. The first recorded use of targeted sanctions dates back to 1992, compelling the Libyan government to turn over the people thought to be responsible for the 1988 Pan Am flight bombings[40]. Subsequently, also in the late 1990s, they were employed towards the military junta in Haiti, instituting a travel ban and enabling states to establish an asset freeze of all individuals involved in General Raoul Cedras's *coup d'etat*[41]. As demonstrated by the case of Angola in 1997, smart sanctions can also be directed at non-state actors, here members of the rebel group National Union for the Total Independence of Angola ("UNITA")[42].

Targeted sanctions differ from comprehensive sanctions based on certain factors. The former are distinguished for their flexible and agile character. They constitute a more adaptable policy tool, which can be adjusted depending on their desired level of influence, the purpose they set for themselves and in response to evolving target behaviors. Their popularity is derived from three distinct elements: they are compatible with other policy actions, such as diplomacy, negotiation and legal referrals; they can be used gradually and modeled in reaction to target actions; finally, conversely to comprehensive sanctions, they are "discriminatory policy measures"[43], not producing extensive and dramatic humanitarian repercussions[44]. The success of smart sanctions is dependent upon a thorough understanding of the economy and politics of a country, thus being more sophisticated than ordinary sanctions. The monitoring practice of sanctions has also become more complex. The basic procedure is unchanged, implying that the Security Council remains the main actor issuing binding resolutions over economic warfare, after first having identified a situation as posing a threat to or breaching international peace and security. Nevertheless, in the case of targeted sanctions, a number of additional actors come into play, tasked with sustaining the legitimacy of sanctions whilst assessing its effectiveness[45]. In addition to increasing the efficaciousness of UN sanctions, this greater level of complexity, in both procedural and substantial terms, yields to increased implementation expenses for the UN and member states executing those sanctions. Some

[39], Thomas J. Biersteker, Sue E. Eckert and Marcos Tourinho, *Targeted Sanctions* (CUP 2016) 2;
[40] UNSC Res 748 (March 31 1992;
[41] UNSC Res 917 (6 May 1994);
[42] UNSC Res 1127 (28 August 1997);
[43] Sue E. Eckert, "The Evolution and Effectiveness of UN Targeted Sanctions", in Larissa van den Herik, *Research Handbook on UN Sanctions and International Law*, (Edward Elgar Publishing 2017), 52-53;
[44]Biersteker, Eckert and Tourinho (supra n. 39) 17;
[45]Ibid, 16;

countries have been compelled to make further investments in the improvement of their enforcement capabilities[46].

The employment of economic sanctions as a blunt instrument of foreign policy has persisted throughout the 21st century. The last two decades have witnessed numerous episodes. These have been activated by various actors, ranging from international organizations such as the European Union and the United Nations, to individual countries, most notably the United States, and regional organizations such as the African Union.

Following the 9/11 attacks, there has been an intensification in the employment of economic sanctions, to cope with entities such as Al Qaeda, not states in the traditional sense, rather made up by individuals who share the same goals. A common belief began to spread that terrorist acts are not always traceable to governments, hence states on the whole, rather it is individuals within those states which are to blame and consequently sanctions must be planned for them specifically. A watershed moment in the regime of targeted sanctions was the passing of UNSC Resolution 1267/1999, intended to strike the Al-Qaida terrorist group at its core, by implementing asset freezing, a travel ban and an arms embargo against particular individuals or entities associated with it, Usama bin Laden and/or the Taliban[47]. Article 6 of this legislation required for the creation of a Sanctions Committee comprising all members of the Security Council and responsible for the management of the sanctions regime and the insertion within an annex of all subjects suspected of terrorism[48]. The request of a member state to introduce an individual in the list can be fulfilled solely with the unanimous consensus of all parties within the Committee, otherwise the ultimate decision is incumbent on the Security Council. The individual's country of citizenship and that of current residence ought to, three days following the Committee's approval of the record, be informed and notify in the shortest possible time the individual in question. The global activity of these radical organizations is reflected in a network of equally global-anti-terrorist measures which target a large number of subjects. The Security Council strengthened its clear stance over the fight against terrorism through the adoption of similar Resolutions. One among them, specifically, extended the jurisdiction and scope of sanctions to encompass individuals of any nationality, regardless of their location, breaking the hitherto existing territorial connection between sanctions and Afghanistan[49]. As far back

[46] *Ibid;*
[47] Peter Hilpold, 'EU Law and UN Law in Conflict: The Kadi Case' (2009) 13 Max Planck Yearbook of United Nations Law, 146;
[48] UNSC Res 1267 (15 October 1999);
[49] UNSC Res 1390 (16 January 2002);

as 2009, the 'Consolidated List' included the names of 142 individuals related to the Taliban, 258 with Al Qaida and 111 other groups and undertakings connected to Al Qaida[50].

The United Nations has not been the only international organization to cope with the emerging threat of international terrorism and armed force. Starting in 1999, also the European Union followed suit with the enactment of economic warfare. Its sanctions regime is articulated in two different typologies: external smart sanctions denote those measures which are enforced following a mandatory United Nations Security Council Resolution to uphold the UN's projects; internal sanctions, conversely, are autonomous and determined by the EU[51]. Prior to the 9/11 terrorist attacks, the EU institutions had to develop their own counter-terrorism policy in order to enforce Security Council Resolutions 1267 and 1333. They operated based on the European Community Treaty and the Treaty on the European Union (TEU), paying special attention to the second and third pillars of the latter, "The Common Foreign and Security Policy" and "Justice and Home Affairs" respectively. As a result, the European Union passed legislation aimed at fulfilling Resolution 1267's binding provisions and, to keep up with the improvements implemented by the UN, it was determined to incorporate the last updates as well. A decisive breakthrough in the restrictive measures regime of the European Union is represented by the adoption of Regulation 467/2001, concerning restrictive measures over Talibans in Afghanistan, such as the embargo on certain goods and services, the reinforcement of flight restrictions and the prolongation in the suspension of funds and other assets[52].

Despite the blacklisting process is rational and beneficial since, by only focusing on the actual perpetrators of international crimes, it reduces the probability of incidental harm to civilians, it is not without its problems. One of the concerns regarding smart sanctions is the protection of the fundamental rights of the individuals that are tailored. Indeed, assessing the effectiveness of targeted sanctions in preventing violations of the rights of the intended target has been a subject of profound controversy. Most notably, the inclusion of people on lists of suspicious terrorists is carried out by means of confidential information and subjective decision-making procedures without giving those affected the opportunity to intervene and assert their legal rights. As a result, some individual rights are affected, mainly those which fall under the scope of effective judicial protection: the right to receive information on the reasons for being listed, the right to defend oneself and present one's case,

[50] Peter Hilpold, 'UN Sanctions Before the ECJ: The Kadi Case' (2010), Oxford University Press, 22;
[51] Torbjorn Andersson, "Developing Multi EU Personalities: Ten Years of Blacklisting and Mutual Trust", in Iain Cameron, *EU Sanctions: Law and Policy Issues Concerning Restrictive Measures,* (Intersentia 2013), 69;
[52] Eu Reg 467 (6 March 2001);

the right to access evidence, freedom of movement, the right to privacy and family life, personal liberty, property rights and the principle of proportionality[53].

Particularly remarkable and interesting, among the recent sanction regimes, is the one activated twice towards the Russian Federation, one in 2014 following the annexation of Crimea and interference in the Donbass region in Western Ukraine and the more recent and ongoing one in 2022, following Russia's invasion of Ukraine. The latter will be the main subject of this study.

1.6 Economic sanctions in the contemporary practice: definition, types and purposes

A unanimous and universal definition of sanctions does not exist. These means are situated at a junction between economic and political justifications. According to a scholar, "sanctions are a political tool - but a political tool that operates through economic regulation"[54]. Generally, they are conceived as coercive measures, whether introduced by a single state acting unilaterally or by a group of states working together, whose aim is to persuade or coerce another state to refrain from committing acts that violate international law[55].

A sanction must, by definition, be composed of two elements: (1) the existence of one or more sender states and the identification of a state to be sanctioned; (2) the enactment of sanctions to alter the target state's behavior, be it political, military or of any other nature[56]. When the sender(s) threaten(s) the prospect of economic warfare or applies sanctions without first threatening them, it is presupposed that a sanctions episode has started. Threats might be generated in various manners, including public pronouncements by government representatives, law drafting directed at a particular state or the adoption of a law that imposes fines on a target state if specific conducts are not changed. When one of the following conditions occur, the sanctioning regime is considered to be relieved: (a) the sanctioned entity complies with the requests; (b) the sender alters the requirements placed on the target; (c) the sending state's configuration is modified; (d) the type of penalty applied varies; (e) the state to which to direct sanctions has changed. Lastly, regardless of the latter's actions, a case may also be considered closed when the sender revokes sanctions or publicly drops the threat.

---

[53] Monica Lugato, "Sanctions and Individual Rights", in Natalino Ronzitti, *Coercive Diplomacy, Sanctions and International Law,* (Leiden, Brill Nijhoff 2016), 172;
[54] Perry S Bechky, 'Sanctions and the Blurred Boundaries of International Economic Law' (2018) 83 Missouri Law Review 1,1;
[55] Christopher, Joyner 'Collective Sanctions as Peaceful Coercion: Lessons from the United Nations Experience' (1995) 16, The Australian Yearbook of International Law, 241;
[56] T. Clifton Morgan, Navin Bapat and Valentin Krustev, 'The Threat and Imposition of Economic Sanctions, 1971-2000' (2009) 26 Conflict Management and Peace Science, 95;

There are numerous reasons and ways in which sanctions can be implemented. Since they are not part of a specific legal classification in international law, these restrictions are divided into different typologies. Beginning with *retorsions,* these are described as "acts which are wrongful not in the legal but only in the political or moral sense, or a simple discourtesy"[57]. States seldom resort to these unilateral self-help mechanisms. The suspension or termination of a treaty, as well as the establishment of an arm embargo, for example, belong to this category. The normative substance of *countermeasures* was positioned as part of a broader endeavor to codify international laws governing states' responsibilities, the Draft Articles of Responsibility of States for Internationally Wrongful Acts. In order to activate this type of sanctions, there must be a prior violation of subjective rights of one state which are attributable to another state. Indeed, countermeasures can only be invoked by an injured state, claiming the cessation or reparation for the wrongful act[58].

A preliminary distinction to be made is that between unilateral and multilateral sanctions. The former indicates measures imposed by one party towards a targeted entity, which may comprise a state, a group or an organization within that state, and in some cases even individuals. It is characterized for being enforced autonomously from other states or international organizations, such as the UN Security Council. The application of unilateral sanctions is regulated by the domestic legislation and policies of the sanctioning states, thus being based on the State's sovereignty right. In addition, the state initiating the sanction mechanism occasionally attempt to engage the global community in its actions, in the interest of collaboration and generally recognized rules. In most cases unilateral sanctions manifest themselves through trade restrictions. The sanctioning state may opt to limit the importation of specific goods from its domestic market by the sanctioned, which could paradoxically produce advantages in favour of the latter, encouraging the state to develop its domestic capacity in various sectors, ranging from the technological to the military one. Multilateral sanctions, instead, constitute an umbrella term for two different actors. On the one hand, they denote measures enacted within the international community by two or more states towards the same wrongdoer. On the other, the label encompasses sanctioning actions undertaken by international or regional intergovernmental organizations, such as the UN and the EU within the framework of the global system of collective security. Multilateral sanctions are self-driven measures in that States may agree to voluntarily abide to them if they can benefit from sanctioning a given nation.

[57] Bechky (n.54);
[58]Federica I Paddeu, 'Countermeasures,', (September 2015), Max Planck Encyclopedia of Public International Law, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1020. Accessed 9 April, 1923;

In addition to this initial differentiation, whose primary basis is the interaction between the various political entities involved, in this case mainly states, sanctions can be subdivided into categories. Beginning with *collective sanctions,* they are restrictions on trade on an array of items that are implemented by a coalition of at least ten states; *punitive sanctions*, secondly, are intended to impose suffering on the nation that is being tailored; lastly, the label *mutual sanctions* denotes the measures that are enforced during the Cold War era, as described earlier[59]. Sanctions can be further broken down in other groups, based on a variety of unique variables, such as the industry or area that will be affected by the aforementioned sanction. The following table provides a broad outline of the various existing penalty regimes:

TABLE 1 – TYPOLOGY OF INTERNATIONAL SANCTIONS[60]

1. DIPLOMATIC AND POLITICAL SANCTIONS

A. Limitation on diplomatic and/or consular ties
B. Revocation of the right to vote
C. Expulsion from an organization's membership
D. Revision of visa policy
E. Restriction in diplomatic personnel

2. COMMERCIAL AND TECHNICAL SANCTIONS

A. Complete or partial embargoes
B. Limitation of import/export licenses
C. Termination or suspension of trade agreements between countries
D. Reduction in the trade of specific goods

3. COMMUNICATION AND CULTURAL SANCTIONS

A. Interruption of physical communication (telephone, cable and postal connections)
B. Interruption of the transportation system
C. Diminished or canceled scientific collaboration, educational relations, sports contracts and tourism

[59] Golnoosh Hakimdavar, *A Strategic Understanding of UN Economic Sanctions: International relations, law and development* (Routledge, 2013), 25;
[60] The following table was created using information provided by Margaret P. Doxey, *International Sanctions in Contemporary Perspective* (Palgrave Macmillan, 1987), 10-12;

4. TARGETED INDIVIDUAL SANCTIONS

A. Limitation on the freedom of movement of individuals

B. Travel ban

C. Freezing of assets or funds

5. ECONOMIC/FINANCIAL SANCTIONS

A. Limitation or prohibition on financial transactions

B. Refusing entry into the financial market

C. Prohibition on investment

D. Revocation of financial resources

The task of identifying each individual typology of international sanctions is beyond the scope of the current work's general purpose. The focus will be directed to the most common type of sanctions, the economic ones.

Economic sanctions include several types of penalties, implemented either individually or integrated with one or more categories of restrictions. The use of one type over another may invalidate or promote the success of sanctions in their goal of influencing sensitive sectors of the target country's economy. The prevalent economic sanctions are: *commercial*, *financial* and *asset freeze*[61]. Beginning with commercial ones, in cases where countries enforce only one type of sanctions, the most commonly used tool is "export control", namely the implementation of a set of regulations that limit the transfer of commodities and the rendering of services to people and organizations in the sanctioned nation. Export controls are preferred over import restrictions for a number of reasons, including the former's ability to grant those enforcing sanctions access to a privileged position as suppliers of essential products, for instance weapons, gas and oil. The General Agreement on Tariffs and Trade (GATT)[62] provides a number of regulatory exceptions that permit contracting nations to apply trade restrictions in certain situations "for the protection of the essential interests of its security" and "in compliance with its obligations under the United Nations Charter for the maintenance of international peace and security" without the need to obtain prior authorization from other members of the agreement[63].

[61] Kimberly Ann Elliott, Jeffrey Joseph Schott, Gary Clyde Hufbauer, *Economic Sanctions Reconsidered* (3rd edn, PIIE 2007);
[62] General Agreement on Tariffs and Trade, Art. XXI;
[63] Ivi, p. 1;

Financial sanctions, in the second place, can be levied to restrain the delivery of specific financial services, limit the entry to financial markets or to available funds and economic resources. They can be directed at companies, organizations or even individuals. One of the most common financial sanctions is the confiscation of all assets within a jurisdiction that belong to a party under sanctions. Once this penalty regime is activated, it is forbidden to: A) Bargain with those who manage or own economic resources that have been frozen; B) Make funds or resources accessible to the appropriate parties or for their advantage; C) Engaging in acts that bypass the restrictions pertaining to financial penalties.

A freezing or seizing of assets consists in:

"Temporarily prohibiting the transfer, conversion, disposition or movement of assets or temporarily assuming custody or control of assets on the basis of an order issued by a court or other competent authority"[64]

Assets must be frozen, seized, and confiscated in order to preserve physical evidence of a crime or to prevent the suspect from disposing of or enjoying the proceeds of a crime. In some jurisdictions, the seizure or forfeiture of property may be used as a sanction in and of itself or as a way to guarantee that monetary fines are paid. By restricting access to assets that would have been helpful to the person or organization committing the crime or by preventing the use of the criminal assets to conduct more crimes, freezing, seizing, and confiscation hinder criminal activity.

Economic sanctions can be used for a wide range of purposes and their objectives can be classified in three different clusters: (i) to *coerce,* responding to the desire to control the intentions of a state, or another sanctioned objective, pressuring it to change its behavior; (ii) to *constrain,* aimed at limiting the reserves and supplies of the targeted entity; (iii) to *signal and stigmatize,* reporting the wrongdoing and the offending state suffers repercussions from the rest of the world[65]. The three rationales may overlap and can occur simultaneously within the same sanctioning regime, therefore not being mutually exclusive.

[64] UNODC (2004), *United Nations Convention Against Transnational Organized Crime and The Protocols Thereto*, United Nations, New York, http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf;
[65] Larissa van den Herik, *Research Handbook on UN Sanctions and International Law*, (Edward Elgar Publishing, 2017) 58;

1.7 A focus on the consequences of economic sanctions

At the conclusion of this first introductory chapter, it is necessary to analyze the potential consequences entailed by sanctions regimes, namely the economic damage and costs that they yield, denoted with the umbrella term "economic impact". According to economists, economic warfare can affect three different types of actors: the targeted nation, indirectly the primary sanctioner through the imposition of countersanctions and third party countries[66]. In order to observe the repercussions of sanctions over targeted entities, academics made use of a range of datasets and econometric techniques, which resulted into four empirical conclusions[67]. In the first place, it was corroborated that restrictive measures had a detrimental influence on a variety of economic agents, namely firms and individuals, industries and activities located in the tailored country. Additional indicators of the comprehensive welfare of a nation, such as trade, foreign direct investment and governmental stability are also adversely affected by these means, having to endure their effect for a long time, even once the penalty regime has been lifted. Ultimately, scholars verified that the outcome of punitive measures varies depending on certain parameters, comprising their typology (travel bans, financial restrictions, trade sanctions), whether they are carried out unilaterally by a single state or multilaterally through an international organization and on the peculiarities of each instance. Those becoming the target of sanctions commit to establishing relationships with third countries, diverting their commercial activities and vital economic agents there, as well as adopting strategies to reciprocate against sanctioners.

Moving on to explore the effect of sanctions on a second subject, the sender, it can be noted that the literature on the topic is not extensive, possibly suggesting that the influence typically remains somewhat minimal. One potential motivation accounting for the lack of interest may lie in the fact that states imposing sanctions possess substantially larger economies than those of the sanctioned ones, eroding their sole mutual economic interdependence. Furthermore, entities exposed to retaliatory countersanctions might have the ability to reduce, or at the very least, alleviate the negative consequences on their community. In line with the existing research, recent data indicates that the repercussions on the primary sanctioners is likely to be minor and limited[68].

Lastly, regarding the link between sanctions and third parties, it is possible to discern two separate and contrasting routes. The former is the direct "extraterritorial" channel which commonly conveys

[66] T. Clifton Morgan, Constantinos Syropoulos, and Yoto V. Yotov, 'Economic Sanctions: Evolution, Consequences, and Challenges' (2023) 1 Journal of Economic Perspectives, 12;
[67] Gabriel Felbermayr, T. Clifton Morgan, Costanstantinos Syropolous, and Yoto V. Yotov, 'Understanding Economic Sanctions: Interdisciplinary Perspectives on Theory and Evidence' (2021) 135 European Economic Review;
[68] Richard D. Farmer, 'Costs of Economic Sanctions to the Sender' (2000) 23(1) World Economy;

an unfavorable result on third countries; the indirect "general equilibrium" channel, instead, produces the opposite effect on third countries, a positive one. Disruptions to economic activity brought by sanctions can lead to the expansion of commercial, financial and other collaboration with third nations as a replacement for missed business prospects. To give a practical and recent example of the general equilibrium effect, following the Russian-Ukrainian War, India and China's imports of Russian oil increased[69]. However, as commercial activities are redirected across many non sanctioned states, the general equilibrium impact on single third nations is modest. "Extraterritorial" or "secondary" sanctions are described as punishments inflicted upon individuals, corporations, institutions and other entities from non-sanctioned countries because of their involvement in business activities with the sanctioned state. Mainstream media and governmental statements indicate that these outcomes exercise a disadvantageous effect on entities that are not subjected to sanctions, which frequently judge these penalties as arbitrary and unlawful[70].

An additional factor to be considered in the imposition of sanctions is the level of poverty within the sanctioned country. If economic warfare is applied towards a rich country it has one effect; in the case of poor countries, however, it has a quite different one. Impoverished individuals face numerous hardships, among which low living standards and lack of economic opportunities. Restrictive measures cause various burdens, which oftentimes are shouldered by the most vulnerable sectors of the population, intensifying their level of grievance. The worsening of their living conditions induces these people to seek vengeance and potentially engage in violent behavior. The frustration and rage of poor people is sometimes directed toward foreign targets, who are held responsible for their suffering. Indeed, research has shown the existence of a positive correlation between the onset of economic sanctions and the incidence of international terrorism[71]. From this it follows that, although penalties are intended to produce advantageous results for domestic and international audiences, such as compelling disobedient states to abide by norms and laws, it might result in unpredicted adverse consequences, causing, for example, an increase in acts of terrorism.

Economic warfare represents one of the greatest legacies of the 20th century and is essential to comprehending its seemingly contradictory approach to war and peace. If a country is subjected to an extensive blockade, it is likely to experience societal breakdown. Sanctions are more and more

[69] Jamal I. Haidar, 'Sanctions and Export Deflection: Evidence from Iran' (2017) 32(90) Economic Policy; Tibor Besedes, Stefan Goldbach and Volker Nitsch, 'Cheap Talk? Financial Sanctions and Non-financial Firms' (2021) 134 European Economic Review;
[70] Jeffrey A. Meyer, 'Second Thoughts on Secondary Sanctions', (2009) 30 (03) University of Pennsylvania Journal of International Law;
[71] Seung-Whan Choi and Shali Luo, 'Economic Sanctions, Poverty, and International Terrorism: An Empirical Analysis' (2013) 39 International Interactions;

difficult to trace, there are multiple means for combatting an economic war. It is challenging to detect their lethal consequences, even to those who make use of them. Sanctions are appealing not only for their potentialities, but also because of their simple utilization for their handlers. It is certainly better to have economic sanctions rather than armed conflict but their application brings about a new dimension of global interchanges that is really difficult to control.

CHAPTER II – Economic sanctions at the international and supranational level: a comparison between UN and EU approaches in the aftermath of 9/11

2.1 The use of economic sanctions against international terrorism in the wake of 9/11

The four highjackings of 11th September 2001 marked the deadliest and most unprecedent terrorist attacks in the history of mankind, costing the lives of nearly 3.000 people and injuring more than twice as many. The then American President George Bush immediately condemned the incident, launching the well-known 'War on Terrorism', signaling the apogee of the global expansion of international terrorism[72]. The latter has become an extra-state, transnational phenomenon, which does not have a legal nature of states and which finds its prerequisite in the presence of international financing, otherwise terrorist organizations could not live. Since then, terrorist techniques have been deployed throughout Europe, although the Middle East, Africa and Asia witnessed the most violent events. Terrorism on an international scale draws sustenance from local issues, to later converge into worldwide disputes between identity groups that share cultural or religious characteristics. The purpose of the perpetrators is causing mass casualties, creating widespread social upheaval and generating political repercussions[73]. The war on terrorism resulted in the overthrow of the governments in Afghanistan and Iraq, based partly on allegations of supporting terrorism and brought at the forefront the beginning of a 'long war against Islamofascism'[74].

9/11 triggered a mobilization by all states in ameliorating their counterterrorism strategies and devising punitive mechanisms that could be effective. In this context there was the emergence of financial sanctions, so that terrorists and terrorist funding states were deprived of the required resources and finance. In Bush's words, "We will starve terrorists of funding, turn them against each other, rout them of their safe hiding places and bring them to justice"[75]. Continuing in the analysis of the American context, its legislative apparatus swiftly set in motion to counter this growing threat. In October 2001 the USA Patriot Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act) was enacted, entitling authorities to track, freeze and seize resources assumed to be linked to terrorism. In addition, a list was compiled by the US Department of the Treasury's Office of Foreign Assets Controls (OFAC), into which were inserted Specially Designated Nationals (SDN) subject to asset freezing and with whom engaging in transactions was prohibited on account of their involvement in radical activities.

[72] Paul D. Williams and Matt McDonald, *Security Studies: an introduction* (Routledge 2018), 144;
[73] Keen Booth and Tim Dunne, *Terror in our time* (Routledge 2011);
[74] Williams and McDonald (n. 72), 396;
[75] The White House, 'Fact sheet on terrorist financing executive order' (24 September 2001);

Financial sanctions constitute a form of economic warfare implemented in pursuit of several rationales. In the first place, in order to deter entities from pursuing illegal undertakings, the senders impose costs on the targeted economy, discontinuing bilateral economic transactions such as trade, arms sale and foreign assistance. Once this behavior has been rectified, the two actors can restart their economic cooperation. The reasoning behind this theory is that the tailored subject will balance its current policies with the potential loss of a trading partner, to eventually be enticed to disengage with terrorism and similarly extremist endeavors[76]. Secondly, financial sanctions aim at rendering unavailable to a given party the necessary means and instruments to achieve their goals, including the required technology and financial infrastructure. This deprivation can hamper the capability to support proxies, finance military activities or partake in activities that undermine global stability. Finally, symbolic communication can also play a key role in deterrence. Indeed, they can act as precursors of more stringent measures ahead or conversely advocate for prudence and caution, opting to prevent unnecessary conflict. The next sections of this paper will explore in more detail the regulation of financial sanctions, more generally economic sanctions, in the United Nations system first and then at the European level.

2.2 Assessing the UN legal basis of economic sanctions

The Security Council, the executive body of the United Nations, was endowed by the Charter of the UN with the responsibility to achieve the organization's princely mission, the preservation of international peace and security. In this regard, its actions are regulated by Chapter VI and Chapter VII of the Charter, which relate to the system of collective security. The former consists in the peaceful settlement of disputes and the Council possesses powers of a merely conciliatory nature, providing recommendations to the parties of a controversy likely to endanger the values of the organization, including adjustment methods or resolution terms as well as the referral of disputes to the International Court of Justice (ICJ), the main judicial organ of the United Nations. By contrast, under Chapter VII the Council is attributed coercive powers and it acquires the monopoly over the use of force in international relations[77].

Concerning the activation of Chapter VII, the Security Council must follow a specific praxis, in accordance with Article 39 of the Charter:

[76] Kenneth W. Abbott, 'Economic sanctions and international terrorism' (2009) 20 Vanderbit Journal of International Law, 301;
[77] Sergio Marchisio, *L'Onu: il diritto delle Nazioni Unite* (Il Mulino 2000), 199;

"The Security Council shall determine the existence of any *threat to the peace*, *breach of the peace*, or *act of aggression* and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security"[78].

At the outset the Council must observe a substantive condition, the determination of the existence of one of the three hypothesis cited. Each of them will in turn be delved in more in depth. The notion of peace can be understood in a limited sense, referring solely to the lack of organized deployment of force among nations, or in a broader sense, implying the presence of friendly relations among states[79]. The first condition listed, *threat to the peace*, is the most ambiguous one in the Article[80]. It is argued that for the Security Council to legitimately claim jurisdiction under Article 39 there must be a threat to international peace. Nevertheless, in practice it has been demonstrated that this restriction has not been acknowledged, rather it has been interpreted otherwise, in a much wider vein. The 1990s witnessed a significant expansion of the concept "threat to the peace", which now comprises: gross fundamental rights violations and severe infringements of international law that might produce the use of armed force, domestic state violence, non-conformity with international commitments, concerns over a state's potential behavior and growing migration in the international arena[81]. Moving forward, regarding the positions of the parties involved, a determination of a *breach of the peace* is not as grave as a finding of aggression, but it carries more weight than a determination of a threat to the peace as previously analyzed, concerning the potential actions that the Council might take in response[82]. Despite since the outbreak of WWII few conflicts have been classified as pertaining to this qualification, a breach of the peace presupposes any use of armed force[83], even "when applied by or against an effective independent de facto regime which is not recognized as a state"[84]. An example is the invasion of South Korea at the hands of North Korean forces[85]. Lastly, the most comprehensive definition of an *act of aggression* has been proposed by a General Assembly Resolution:

[78] United Nations, *Charter of the United Nations,* 1945, Chapter VII, Article 39;
[79] Bruno Simma et al., eds, *The Charter of the United Nations: A Commentary* (OUP 1994), 608;
[80] *Ibid;*
[81] M. Shervin Majlessi, 'Use of Economic Sanctions under International Law: A Contemporary Assessment' (2001) 39 Can YB Int'I L, 253;
[82] Lealand M. Goodrich, Edward Hambro, and A.P. Simons, *Charter of the United Nations: Commentary and Documents,* (3rd edn, Columbia University Press 1969), 297;
[83] Ibid, 298;
[84] Simma et al. (n. 79) 609;
[85] UNSC Res 82 (June 25 1950);

"Aggression is the use of armed forces by a State against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition"[86].

A further elucidation is provided by the well-known Nicaragua case, which also calculates as aggression "cases of indirect military intervention of one state in another state"[87]. The first instance that the Security Council has characterized as such is the South African Border War between South Africa and Angola in 1976[88].

In the event that the situation in question falls within those parameters, depending on the severity of the incident, the Council may adopt three different kinds of measures: provisional measures under Article 40, aimed at maintaining the status quo and preventing degeneration; coercive measures not implying the use of force and measures implying the use of force, Articles 41 and 42 respectively. Article 41 covers multiple measures, among which economic sanctions. Their content can range from the complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations[89]. The provision offers no specific criteria for when sanctions should be imposed, it only offers suggestions for the types of actions that could be taken (Charron 2011). The list provided in the Article is not exhaustive, so the Council adopts others that still fall under the same general category. In the years following the Cold War, there has been extensive use of measures such as embargoes on trade in arms and raw materials. The term "arms embargo" is to be understood as a ban on the export of arms, ammunition and any other products that would allow states at war to prolong the conflict. Sometimes the measure of suspending trade in determined goods is intended to exert political pressure on the sanctioned state. Disruption of diplomatic relations may consist in the reduction of diplomatic personnel in the consulate of that state or even the closure of some consulates, the prohibition for international organizations to hold conferences there as well as the forbiddance for entry into and transit through the territory of member states for the government and military leadership of that state[90]. A literal interpretation of Article 41 appears to limit the targeted measure not involving the use of force to state entities only, thus excluding from its reach individuals and those not qualifying as states. Nevertheless, practice in reality proves otherwise, as sanctions can have repercussions, even

[86] UNGA Res 3314 (14 December 1974);
[87] *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America); Merits,* International Court of Justice (ICJ), 27 June 1986;
[88] UNSC Res 387 (March 31, 1976);
[89] United Nations, *Charter of the United Nations,* 1945, Chapter VII, Article 41;
[90] Marchisio (supra n. 77), 232-233;

detrimental ones, among which the restriction of the freedom of movement of individuals and the establishment of ad hoc criminal courts.

From a procedural point of view, the mechanism of economic sanctions is triggered with the approval of nine of the Council members, counting the votes of its permanent members, normally through a draft resolution presented by one or multiple members. Moreover, its decisions are binding on all members of the UN. Only if the appeal to Article 41 is insufficient to restore order shall the more restrictive measures of Article 42 be resorted to through military actions with air, naval and land forces undertaken by the Council[91]. As stipulated by Article 103 of the Charter, in case of conflict between the member states' obligations under international agreements and those of the UN Charter, the latter should always prevail[92].

2.2.1 A quest for legality of economic sanctions under international law

The above analysis demonstrated that in the context of economic sanctions the Security Council has a significant amount of flexibility. Consequently, for this very reason it has often been challenged on different grounds. One of the criticisms has to do with the composition of the body, which is constituted by fifteen members, of which ten members elected by the General Assembly for two-year terms and five are permanent (China, France, United Kingdom, Russia and United States). The latter enjoy the right of veto which sometimes results to be problematic and unfair. It follows that the economic sanctions regime is regulated solely by a handful of states which are represented in the institution and the resulting risk is the politicization of the Council's decisions. Related to this there is another problem, the employment of double standards or selectivity. This means that human rights infractions can result in sanctions in some situations whilst being disregarded in others. The perplexity brought forward by some academics[93] is that on some occasions the main reason for imposing sanctions is not the maintenance of international peace or the redress of human rights violations, rather it is put in motion by other factors. The issue at hand, then, is determining the manner in which to categorize cases that necessitate a collective response. A final concern is the termination of Security Council actions, as the United Nations Charter is silent on the matter. The body is given considerable leeway and decides for itself on the duration of its actions, through the exercise of the so-called *reverse veto* by the permanent members. The argument against such a veto is that it prevents the possibility of reaching an agreement through negotiation, strengthening instead the dominant position

[91] Marchisio, (supra n. 77), 220;
[92] United Nations, *Charter of the United Nations,* 1945, Article 103;
[93] Lori Fisler Damrosch, *Enforcing Restraint: Collective Intervention in Internal Conflicts* (Council on Foreign Relations Press, 1993) 277;

of those states. Russia's invasion of Ukraine has revived the debate, which has been going on since the 1990s, of the need for a structural reform of the Security Council's membership and veto system, strengthening regional representation and a more equitable geographical distribution in order to make it a more democratic and transparent institution.

Several scholars have proposed that the imposition of coercive economic/financial sanctions should be governed by standards of international humanitarian law, denominated in legal terms as *jus in bello economico*. A study conducted by two experts is particularly instructive for shedding light on the relevant ones for them[94]. First is the *principle of discrimination between combatants and non-combatants,* which tackles the possible unintended consequences of sanctions towards the civilian population. As far back as 1934, it was feared that economic sanctions "operate against whole peoples and tend to drag millions of innocent parties into an affair not of their making"[95]. The question at hand is whether economic sanctions, intended to cripple a nation's economy and subsequently inflict hardship on a particular population are more "humane" than military actions. Economic warfare may bring about an economic crisis in the target state and a subsequent worsening in the condition of the population, such as poverty. Furthermore, there is a growing concern that these means do not always succeed in inflicting harm towards those responsible for the misconduct. In order to minimize the collateral damage, sanctions should be directed at the policymakers of the country, at denying the access to a military arsenal or at altering the political agenda. Targeted and precise measures are to be prioritized over more undiscriminating and impersonal ones. Economic regulations yielding highly destructive repercussions have to be avoided. The second principle to be taken into account is that of *necessity of a periodicity of review of sanctions programs,* as to guarantee that they always remain compatible with the values of international law over time. The continuous assessment of sanctions committees should also be enforced with the aim of enhancing their effectiveness by leveraging the expertise and efforts of other sanctions committees[96].

Lastly, the *legal proportionality principle* constitutes one of the cornerstones of international law and is composed by two benchmarks: the *necessity test* and the *proportionality test.* The former is based upon an affective analysis, weighing whether the legal sanctions opted for is appropriate to attain a particular goal. The imposing entity must restrict itself to measures that are likely to be effective in addressing a specific need and not to go beyond what is considered reasonable (Owen

[94] W.Michael Reisman and Douglas L. Stevick, 'The Applicability of International Law Standards to United Nations Economic Sanctions Programmes' (1998) 9 European Journal of International Law;
[95] Payson Sibley Wild, Jr., *Sanctions and Treaty Enforcement* (HUP 1934) 219;
[96] Letter from the Permanent Representatives of the United States of America, Northern Ireland, Great Britain, United Kingdom, France, the Russian Federation and China to the President of the Security Council of the United Nations (13 April 1995);

2013, 118; Geiss 2005, 175). The necessity test relies upon a comparison and an evaluation among the available alternatives, resorting to that which provokes the minimum collateral damage. Consequently, the state is not given *carte blanche* for the choice of the mean in a certain situation, instead it must engage in an empirical calculation pertaining to the potential impact on reaching the purpose (Kern 2009, 65). The degree of acceptable lawful violence, along with the resulting collateral damage, is partly determined by the extent to which the public order is threatened and the potential irreparability of the harm that may result[97]. The proportionality test goes even further, preventing the escalation of countermeasures. Indeed, its function is that of examining the relationship between the sanction and the human rights conditions in the targeted country, limiting the amount of harm that can be discovered using the necessity test.

According to the International Court of Justice, in accordance with the principle of proportionality, combatants should not be subject to needless and unjust suffering, producing "a harm greater than that unavoidable to achieve legitimate military objectives"[98]. It outlaws the employment of weapons which treat indiscriminately civilian and military targets. There are two possible methods for organizing the empirical component of the proportionality test. One is consistent with the overall strategy advocated in the legal literature, treating all aspects of human rights (including basic, emancipatory and political rights) as a single collective entity when evaluating proportionality. The other technique establishes the sanction' causal effect by breaking down human rights categories depending on their type, enabling to obtain a more comprehensive picture. In this regard, the Security Council should consider, when dealing with the regime of economic sanctions, the opening article of the section of the Charter dealing with economic and social cooperation. Article 55 lays down that the United Nations should advance, *inter alia*, "higher standards of living, conditions of economic and social progress and development"[99]. Applied to economic warfare, this entails that prior to choosing which sanctions would have the least negative effects on the target's growth, the UN would have to evaluate the socioeconomic situation of the target.

Before the 20th century states were not subject to any legal restriction on their freedom to use force. An early endeavor, yet without success, to limit the employment of force in interstate relations was the Covenant of the League of Nations. In the subsequent years, the Kellogg-Briand Pact instituted a blanket ban on the application of force[100]. State's resort to war was eventually

[97] Reisman and Stevick (n. 94);
[98] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, International Court of Justice (ICJ), 8 July 1996;
[99] United Nations, *Charter of the United Nations*, 1945, Chapter IX, Article 55;
[100] Quoting Article 1: "The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce to it, as an instrument of national

incorporated in Article 2(4) of the UN Charter, regulated by the guidelines set forth in *jus ad bellum economicum,* which outlaws the use of force, except in two circumstances: UN Security Council economic sanctions and approving self-defense against an armed attack.

There is a scholarly debate regarding the legality of economic sanctions, in particular it is questioned whether they are compatible with the prohibition of the use of force or not. The UN's Charter history of drafting and the following General Assembly resolutions[101] that were made thereafter seem to suggest that economic warfare was not included into the sphere of Article 2(4). In the absence of bilateral or multilateral treaties that restrict that right, it was asserted that the legitimacy of economic sanctions was derived from the freedom that each country had to decide the nature of its commercial relations[102]. Nevertheless, there exists another side to the coin. Indeed, to cite an example, during a 1970 United Nations General Assembly meeting, the representative of Pakistan casted doubts over whether "the duty to refrain from the use of force included the duty to refrain from economic, political and other forms of pressure, and whether a definition of the term 'force' should be included in that principle"[103].

The Arab oil embargo constituted a focal point for scholars to equal the use of economic pressure to the use of force, which is forbidden by the UN Charter. This caused a split in the interpretation of the clause between developing countries and the Soviet Bloc which advocated for a broad connotation of the term "force", including economic "weapons" in their reading; the international viewpoint, on the other hand, refers solely to military force. According to this stream of scholars: "Were this provision to extend to other forms of force, states would be left with no means of exerting pressure on other states which act in violation of international law"[104]. Although the prevailing perspective is the latter, this must be reconciled with its historical context. The UNSC economic sanctions procedure was activated twice before the 1990s: against Southern Rhodesia in 1966 and South Africa in 1977. Both were not effective in reaching their goal and their impact on the civilian population was restricted. In the 1990s, however, the nature of the regime changed. Sanctions

policy in their relations with one another". They further convened, in Article 2 that: "The settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means";

[101] Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res 2625 (24 October 1970); Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from Threat or Use of Force in International Relations, G.A. Res 43/22 (18 November 1987);

[102] *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America); Merits,* International Court of Justice (ICJ), 27 June 1986;

[103] UNGA Sixth Committee (25th Session) Summary record of the 1179th meeting (24 September 1970) UN Doc a/c.6/sr.1179 para 19;

[104] Simma and Wessendorf (n 88) 208; Omer Y Elagab, 'Coercive Economic Measures Against Developing Countries' (1992) 41 International and Comparative Law Quarterly 682, 688;

towards Iraq, former Yugoslavia and Haiti were comprehensive and brought about major humanitarian, social and economic concerns towards civilians. It may be concluded that in most cases, especially in the past, sanctions lack the requisites to be classified as acts of violence; however, in other circumstances, their impact is more harmful than the use of military force and, consequently, the conception of the relationship between force and sanctions needs to be changed.

In order to provide clarity over the acts which fall under the range of Article 2(4) on a case-by-case basis, a group of experts has devised an instructive scheme, which is based upon several components. First of all, the *severity* of the damage should be assessed, in accordance with the *de minimis rule,* stipulating that an action which causes physical harm to individuals or property can be considered as a use of force based solely on its consequences. Afterwards, the *immediacy* with which those effects appear must be evaluated as well as the *directness* between the action and its results. Then, the *invasiveness* of the act, which is based upon the extent to which it interferes within the targeted entity. The fifth and sixth elements are constituted by the *measurability of the effects,* meaning the extent to which the consequences of an act are observable and the *military character* of the act. Lastly, the degree of *state involvement* in the activity it has brought about and the *presumptive legality* of the latter, namely whether it is expressly in conflict with a treaty or custom[105]. It follows that economic sanctions which are indiscriminate and cause unnecessary harm to the civilian population and amount to a military action reach the threshold of an act of force; those, instead, which have a more noble goal are not illegitimate. Although the discussion over Article 2(4) is far from settled, economic sanctions might compromise another international law foundation, the principle of non-intervention. Despite its precise boundaries are not clearly defined within the UN Charter or any other international treaty, legal scholars generally make reference to it through Article 2(7) of the UN Charter, which reads:

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter but this principle shall not prejudice the application of enforcement measures under Chapter VII"[106].

The Article essentially forbids the UN from getting involved in issues that are primarily under each state's domestic sovereignty. Despite the imposition of economic warfare, under the conditions set out in Chapter VII, represents the only exception to the absolute proscription of non-intervention,

[105] Michael N. Schmitt, *Tallin Manual on the International Law Applicable to Cyber Warfare* (CUP 2013) 41-51;
[106] United Nations, *Charter of the United Nations,* 1945, Article 2(7);

the UN has devised specific methods for its interventions. First, there should be a prior identification of the situation as an "international concern" by the Security Council as well as the 'consent' of the targeted state. Indeed, the economic and social background of the sanctioned country may be particularly impacted by these tools, which can be viewed as means to exert influence over the policy makers in government actions and judgements. It ought to be pointed out that intervention and coercion are not synonymous terms. Only coercion that intrudes within a state's sovereign territory, its *domain reserve,* qualifies as a forbidden intervention. The restriction of a state's ability to select its own political, social, economic and cultural system might incur in this prohibition. If economic coercion encroaches on a state's freedom, then it can be categorized as an intervention and would amount to a violation of the sovereign equality principle. The nation, indeed, would be precluded from autonomously making their own decisions, being instead coerced to comply with another entity's demands.

Strictly related to the ideas of non-intervention and sovereign equality is the territorial principle of jurisdiction. This stipulates that, within its own borders, a state has the power to enforce its laws and rules over its territory and inhabitants. Economic sanctions can have extraterritorial effects, influencing the economies of third states which are engaged in trade or financial relations with the targeted state. Often, neighboring economies are so interrelated that the penalties charged over one given state can have spillover effects over others[107]. Embargoes might correspond to an extension of jurisdiction beyond territorial borders, which may not necessary be in line with international law provisions. In the event that one or more states implement sanctions on another state, they are for all intents and purposes exercising authority over its economic arrangements.

2.2.2 Human rights implications inferred by coercive measures

Human rights are particularly vulnerable to economic sanctions. First and foremost, the *right to life,* a fundamental human entitlement. In addition to safeguarding against arbitrary deprivation of life, this right also encompasses economic and social aspects and entails positive obligations on governments to fulfill all essential measures to ensure its realization[108]. The right to life has a global scope and places responsibilities on states to honor and safeguard this right to the degree that their activities may have an impact on people's right to life in other jurisdictions. States that are enforcing coercive measures must refrain from engaging in acts that will intentionally deprive people of food

[107] P.J. Kuyper, "International Legal Aspects of Economic Sanctions" in P. Sarcevic, H. van Houtte, eds., *Legal Issues in International Trade* (Graham and Trotman, 1990) 154;
[108] Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (3rd edn, Oxford University Press 2013), 203;

or subject them to hunger and starvation, in order to effectively guarantee the protection of this right[109]. Regarding children in particular, the Convention on the Rights of the Child points out that, in the event that a sanctions regime is triggered, children must not be deprived of essential goods and services[110]. The *right of people to self-determination*, codified in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted in 1966, is a second prerogative which may be affected by the means in question. Article 1 and 2 of both legislations provide people's right to "freely determine their political status and freely pursue their economic, social and cultural development and "in no case may a people be deprived of its own means of subsistence"[111]. According to scholars, sanctions that are not adequately discriminate in their targets and do not possess sufficient humanitarian exceptions, may incur in the violation of the right to self-determination[112]. The *right to development,* in its conceptualization of General Assembly Resolution 41/128 might also be endangered by economic warfare. The latter unavoidably have a significant deterrent effect on foreign banks, investors and international financial organizations, such as the World Bank Group. This damages the country's economy, harming people's human rights, the consequences of which are born by the most defenseless sectors of the population[113]. For instance, American economic sanctions against Iran have disrupted their availability of employment, food and medical resources.

Another fundamental right that comes to the fore in the debate over economic sanctions is the *right to an adequate standard of living, including food, clothing, housing and medical care,* enshrined in Article 25 of the Universal Declaration of Human Rights and Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights. Indeed, coercive measures may hinder the capacity of individuals and communities to obtain basic commodities and utilities. Precisely for this reason, measures such as embargoes and other comparable policies, that jeopardize food production and the provision of adequate medicines and medical equipment should not be enforced by states. The right in question is strictly related to the enjoyment of other human rights, such as the *right to health* and the *right to education,* which may be endangered by economic warfare. The former manifests itself through declines in health-related indicators and a higher incidence in child

[109] Erika De Wet, *The Chapter VII Powers of the United Nations Security Council* (Hart Publishing 2004), 221;
[110] UN General Assembly, *Convention on the Rights of the Child*, November 20, 1989, 1577 UNTS 3, Articles 6 and 24(2);
[111] United Nations, Article 1, "International Covenant on Civil and Political Rights," March 29, 1967; and United Nations, Article 1, "International Covenant on Economic, Social and Cultural Rights,", December 16, 1966;
[112] Ben Saul, David Kinley and Jacqueline Mowbray, *International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (Oxford University Press, 2014) 107;
[113] United Nations General Assembly, "Human Rights and Unilateral Coercive Measures," A/70/345, paras 31-33;

malnutrition and mortality; the latter, instead, includes the prerogative to be granted education at every level, from primary schools to the higher levels of education.

The right to respect for private and family life, as guaranteed by Art. 8 ECHR, might also be compromised by punitive measures, specifically by restrictions on travel. This occurs when individuals are compelled to leave their homes and their loved ones or if they face internal displacement. A final package of entitlements to whom coercive policies might cause several concerns are *procedural rights.* Tailored parties must have at their disposal adequate and just systems in order to face the charges brought against them. Despite the Security Council was not granted the prerogative to receive complaints from individuals, in principle the right to a fair trial is protected by international human rights covenants. Akin to criminal charges, some forms of economic warfare possess a punitive and deterrent nature. It follows from this that in the absence of the possibility to challenge allegations and provide defense-related evidence, procedural rights may be violated. When economic penalties impact on individuals' endowments, effective review processes are essential. Both the factual and legal elements of a case must be thoroughly examined by a judicial body. A practical example where this has been implemented effectively is in Switzerland. The approach consists of a protocol enabling entities to file an appeal with the federal court if facing an asset freeze. This practice satisfies the requirements of an efficient review as the Swiss federal court is qualified to examine the foundations behind the order of freezing. In addition to Switzerland, other countries are also implementing mechanisms to protect their citizens from UN sanctions[114].

All individuals are endowed with the abovementioned essential rights, irrespective of their nationality, race, gender or any other status. They are also regarded as interconnected, implying that the exercise of one right frequently depends on the exercise of another. The relationship between sanctions and human rights is a complex one, which can change based on the context. Governments and international organizations exploit the contentious tactic of economic sanctions to further their political and economic goals. Nevertheless, whilst they may be conceived to persuade governments in altering their behavior, they may inadvertently have repercussions on human rights.

Regarding the Security Council's respect for human rights, scholarship is divided into two interpretations. According to some academics[115], the body must act in line with human rights as they

[114] Noah Birkhauser, 'Sanctions of the Security Council against individuals – some human rights problems' European Society of International Law;
[115]S. Sheeran, C. Bevilacqua, Erika de Wet in Christopher Michaelsen, 'Human Rights as Limits for the Security Council: A Matter of Substantive Law or Defining the Application of Proportionality', (2014) 19 Journal of Conflict & Security Law;

are an integral part of the organization of which it is an organ; others[116], however, maintain that the Security Council is solely deemed to adhere to jus cogens norms of international law, thereby conceiving that the UN, being an autonomous entity of international law, might disregard human rights in its actions as only member states have ratified universal and regional treaties for the protection of human rights, not the UN as an organization. Nevertheless, Article 24(1) of the UN Charter provides that: "The Security Council must act in accordance with the purposes and principles of the UN and the provisions of the Charter"[117]. Among these are the promotion of and respect for human rights and fundamental freedoms. Article 1(3) of the UN Charter, on a similar vein, seems to pose limits to the actions of the Security Council[118]. Article 2(2) requires that the United Nations act "in good faith"[119]. It follows that actions which violate the rights outlined in the Charter's provisions, setting forth the goals and guiding ideals of the UN, would thus be prohibited from being considered by the Security Council[120]. The latter is obliged to abide by international jus cogens, which, in contrast to treaties that solely bind signatories, applies to all subjects of international law, including international organizations. The SC can only create an exception to human rights law by expressly declaring its willingness to do so.

2.3 The European approach to economic sanctions and the activation of judicial safeguards

After analyzing the regulation of economic sanctions in the system of the United Nations, the existing legal regime at the European level can be explored, in order to strike a comparison between them. At the outset, a terminological clarification needs to be made. Whilst in the UN regime the means of economic warfare were referred to as economic sanctions, here they are called *restrictive measures*, "imposed by the EU to bring about a change in policy or activity by the target country, part of country, government, entities or individuals"[121]. From the standpoint of EU institutions, the two labels are equivalent[122]. Nevertheless, in terms of criminal law, they are not equal. According to the European Court of Justice, restrictive measures are provisional and preventive, not possessing a criminal nature[123]. The latter, however, is not absolute; rather, it must be evaluated on a case-by-case

[116] Annalisa Ciampi, *Sanzioni del Consiglio di Sicurezza e Diritti Umani* (Giuffrè Editore, 2007) 137-141;
[117] United Nations, *Charter of the United Nations,* 1945, Article 24(1);
[118] Quoting Article 1(3), among the purposes of the United Nations is to "achieve international cooperation in solving international problems of an economic, societal, cultural or humanitarian character and promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion";
[119] United Nations, Charter of the United Nations, 1945, Article 2(2);
[120] Michaelsen (n.115) 457;
[121] Council of the European Union Guidelines 11205/12 on implementation and evaluation of restrictive measures in the framework of the EU Common Foreign and Security Policy (15 June 2012);
[122] Council of the European Union Basic Principles 10198/1/04 on the Use of Restrictive Measures (7 June 2004);
[123] UNSC Res 2083 (17 December 2012);

basis, considering their length and degree of severity[124]. The 'economic weapon' in the EU can be organized based on three factors: the type of measure, the target and their location within the framework of international law[125]. The EU has a broad selection of restrictive measures available to choose from, among which diplomatic sanctions, cultural sanctions, discontinuation of collaboration with a foreign nation, trade and financial embargoes, flight bans and restrictions on admission[126]. They may be directed at third countries, organizations or people. Moreover, geographical limitations may or may not be applicable to restrictive measures, in case they are not present, they are typically intended for non-state actors[127].

The historical evolution of the juridical foundation for restrictive measures began in the late 1960s, with the enforcement of UNSC sanctions towards Rhodesia by EU member states. The latter opted to do so in accordance with national law rather than Community one, justifying their choice by making reference to Article 347 TFEU, which allowed, subject to the existence of exceptional situations, a departure from EU law. Nevertheless, the implementation of the 'Rhodesia Doctrine' has been difficult due to divergences in content and timing among the sanction regimes of different states[128]. For this reason, throughout time, the legal framework has undergone several changes. Prior to the enactment of the Treaty of Lisbon in 2007, the procedure regarding the implementation of UN sanctions was regulated by Articles 60, 301 and 308 of the Treaty establishing the European Economic Community (EEC), following a three-step methodology. Initially, EU member states agreed on a common position to identify individuals and entities involved in counterterrorism measures by blacklisting them, under the so-called second pillar of the EU – the Common Foreign and Security Policy (CFSP). This was followed by the adoption of an EC regulation on the basis of Articles 60, 301, 308 of the EEC Treaty. Article 60 conferred the power to completely or partially discontinue or diminish economic activities with one or more third states. Article 301 gave similar power with regard to capital flows and payments. Article 308 provided a legal basis for such measures where there were no specific provisions in the Treaty granting powers to the Community institutions for the operation of the European Community. The decision to adopt the provision was taken by the Council, after consultation with the European Parliament, on a proposal from the Commission, and required

[124] United Nations High Commissioner for Human Rights Report A/HRC/12/22 on the protection of human rights and fundamental freedoms while countering terrorism (2 September 2009);
[125] Clement Uwayo, 'The Conflicting Case of Economic Sanctions and Economic Interests under EU Law', (2017-2018) 54 Jura Falconis 59;
[126] *Ibid;*
[127] Christina Eckes, 'Eu restrictive measures against natural and legal persons: from counterterrorist to third country sanctions' (2014) 51 (3) Common Market Law Review 874;
[128] Pieter J. Kuyper, 'Sanctions against Rhodeshia: the EEC and the Implementation of General International Legal Rules', (1975) Common Market Law Review 231;

unanimity[129]. The regulation provided for the freezing of the financial assets of natural and legal persons on the list and empowered the EC Commission to update it if necessary. Subsequently, EU member states implemented the regulation at the national level through the adoption of internal administrative acts to block the financial activities of blacklisted individuals and legal entities[130].

The Lisbon Treaty was signed on December 13, 2007 and became operational on December 1, 2009. It involved amending the Treaty on the European Union (TEU) and the Treaty establishing the European Community (EC Treaty). The Union born in Maastricht and the Community born in Rome, have been merged into a single legal entity, the European Union[131]. In addition, the Lisbon Treaty abolishes the "pillar" organization although the Common Foreign and Security Policy (CFSP) retains its autonomy and continues to have its own decision-making process. The current provisions governing the implementation of EU restrictive measures are: Art. 75 of the Treaty on the Functioning of the European Union (TFEU), concerning individual sanctions, and Art. 215 TFEU, regarding foreign policy goals. In the wording of the former:

"Where necessary to achieve the objectives set out in Article 67, as regards preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities"[132].

The Article refers to the area of freedom, security and justice. Economic and financial measures directed at individuals and non-state entities are provided. The procedure under Art. 75 is the ordinary one, whereby the act is adopted by qualified majority in the Council of the European Union and the Parliament acts as co-legislator.

The second legal basis, Art. 215, provides that:

1. *"Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic*

[129] Paola Mariani, 'The Implementation of UN Security Council Resolutions Imposing Economic Sanctions in the EU/EC Legal System: Interpillar Issues and Judicial Review' (2009) Bocconi Legal Studies Research Paper No. 1354568. Available at: http://ssrn.com/abstract=1354568 or http://dx.doi.org/10.2139/ssrn.1354568;
[130] Federico Fabbrini, *Fundamental rights in Europe, Challenges and Transformations in Comparative Perspective* (Oxford University Press, 2014), 59;
[131] TEU, Article 47 ;
[132] TFEU, Article 75 ;

and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof"

2. *"Where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities"*[133]

This Article, differently from the previous one, affects actions taken outside of the European Union; the sanctioning mechanism intended to target a third state applies to people and other entities. Differently from Art. 75, in this case the Parliament has a minor role, being solely informed by the Council.

EU member states must take into account three primary regimes of restrictive measures: a) The implementation of UNSC sanctions; b) The autonomous EU sanctions regime; c) Extraterritorial sanctions imposed by third countries. Policies can lead to the targeting of non-EU countries with restrictive measures. They may be tailored towards entities, groups, organizations or individuals who engage in terrorist acts or endorse specific policies, in order to further security and foreign policy goals, for example combatting terrorism and nuclear proliferation[134].

The highest ranking is held by UN sanctions, whose application and enforcement has been extensively described in the previous paragraphs. It only remains to be explained how these are integrated into the European system. As per Article 3(5), 21(1) and 2(c) TEU, the EU bases its activities upon "… respect for the principle of the UN Charter" and, following Article 347 TFEU, EU member states are required to consult with regards to the obligations they have undertaken "for the purpose of maintaining international peace and security" which leads to the adoption of regulations within the EU, in compliance with UNSC resolutions under Art. 215 TFEU. The incorporation of UNSC sanctions into the framework of the EU takes place through implementing regulations proposed and approved by the Council, currently depending on Council decisions. These typically only deal with particular practices, in accordance with TFEU Article 291 requirements, and are not permitted to include any supplementary or adjacent regulations. They are non-legislative in nature and may be published in the Official Journal[135]. Despite not being enacted through a formal legislative

[133] TFEU, Article 215;
[134] Nadia Zelyova, 'Restrictive measures – sanctions compliance, implementation and judicial review challenges in the common foreign and security policy of the European Union' (2021) 22 ERA Forum 161;
[135] TFEU, Article 288;

process, implementing regulations are binding and directly enforceable in all member states. Therefore, in order for it to come into effect, no further act is necessary. If the EU implementing regulation incorporating the UNSC decision is not correctly executed, the responsibility falls on member states.

Moving towards EU autonomous sanctions, the EU has a lot of expertise in "designing, implementing, enforcing and monitoring" restrictive measures in the context of the Common Foreign and Security Policy (CFSP)[136]. The Council may impose penalties on third-party nations, businesses and people, as stipulated by the CFSP's goals under Article 21 of the Treaty on the European Union (TEU). The legal foundation for EU questions connected to CFSP is Art. 24(1) TEU. This gives the EU authority to act in all foreign policy sectors with regard to Union security and necessitates consultation with regard to the CFSP[137]. In line with Chapter 2 of Title V of the Treaty on European Union, Member States must follow two steps in the process for the EU to approve a restrictive CFSP policy. In accordance with Article 29 of the Treaty on European Union, which sets the Union's strategy, the Union may take such actions with respect to a specific geographical or thematic issue by way of a Council decision. This corresponds to the EU'S goal[138]. The Council then decides whether to impose sanctions in accordance with Article 215(1) by a qualified majority. The adoption process described in Article 215(1) TFEU can be used when measures under Article 215(2) TFEU pertaining to natural or legal persons or non-state organizations are being adopted. A regulation establishing restrictive measures with relation to CFSP decisions is simultaneously adopted with a Council resolution on the basis of Article 29 TEU.

Member states are directly responsible for executing some sanctions such as arms embargoes or travel restrictions. Procedure only requires a Council decision, which then must be followed directly by EU member states, as it is binding. On the other hand, restrictive measures such as the freezing of goods or export bans are administered by the European Union and require the enactment of specific legislation, expressed through a regulation of the Council of the European Union, which is directly binding on EU citizens and businesses. The regulation is approved on the basis of a joint proposal by the High Representative of the European Union for Common Foreign and Security Policy and the European Commission. In terms of content, the regulation sets out the objectives of the measures taken and how they are to be implemented. The regulation becomes effective the day after its publication in the official journal of the European Union.

[136] Zelyova (n.134) 167;
[137] TEU, Art. 32;
[138] Council Decision (CFSP) 2020/1999 (7 December 2020);

The issue of the incorporation of UN sanctions within the European system has also been the subject of an important jurisprudential reflection by the European Court of Justice in the so-called Kadi Saga. This is one of the landmark legal cases deriving from the evolution in the type of sanctions applied as a preventive or punitive tool for conduct that does not comply with international law and it epitomizes the difficult balancing between two primary interests: the respect for human rights and the fight against terrorism. Kadi possesses all the necessary components to explain the reasons why it became one of the pivotal and most controversial cases in the jurisprudence of the European Union. It was a twelve year-long legal battle and it marked a significant erosion of the Security Council's monopoly over the exclusive control of decision-making power, not just towards individuals, but also versus global security[139]. As elucidated earlier, the "sanctions decade" which unfolded beginning from the 1990s received criticism by numerous academics, primarily centered over the insufficient attention attributed to procedural human rights and deficiencies in the due process. The case at hand somewhat altered the status quo due to the EU' shift in paradigm, which prompted the UNSC to implement a significant reforming procedure.

At the outset, it is paramount to outline the factual basis of the controversy. The Kadi Saga fits within the framework of the resolutions passed by the UNSC following 9/11, in this case the blacklisting procedure provided for by Resolution 1267/1999. On October 17th 2001, the Sanctions Committee enters in the annex the name of the petitioner, Mr Kadi, on charges of being suspected of having dealings with the Al Qaeda network and Osama Bin Laden. He is a 47 years old Saudi Arabian resident and business man with properties in Sweden and a member of the Al Barakaat International Foundation. In order to incorporate the UNSC resolution in the European legal system, the EU adopted Regulation 467/2001, giving immediate application to the measure of seizure of assets and confirming the list of addressed individuals and organizations already defined by the UNSC. It follows that Mr Kadi and Al Barakaat, already included in the UN list, have been re-inserted also at European level. From here begins a long proceeding on the part of the petitioners to challenge their involvement in the list, with the core contention of being unable to challenge the Committee's decision and contest their association with the terrorist organization. During that period, the only way for individuals on a list to attempt to be removed from it was to rely on the capacity of their country of nationality's diplomatic efforts over the Security Council's members. Given that the subject in question holds Saudi Arabian citizenship, this path would have been difficult to pursue. Consequently,

[139] Devika Hovell, 'Kadi: King-Slayer or King-Maker? The Shifting Allocation of Decision-Making Power between the UN Security Council and Courts' (2016) 79 Modern Law Review;

the petitioner lodged a complaint before a series of domestic and regional courts in Switzerland, United Kingdom, United States, ultimately resorting to Court of the European Union.

The case is overall comprised by four judgements, also referred to as 'Kadi I', 'Kadi II', 'Kadi III' and 'Kadi IV', respectively delivered by four different Courts: the Court of First Instance (CFI), the European Court of Justice (ECJ), the General Court of the European Union (GC) and the Court of Justice of the European Union (CJEU). One of the main issues addressed by the Kadi Saga is the reframing in the relationship between the European Union order and the UN order under three different domains:

a) The relationship between international law and EU law;
b) The protection of property rights and proportionality;
c) The right of action of individuals, namely the right of defense;

Each of the areas will in turn be analyzed separately, yielding the conclusions of the courts involved, in order to shed light on the differences in their reasoning.

2.3.1 The Kadi case: the relationship between international law and EU law

Both the Treaty on European Union and the Treaty on the Functioning of the European Union define the relationship between the United Nations Charter and European Union law. According to Article 3(5) of the EU Treaty, the European Union is committed to adhering to and promoting international law, focusing especially on the principles set forth in the United Nations Charter[140], in Article 21(1) concerning the European Union's external action, this commitment is reaffirmed and the EU's determination to promote collective solutions to common issues within the United Nations is highlighted[141]. Under Article 34(2), states participating in the UNSC are required to provide regular updates to the member states of the European Union and the High Representative[142]. In addition, they have an obligation to protect the position and interests of the European Union, except for the duties imposed by compliance with the principles contained in the United Nations Charter. Regarding the Common Security and Defense Policy, Article 42(1) states that the EU upholds the principles of the UN Charter in pursuing the goal of international peace and security[143]. Additionally, item 7 makes reference to Article 51 of the Charter, which mandates member states to intervene with aid and assistance in the event of an act of aggression against another member state. What was earlier established in the EU Treaty is reinforced and confirmed by the Treaty on the Functioning of the EU

[140] TEU, Article 3(5);
[141] TEU, Article 21(1);
[142] TEU, Article 34(2);
[143] TEU, Article 42(1);

(TFEU). Article 208(2) indicates that the EU and its member states were committed to upholding duties and taking into account goals recognized by the UN and other pertinent international organizations in the sphere of development cooperation[144]. The EU is also required by the Treaty's Article 214 (7) on humanitarian aid to ensure that its activities are coordinated and compatible with those of other international organizations and bodies, particularly with the United Nations system[145].
A further rapprochement between the European and international systems occurs in 1974, with the EU's acquisition of permanent observer status at the UN, participating in meetings and acquiring official documentation, being deprived only of the right to vote. A more recent step occurs in 1992 with the establishment of the Common Foreign and Security Policy (CFSP).
Although over time there have been correspondences between the international legal framework under the United Nations and the national legal system, their relationship has not been fully clarified until the advent of the Kadi Saga following 9/11. This was interpreted differently by the Court of First Instance and the European Court of Justice in their judgments, in 2005 and 2008 respectively.

The rationale of the First Instance Court is essentially grounded in the rule of primacy, enshrined in Article 103 of the UN Charter, according to which rules of community law, among which obligations under the ECHR and the EC Treaty, are superseded by the commitments made by UN member states in accordance with the Charter[146]. This principle also finds reference in customary international law, specifically Article 27 of the Vienna Convention on the Law of the Treaties dated 23 May 1969, providing that: "A party may not invoke the provisions of its internal law as a justification for its failure to perform a treaty"[147]. To further justify its position, the CFI invokes Article 25 of the UN Charter, which stipulates that the members of the UN undertake to acknowledging and implementing the Security Council's decisions in conformity with the Charter[148].
Another provision that was incorporated into the treaty to uphold the rule of primacy was Article 224 of the Treaty establishing the European Economic Community, which states that:

" Member states shall consult each other with a view to taking together the steps needed to prevent the functioning of the common market being affected by measures which a Member state may be called upon to take… in order to carry out obligations it has accepted for the purpose of maintaining peace and international security"[149].

[144] TFEU, Article 208(2);
[145] TFEU, Article 214(7);
[146] United Nations, Charter of the United Nations, 1945, Article 103;
[147] Vienna Convention on the Law of the Treaties, 1969, Article 27;
[148] United Nations, Charter of the United Nations, 1945, Article 25;
[149] EC Treaty, Article 224;

It follows from this that resolutions ratified by the Security Council under economic sanctions assume a binding role for member states, which ought to devote themselves so that the resolutions will be enforced. Article 307 of the EC Treaty also strengthens this point of view, making it necessary for member states to uphold UN responsibilities even in the event that they are opposed to community legislation[150]. National measures in conflict with the common commercial policy outlined in Article 113 of the EC Treaty could find justification under Article 307 EC if deemed essential to guarantee that the concerned Member State carried out its responsibilities under the United Nations Charter and a Security Council resolution[151].

The Community, in accordance with the CFI, was acting within the scope of its "circumscribed powers" when implementing a trade embargo mandated by a Security Council resolution[152]. The Court was not in a position to rule that the anti-terrorism measures enacted by the Security Council resolution violate people's fundamental rights as guaranteed by the Community legal system, not even indirectly or implicitly[153]. The Court of First Instance recognized that the Security Council of the UN was competent to impose economic and financial sanctions against individuals, the resolution was a valid and due act. It follows that the European Union was forced to provide full implementation to this act, there were no margins of discretionality. The UN resolution was outside the remit of the court's judicial review and consequently there was no jurisdiction of the Court of First Instance in revising un resolution. The EU was compelled to prioritize security concerns and consequently had to make concessions in the realm of fundamental rights. Eventually the Court of First Instance dismisses the appeal of Mr Kadi as it found out no infringement of jus cogens peremptory norms. The violation complained of does not exist and the seizure of assets measure must be deemed lawful.
The conclusions reached are not in favor of Kadi, rather they reinforce the UN's authority's positions.

Kadi was not satisfied with the judgement and consequently appealed the Court of First Instance's decision to the European Court of Justice, which reversed the verdict of the lower court. The ECJ's argument departed from the rule of law principle which underlies the Community, whereby neither its member states nor its institutions are exempt from scrutiny of whether their acts are in

[150] EC Treaty, Article 307;
[151] Case T-315/01, *Yassin Abdullah Kadi v Council and Commission*, Court of First Instance, 21 September 2005, para 191;
[152] Ibid, para 203;
[153] *Ibid*, para 216;

compliance with the fundamental constitutional Charter, the EC Treaty[154]. Reasoning follows that the division of powers established by the Treaties and the independence of the European legal order cannot be affected by an international agreement[155]. The EU legal system possesses a unique character, a *sui generis* nature, that deserves recognition and esteem on a global scale. This concept is also reiterated in Advocate General Poiares Maduro's Opinion, delivered on 16 January 2008, which highly influenced the final verdict of the Court. In introducing the relation between the UN and the EU, he recalled the historic Van Gen den Loos decision, in which the Court upheld the independence of the Community legal system, tied to, yet separate from the prevailing legal framework of public international law[156]. This does not imply that the two systems merely coexist without interaction. In fact, the Court reiterates that the Community has an obligation to respect its international commitments[157]. Nevertheless, despite one would have anticipated that the Court would have balanced the domestic and the international point of view, the ECJ showed complete consideration for the EU, maintaining that:

"Those [international] provisions, cannot be understood as to authorize any derogation from the principles of liberty, democracy and respect for human rights and fundamental freedoms enshrined in Article 6(1) EU as a foundation of the Union"[158].

The ECJ found that the inferior court erred in stating that the European Court had no jurisdiction in revising the validity of the un regulation. There is no automatism between international law and European union law. An international agreement cannot prejudice the constitutional nature of community principles. There is a margin of directionality which must be guaranteed to European authorities in incorporating a UN resolution within the European legal order. The ECJ's viewpoint contends that while Community law is inherently hierarchical, it does not automatically take priority over international law. Article 300(7), cited by the Court, rules that international agreements impose legal duties on both the institutions of the community and the member states[159]. This, however, is the case solely for acts of secondary law, presupposing that the core pillars of the European legal order are inherently non-negotiable.

[154] Joined Cases C-402/05 P and C-415/05 P, *Kadi and Al Barakaat International Foundation v Council and Commission,* European Court of Justice, 3 September 2008, para 281;
[155] *Ibid*, para 282;
[156] Case C-402/05 P, Kadi v Council and Commission, Opinion of Advocate General Poiares Maduro, 16 January 2008, para 21;
[157] *Ibid,* para 22;
[158] Joined Cases C-402/05 P and C-415/05 P (n.68), para 303;
[159] *Ibid,* para 306;

The ECJ proceeded in declaring the disputed regulation invalid but set a period of three months for adapting the regulation to the decision. In the transitional period the regulation was maintained in force to avoid blackholes in the strategy against terrorism.

From the point of view of jurisdiction, the Court of First Instance conceded the relation between the international and the European legal order as following a monist approach. There is a unique legal order and a hierarchy between the international legal framework and the European one. In this reconstruction, the laws pertaining to the former are superior. The judgment of the CFI can be interpreted as a reflection of a conventional standpoint. This Court has made a concerted effort to consider the interests of all parties when facing the case. It essentially postponed the implementation of international law as a whole and specifically deferred to the laws established by the United Nations, preserving simultaneously human rights in Europe, albeit primarily in theoretical and formal terms. This was accomplished by drawing a contrast between international law and UN law: UN legislation should have precedence over customary international law, while jus cogens should also apply to the UN. Only insofar as they are manifestations of jus cogens should laws pertaining to human rights in EU/EC law take precedence over UN law.[160]. The ECJ, instead, espouses a dualist perspective, which conceives the two legal systems as distinguished and separated. The EU legal order and the international legal order are distinct systems that function at separate levels of operation. Any legal question must be addressed entirely and definitively in accordance with the underlying principles of the relevant order. Each legal order is autonomous. The principles of the international legal order can enter into the national legal order only if coherent with the threshold communitarian threshold of protection of fundamental rights. In Kadi the ECJ assumes that as long as the EU fulfils higher standards of protection of fundamental rights over the international order, the European legal order should prevail over international duties. A substantive view of the standard of protection of rights that the EU wants to guarantee determines the prevalence of European law over national law. This reasoning is in accordance with the Solange jurisprudence, whereby the priority of the German constitutional order was inferred over the European order, so long as the European legal order did not adapt to the standards of protection of fundamental rights provided for by the national constitution[161].

Both the community advocating for human rights and international organizations should work together to create a set of principles, rules, and commitments that can ensure peaceful coexistence among the various branches of international law and avert future division and conflict.

[160] Peter Hilpold, 'UN Sanctions Before the ECJ: The Kadi Case' (2010) Oxford University Press, 27;
[161] *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* (Solange I), Federal Constitutional Court (Second Chamber), 29 May 1974, BVerfGE 37, 291, (1974 II) 14 CMLR 540;

2.3.2 The protection of property rights in the Kadi jurisprudence

The right to respect for property is a fundamental right of the Union, codified in Article 1 of the First Additional Protocol to the European Convention on Human Rights (ECHR), which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law"[162].

The Article safeguards individuals and legal entities from unwarranted state intervention with their property. However, the right to property is not absolute, rather, under certain circumstances, the state is empowered to regulate use or even take away property. This is done most prominently to ensure the payment of taxes, fines or other obligations. The content of the right to property was explained thoroughly in the case *Sporrong and Lönnroth v. Sweden* in 1982, which identified three components of it: a) The peaceful enjoyment of property; b) Deprivation of possession subject to certain conditions; c) States have the right to regulate how property is used in line with the common good[163]. Whilst property interference is permitted, it must meet a number of prerequisites: the principle of legality, the pursuance of general or public interest and the proportionality test. The first condition presupposes that any interference must be authorized by law, published and its provisions crafted with adequate clarity so as to enable the parties involved to foresee the potential consequences of a particular action and control their behavior[164]. Secondly, any intrusion with the right to property ought to be undertaken on behalf of a valid objective, like the common good. Lastly, proportionality accounts for the reasonabless of the connection between the means used and the goal being pursued. According to the European Court of Human Rights, a fair balance must be attained between the interests of the community's general welfare and the preservation of human rights[165]. The Court grants the contracting parties a certain degree of discretion in their choice of measures.

After this brief preamble on the legal basis of the right to property, it is possible to evaluate more in depth how this entitlement is approached in the Kadi case.

The Court of First Instance starts from the premise that there is only one limit on the binding nature of the UN resolution: the observation of jus cogens. The only possibility for the Court to review

[162] First Additional Protocol to the European Convention on Human Rights (ECHR), Article 1;
[163] Sporrong and Lönnroth, Application no. 7151/75; 7152/75, Judgment of 23 September 1982, para 61;
[164] James and others v. The United Kingdom, Application no. 8793/79, Judgment of 21 February 1986, para 67;
[165] Tre Traktörer Aktiebolag v. Sweden, Application no. 10873/84, Judgment of 07 July 1989, para 46;

the validity of the UN resolution is about its compliance with *jus cogens*, designating several essential and dominant principles of international law from which no exceptions are allowed through specific agreements[166]. It eventually proceeded in the analysis of the alleged violation of fundamental rights claimed by the applicant in order to assess whether they had been breached to the point where the pertinent acts had to be revoked. Beginning with the 'right to property', the Court of First Instance reached the conclusion that it was not so, supporting its argument with several observations. In the first place, the Court remarked how, based on Article 17(2) of the Universal Declaration of Human Rights, a violation of jus cogens is incurred only in the event that the right to property is arbitrarily deprived[167]. In the case at hand, however, the economic sanction imposed worked toward a goal of paramount importance to the entire world community: the fight against international terrorism. Asset freeze is a temporary and precautionary measure, which does not influence the fundamental right of individuals to possess financial resources, but exclusively limits their utilization[168]. In addition, over time the Security Council has equipped itself with mechanisms designed to reassess the overall system of economic sanctions following specific time intervals and to improve their functioning[169]. The last argument brought forward by the CFI is that there exists a process whereby individuals inserted on a blacklist may rely on the capacity of their country of nationality's diplomatic efforts over the Sanctions Committee to submit their case for evaluation, but the applicant did not take advantage of this possibility[170]. According to the reasons listed, the Court ruled that the infringement complained of does not exist[171].

As with regards the relationship between UN and EU law, the European Court of Justice presents a different view. Initially, the ECJ admits that the end underlying Regulation No 881/2002, namely the battle against challenges to international peace and security, in principle justify the means, a restriction right to property. Nevertheless, the appropriateness and proportionality of the measure must also be assessed with the applicant's promise to present his case to the appropriate authorities. It is precisely on this ground that the Court acknowledges that the insertion of Mr. Kadi in the blacklist represents an undue encroachment on his property rights.

[166] Case T-315/01 (n.65), para 226;
[167] *Ibid*, para 241;
[168] *Ibid*, para 248;
[169] *Ibid,* para 249;
[170] *Ibid*, para 250;
[171] *Ibid,* para 252;

2.3.3 Access to justice as a pivotal constitutional guarantee against security measures in the EU

One last, but no less important, issue dealt with in the Kadi Saga is the alleged breach of the right to be heard and the right to an effective judicial review, which can be merged into a single concept: access to justice. Despite there is no unanimous agreement on the content that such a term would encompass, it is broadly characterized as: "The right of an individual not only to enter a court of law, but to have his or her case heard and adjudicated in accordance with substantive standards of fairness and justice"[172]. Under this comprehensive definition, access to justice is equivalent to judicial protection, not only in compliance with specific criteria, but also in agreement of substantive criteria. The core contention debated in the case is whether it is possible to deviate from the right in question, and if so, to what degree. The legal basis of the 'access to justice' is evident in almost every international and regional legislation for the protection of human rights[173]. After analyzing in a general sense the essence of this right, it is possible to address how it was investigated by the courts in the Kadi Case, based on the assumption that 'the right to be heard' and the 'right to an effective judicial review' were discussed separately.

In its opinion, the CFI split the former into two different questions: the petitioner's purported right to be heard by the Council in relation to the disputed implementation of the regulation and his right to be heard by the Sanction's Committee due to his insertion in the blacklist[174]. It observed that, in principle, within the European Union all individuals that may potentially be negatively impacted by a penalty of the Community must be given a position where he can successfully express his opinions. It follows that a rigorous and high standard is to be employed[175]. Nonetheless, the Court continues, procedural rights are dependent upon discretionary action at the hands of the authority[176]. Given that, according to the CFI, community entities have no maneuvering in the scrutiny of economic sanctions adopted at the UN level, the Council cannot be considered obliged to attend to

[172] Francesco Francioni, "The Rights of Access to Justice under Customary International Law" in Francesco Francioni (ed), *Access to Justice as a Human Right* (Oxford University Press, 2007) 1, 1;
[173] Quoting Article 25 (1) of the American Convention of Human Rights: "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties"; The African Charter on Human and People's Rights, on a similar vein, provides that: "Every individual shall have the right to have his cause heard. This comprise: (a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) The right to be presumed innocent until proved guilty by a competent court or tribunal; (c) The right to defence, including the right to be defended by counsel of his choice; (d) The right to be tried within a reasonable time by an impartial court or tribunal';
[174] Case T-315/01 (n.65) para 254;
[175] *Ibid*, para 255;
[176] *Ibid*, para 257;

the applicant's arguments[177]. To further demonstrate that the applicant's rights were not unlawfully violated, the Court makes reference to a procedure established by the UNSC which allows those who are placed in a blacklist to challenge their involvement with terrorism through their national authorities, paying particular attention to individuals' rights, among which that to be heard. With regard to the infringement of the right to an effective judicial review, the CFI finds that there are shortcomings in the available judicial safeguards for the individual, however not amounting to a breach of peremptory norms[178]. The applicant has been granted the opportunity to initiate a legal challenge for annulment before the Court of First Instance (CFI) in accordance with Article 230 of the EC Treaty[179]. In addition, the entitlement to access a court may be subject to limitations, be it in times of national emergencies or depending on the valid interest sought. In the specific case under examination, the respect for a person's right to a fair trial is insufficient to counterbalance the preservation of international peace and security through the Security Council's actions in the field[180]. In essence, even though the Court expressed some concern with the outcome, the CFI was reluctant to contest the superiority of UN law. If the Community had been granted some latitude in this regard, this approach to advancing the combat against terrorism would have been unconceivable. The Court attributes security matters a primary concern. Compliance with the UN legal system is a legal imperative but there is indication that the Court was alleviated that it was not incumbent upon it to ponder conflicting interests[181].

The latter difficult task fell in the hands of the Court of Justice, that put forward a different view of the facts. Indeed, based on its stance*: "The rights of the defence, in particular the right to be heard, and the right to effective judicial review of those rights, were patently not respected"*[182]. As for the former, the court criticizes the fact that the Council has not disclosed the evidence utilized to justify the economic sanctions enforced against the applicant, consequently not giving them the possibility to appear before a court[183]. Moreover, Mr. Kadi was not granted the possibility to adequately assert his rights regarding the testimonies presented to the Community judiciary[184]. The last point that the ECJ highlights is that the violations have not been redressed during the proceedings[185].

[177] *Ibid*, paras 258-259;
[178] Ibid, paras 285-286;
[179] *Ibid*, para 278;
[180] *Ibid*, para 289;
[181] Hilpold (n.160) 31;
[182] Joined Cases C-402/05 P and C-415/05 P (n. 70) para 334;
[183] *Ibid*, para 348;
[184] *Ibid*, para 349;
[185] *Ibid*, para 350;

Overall, it becomes increasingly evident that a deprivation of the right to access to justice may be equivalent to a total negation of the protection of human rights. The vast majority of states strive to maintain national order and security, yet sometimes this is done at the expense of human rights and this is not acceptable.

With regard to an overall assessment on the comparison between the UN and EU legal framework on economic warfare, it is clear from the analysis that both systems have their non-negotiable anchors which they do not want to give up: the former stresses the superiority of international law, except in the eventuality that a *jus cogens* norm is at stake; the latter, instead, is unwilling to undermine human rights, which constitute a key feature of the Community legal order. The aspirations of both parties hold a measure of validity. In the end, however, the were left with no other alternative other than compromise. This was eventually reached by the balancing scrutiny developed by the Court of Justice of the European Union.

2.3.4 The aftermath of the Kadi decision: searching a balance between different values

Once it was acknowledged that the fundamental rights of the Union and the rule of law might have been compromised by the procedure of economic sanctions then in place, in the name of the three entitlements described above, the Court of Justice of the European Union builds in the European and in the international environment a balancing test of rights. The EU is now allowed to apply sanctions autonomously from the UN Sanctions Committee and from European countries acting unilaterally. Individuals, groups and entities can be included on the list on the basis of proposals submitted by member states or third states. A request for delisting can be made by the subjects targeted or by the third state which had initially proposed the listing. The ECJEU created a formula in order to consider consistent with fundamental rights of the EU a procedure for imposing sanctions, which was eventually incorporated in Council Regulation 1686/2016[186]. It affirmed that Kadi was unfairly put in the blacklist and eventually ruled for his delisting. Indeed, after this decision Kadi was free from the asset freeze and the possibility to travel in Europe. The regulation provided for a series of warranties for the individual or entity exposed to administrative sanctions. Once a restrictive measure is enforced, a process of notification of the subject takes place, either by means of postal service or through publication in the official journal of the EU. Secondly, the sanctioned individual is given the opportunity to challenge the decision before a national authority, by reconsidering the case on the basis of new documentation. In the eventuality of a possible rejection of this sort of appeal, as a last resort, the person in question may appear before the tribunal of the EU, the Court of First Instance.

[186] Council Reg 1686 (EU, 20 September 2016);

The European Union has imposed stricter standards of proof to justify blacklisting. Evidence must be verifiable, credible, and reliable. This requires a more thorough investigation before including individuals in a blacklist. The rationale for blacklisting must now be very specific, a detailed explanation of why a party has been sanctioned, including factual evidence to support the decision, is needed. A further new feature was the introduction of a periodic review procedure for sanctions, aimed at establishing if they are still appropriate and proportionate to the circumstances. In the event that new details or evidence come to light or the premises underlying a case are altered, punitive measures may be modified or altered. This ensures that sanctions are not adopted in perpetuity without a prior proper evaluation. The EU tried to build a different way of applying administrative sanctions against supposed terrorist supporters, taking into account on the one hand the national interest of security and on the other the preservation of fundamental rights of people living in Europe or that would have a relationship with Europe. EU member states were asked to participate more actively in the enforcement of sanctions and ensure compliance with procedural rules.

The Kadi Saga has also yielded profound repercussions at the UN level. Indeed, UNSC Res 1904/2009 provided for the creation of a new institution, the Ombudsman, deputized to review the cases of application of administrative sanctions, handling the requests of parties to be removed from the blacklists[187]. The body does not make decisions autonomously; rather, he/she consults with applicants, assembles data and drafts reports to the Sanctions Committee[188]. If the request is denied, the Ombudsperson notifies the appellant with the grounds for rejection, assuming that they are not confidential[189]. Originally only the Sanctions Committee acting unanimously had the prerogative to determine a potential exclusion from the record. It ensued that each state could have impeded a de-listing, irrespective of the Ombudsman's stance. Nevertheless, in June 2011 the institutions witnessed an increase in its powers[190]. From that moment on, the recommendation to delist becomes official if within 60 days it is not met with unified objection by the Sanctions Committee. This result can only be averted in the absence of agreement if a Committee member demands referral to the SC, implying that delisting necessitates the consent of nine of the fifteen veto members of the SC. Opposition to an Ombudsperson recommendation could include the political accountability of the concerned state because the SC typically publishes its deliberations. It might even pave the way for judicial remedies before the courts of that state. This novel approach demonstrates how international institutions are able to draw lessons from national human rights victories. In fact, the role of the ombudsperson - first

[187] UNSC Res 1904 (17 December 2009);
[188] Juliane Kokott and Christoph Sobotta, 'The Kadi Case – Constitutional Core Values and International Law – Finding the Balance?' (2012) 23(4) The European Journal of International Law, 1020;
[189] Point 20 and Annex II of UNSC Res 1904 (17 December 2009);
[190] Points 23 and 25 of UNSC Res 1904 (17 December 2009);

before national authorities, then before international institutions - has greatly improved the protection of individual rights. Moreover, this revised process partially addresses several concerns raised by the Court, specifically with relation to the listing criteria. The introduction of these new safeguards reveals that economic sanctions might be considered legitimate, nevertheless a framework must be established that enables recourse to an administrative appeal or, as an *extrema ratio* to verify the proportionality of the measure, a judicial review.

Striking a balance between fundamental constitutional principles and globally effective measures against terrorism is not a simple task. Nevertheless, the aftermath of the Kadi decision illustrates the parties' desire to find a workable balance. Compared to the original system of regulating sanctions, huge advances have already been made.

The current sanctions imposed towards Russian oligarchs, following Russia's invasion of Ukraine and Putin's authoritarian regime, may be considered as a last consequence of the Kadi case. Once the conceptual toolkit of economic restrictive measures was established through the Kadi Saga, the last chapter of the dissertation aims at retracing the timeline of the sanctions against Russia and at assessing whether they comply with the Kadi standards.

CHAPTER III – The use of economic sanctions in the war against Ukraine

3.1 Introduction

As extensively described in the previous chapter, one of the main takeaways of the longstanding Kadi Saga was the development of an economic sanctions regime more aligned with standards ensuring transparency, participation, rational decision-making, compliance with the law and accessible recourse mechanisms[191]. In fact, especially in its last pronouncement to the case in 2013, the Court of Justice of the European Union strengthened the jurisdictional protections available to individuals in the event that they were tailored by economic warfare[192]. In the first place, the targeted subject must be warned about the restrictive measures incumbent upon him or her in a prompt, unambiguous and comprehensive manner, including the reasons and information behind his accusation. In order to prepare an adequate defense and contest the allegations, the person concerned is given the opportunity to consult the evidence against him or her[193]. Ultimately, the right to an independent and impartial judicial review of the case by a competent court or judicial body is guaranteed, aimed at examining that the economic sanctions imposed are in compliance with legal norms and principles of justice.

With this being said, for the past couple of years the world has been witnessing one of the most dramatic events on a large scale, given the adverse consequences it has yielded: the Russian invasion of Ukraine. Among the international maneuvers carried out to address this emergency are economic sanctions, whose main recipients are Russian Oligarchs.

The main purpose of this chapter and of the thesis more generally, is to assess whether the jurisprudence and the lessons learnt from the Kadi Saga have been fully absorbed and respected in the current 'economic war' against Russia. After tracing the genesis of sanctions on the Russian Federation, their nature and effectiveness, an attempt will be made to answer this question. In particular, it will be evaluated how Russian oligarchs are inserted in the blacklists and which safeguards are accessible to them, notably whether there is an option to appeal to have their names removed or whether sanctions have an immediate and direct effect.

[191] Larissa J. van den Herik, 'Peripheral Hegemony in the Quest to Ensure Security Council Accountability for its Individualized UN Sanction Regimes' (2014), Journal of Conflict & Security Law, 438;
[192] Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, *European Commission and Others v Yassin Abdullah Kadi,* Court of Justice of the European Union, 18 July 2013;
[193] *Ibid*, para 111-112;

3.2 A historical overview: The Crimea Question and the Destabilization in Ukraine in 2014

Economic sanctions towards Russia are not a new phenomenon. Indeed, they have deep historical roots. It all began in 2014, with the annexation of Crimea by the Russian Federation and the resulting destabilization in the region, due to rebellions between pro-Russian activists and the central government of Ukraine. An additional factor that led to an escalation was the downing of a Malaysian Airlines flight at the hands of a Russian missile. As a result of such actions that endanger and threaten Ukraine's territorial unity, autonomy and freedom of decision-making, the European Union and multiple states, most prominently the United States, have decided to undertake a series of autonomous economic sanctions, which have become increasingly more stringent over time. Although these were adopted without a mutually agreed framework or formal coordination mechanism, they are similar to one another in content[194]. The implementation of the restrictive measures occurred in three distinct phases[195]. The first policies enacted involved diplomatic measures, such as travel bans and restrictions on admission to EU countries. In addition, among the targeted sanctions envisioned, it was stipulated that:

"All funds and economic resources belonging to, owned, held or controlled by natural persons responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, and natural or legal persons, entities or bodies associated with them, as listed in the Annex, shall be frozen"[196].

The targeted sanctions implemented in March 2014 reported the names of persons and organizations considered accountable for the political events unfolding in Ukraine, overall 21, comprising both Russian individuals and businesses as well as members of the Crimean government. It is forbidden to access or transfer their assets, including currency, funds held in financial institutions, equity investments, and ownership stakes in the European Union. The real estate owned by individuals and corporations subject to the sanctions cannot be sold or leased. At a later stage, the EU began implementing several economic (sectoral) sanctions against Russia. For example, it placed a policy on specific banks and businesses in order to restrict their entry into primary and secondary capital markets in the EU. Moreover, there was a prohibition on the importation of certain goods and

[194] Masahiko Asada, *Economic Sanctions in International Law and Practice* (Routledge 2020), 129;
[195] V. Voinikov, 'The EU vs. Russia: Legal Nature and Implementation of the Union's Restrictive Measures' (2015) 23(1) The Baltic Region;
[196] Art 2(1), Council Decision 2014/145/CFSP (17 March 2014); Article 2 (1), Council Regulation (EU) 269/2014 (17 March 2014);

services, among which arms related material and designated technologies and services that could be used in the exploitation and extraction of oil. Lastly, firms operating in the energy, transport and telecommunications services were impacted by economic warfare[197].

These restrictive measures had two main objectives. The former corresponds to what sanctions most commonly aspire to, an instrument of coercive diplomacy intended to obstruct the governmental actions and choices of an independent nation. However, they are also the result of a firm condemnation by the European Union and the United States regarding the annexation of Sevastapol and Crimea, thus embodying a nonrecognition policy[198]. The latter distinctive aspect implies that there is minimal flexibility for easing the sanctions as their complete withdrawal would take place only in the event that the territories returned to Ukraine, which is all but impossible. Russia, for its part, has not welcomed the economic war waged against itself. Therefore, it promptly devised a system of countersanctions, which came to fruition on August 6, 2014, mainly affecting the agriculture and food industry. A total ban on the import of products such as fruit, vegetables, meat, fish and dairies, was enforced initially over the US, Canada, Norway and Australia[199]. One year later the list of countries targeted was updated, including Japan, Switzerland, Albania, Iceland, Lichtenstein and Montenegro. The reciprocal sanctions caused severe financial harm to all nations and economies impacted. Most of the EU member states as well as prominent business personalities raised the loudest objections to the penalties and demanded their reassessment.

Russia raised doubts about the legitimacy of economic sanctions on different grounds. First of all, these measures are taken without a legal basis, as they are not founded, requested or suggested by a UNSC resolution nor authorized by the UN Charter. One could therefore challenge the incompatibility of the policies with the principle of non-intervention or non-interference in another state's affairs. Nevertheless, if it is assumed that Russia engaged in actions which run counter to the norms and standards of international law, as sanctions are a response to these transgressions and aim to halt them, they could be justified as a typical instance of implementing a retaliatory action, namely a countermeasure. These are activated at the time when a state that has been damaged responds to the nation that has committed an international wrong[200]. In this particular case, however, it is remarkable

[197] Asada (supra n.194), 130;
[198] Théodore Christakis, 'Les conflits de sécession en Crimée et dans l'est de l'Ukraine et le droit international', (2014) 3 Journal du Droit International, 750;
[199] Federal Law No. 281-FZ "On Special Economic Measures" (December 30, 2006) and Federal Law No. 390-FZ "On Security" (December 28, 2010).
[200] Marco Gestri, "Sanctions Imposed by the European Union: Legal and Institutional Aspects", (2016), in Natalino Ronzitti, *Coercive Diplomacy, Sanctions and International Law*, (Brill, 2016);

that the entities which have engaged in economic warfare with Russia, namely the EU and the US, were not personally involved in the territorial dispute. Ukraine, being the injured state, should have been the right claimant. What remains to be elucidated is under which jurisdiction the subjects which carried out economic sanctions deemed to act. The international community is united in the unanimous view that the Russian Federation infringed peremptory norms of international law which do not concern only bilateral obligations between itself and Ukraine, rather they concern obligations *erga omnes,* which are defined as: "The obligations of a state towards the international community as a whole which are the concern of all states and for whose protection all states have a legal interest"[201]. It follows from all this that the use of third-party countermeasures to respond to breaches of specific categories of responsibilities does not appear to be opposed.

Secondly, Russia tests the validity of restrictive measures with some of the bilateral and multilateral treaties to which it is a party. To cite an example, it observes an incongruence with the World Trade Organization (WTO) agreements, whose signatories also include the EU and the US. Considering the principles of unrestricted trade within the WTO, practices that impede their ability to trade can be assessed and subsequently found to be unlawful. Another treaty that was interpreted within the context of economic penalties is the 'EU-Russia Cooperation and Partnership Agreement', object of the Rosneft Case Law. Economic sanctions against the Russian Federation significantly affected the oil energy sector by placing restrictions on access, banning the supply and export of specific sensitive services and technologies used in oil extraction and exploration. In addition, restrictions were imposed on access to the EU capital market for some Russian companies operating in the field. In 2018, a number of Russian energy firms linked to the Rosneft Group filed a lawsuit in the General Court. Arguing that the sanctions lacked sufficient justification and were adopted in violation of relevant EU laws and international commitments, they called for the lifting of the restrictive measures. In its decision of September 13, 2018 (T-715/14 Rosneft Oil Company and others v. Council), however, the Court dismissed the appeal, ruling that the Council had adequately justified the challenged measures and that their objective was in accordance with the promotion of international peace and security, which is one of the main objectives of the European Union's external action. The Tribunal had also confirmed the consistency of these restrictive measures with the Russia-EU Partnership Agreement mentioned earlier, as they were necessary to protect the Union's core security interests. Furthermore, it had rejected the objections regarding the violation of the principles of equal treatment and proportionality, acknowledging that the Council had legitimately chosen to

[201] Jochen A. Frowein, 'Obligations erga omnes', (December 2008) Max Planck Encyclopedia of Public International Law, https://opil.ouplaw.com/home/epil Accessed 13 June, 2023;

identify Russian companies or production sectors that were dependent on technology or expertise primarily available in the Union, in order to ensure the effectiveness of the restrictive measures taken and prevent their purpose from being undone[202]. Finally, the Tribunal had concluded that the relationship between the size of the penalty measures and the objective pursued was reasonable and proportionate[203]. Against this decision, the Russian oil companies appealed to the Court of Justice, which, in its recent ruling on September 17, 2020, rejected the appeal and fully upheld the restrictive measures adopted by the Council[204]. In the Court's opinion, the importance of the purposes of these measures justifies the consequences, in spite of the significant repercussions against also individuals who have no direct responsibility with respect to the cause that led to the implementation of these sanctions: therefore, given the significance of the interests at stake, the encroachment in the freedom of enterprise and property rights of affected individuals cannot be considered disproportionate. The Rosneft case is crucial, as it upholds a consistent pattern in the legal precedents of the CJEU, notably the Kadi Saga, by establishing an appropriate balance between the rule of law and fundamental rights on the one hand and the unique character of foreign policy within the EU legal framework. In the face of an "emergency in international relations", such as the unrest in Ukraine in 2014, the Council exercises wide discretion in the adoption of targeted sanctions[205].

3.3 The international reaction to the Russian invasion of Ukraine in 2022

Starting February 24, 2022, the whole international community has been deeply shaken by the military aggression carried out by the Russian government against Ukraine, causing an unprecedented global impact.

As explained in the preceding chapter, the key entity in charge of the preservation of international peace and security is the Security Council. In order to accomplish this task it was granted broad-reaching authority, among which the permission for military action and the ordering of economic sanctions that each state ought to implement. Within this organization there is a rule that permanent (or non-elected members) enjoy the right to veto, which basically removes them from the consequences when their actions, or those of their client states, are being scrutinized. Although in the circumstance under review the Russian Federation figures as the aggressor, the Council is

[202] Case T-715/14, Rosneft Oil Company and others v. Council, General Court, 13 September 2018, para. 194;
[203] *Ibid*, para. 205;
[204] Case 732/18, Rosneft Oil Company and Others v Council of the European Union, Court of Justice of the European Union, 17 September 2020, para 138;
[205] Peter van Elsuwege, 'Judicial Review of the EU's Common Foreign and Security Policy: Lessons from the Rosneft Case' (2017) Verfblog;

deadlocked as the state would invariably veto binding resolutions concerning restrictive measures in reaction to the situation in Ukraine[206]. This did not however imply that the body remained inert in the face of Russia's unjust annexation of Ukraine. The latter has been the subject of several Council special sessions and certain organs of the United Nations, among which the General Assembly and the Human Rights Council, have voiced their apprehension over the situation through resolutions. Approximately seven months after the invasion, on 12th October 2022 a first resolution was promulgated with the agreement of 143 countries, expressing disapproval over the recent referendums in Ukraine and requesting that Russia rescind its declaration of annexation. Subsequently, on March 2nd 2022, the UN General Assembly voted by a significant margin – 141 to 5, with 35 abstentions – that Russia "immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders[207]". Ultimately, through an April 7 resolution, Russia was suspended from its membership to the Human Rights Council[208].

The United Nations has been involved in normative statements regarding transgressions of international law after Russia's military incursion, comprising declarations by Secretary-General Guterres during the General Assembly's yearly meeting. Additional UN organizations offered humanitarian aid to individuals impacted by the conflict and participated in the inspection of nuclear sites in Ukraine. However, with regard to sanctions, the UN refrained from intervening in a pervasive manner, it mobilized to some extent but it could have done more. It is important to bear in mind that once a sanction regime is activated toward an individual, there are no judicial remedies available at UN level, only member states possess them. It could be for this very reason that, given the problems that have arisen with the Kadi case in the post 9/11 era, the UN did not take a very prominent stance. Due to the limitations imposed by the UN's organizational structure in enforcing sanctions, informal multilateral action by the European Union and a coalition of like-minded states have developed, which will be explored in in the subsequent sections of the work.

[206] Patrick Butchard, 'The UN General Assembly condemns Russia: but what can it actually do' (14 October 2022) House of Commons Library. https://commonslibrary.parliament.uk/the-un-general-assembly-condemns-russia-but-what-can-it-actually-do/. Accessed 30 August 2023;
[207] Letter dated February 28, 2014, written to the president of the Security Council by Ukraine's permanent representative to the UN;
[208] Thomas Bierstecker, 'Sanctions against Russia and the role of the United Nations' (November 2022), Global Challenges, https://globalchallenges.ch/issue/12/sanctions-against-russia-and-the-role-of-the-united-nations/ Accessed 30 August 2023;

3.4 The European response against the Russian invasion of Ukraine in 2022

A real war has been waged, with severe economic and social impacts not only for the immediately involved or neighboring countries, but also for more remote European nations. Western countries, particularly NATO member states, immediately denounced the aggression, and among the most significant reactions was that of the European Union, which adopted four separate sanctions packages that dealt a severe blow to Russia's economy. Among the various actions taken by the European Union, the most significant sanction measures included restricting access to the SWIFT system for seven Russian credit institutions and suspending assets owned by Russian tycoons in the territory of the European Union, including Italy. This specific form of penalization has generated multiple questions, not only regarding the implementation measures, but also regarding the implications that arise from it. It is, therefore, of considerable interest to understand what are the legal foundations of such measures, their duration and the possible avenues of redress made available to protect individuals affected by this restrictive measure on their financial resources[209].
In the first instance, the economic battle launched by the European Union for the illegal aggression in Ukraine against alleged supporters of Russian President Vladimir Putin, beyond considerations about the feasibility and persuasive effectiveness of such measures, might risk, according to some commentators, to involve real acts of "judicial oppression"[210].

Having conducted an analysis of the genesis of the economic warfare on Russia, it is possible to move on to examine the most recent sanctions on the Federation, which stem directly from the 2014 sanctions regimes. Specifically, the Council made amendments to the earlier Regulations and Decisions, expanding the legal preconditions for the identification of recipients of measures, through Decision (CFSP) 2022/329 and Regulation (EU) 330/2022. These acts were published in the Official Journal of the European Union on February 25, 2022 and entered into force on the same day. They aimed to target, among others,

"Natural persons responsible for actions or policies, or who support or carry out such actions or policies that undermine or threaten the territorial integrity, sovereignty, and independence of Ukraine, or stability or security in Ukraine, or that hinder the work of international organizations in Ukraine"

[209] Renato Amorosa, 'Il congelamento dei beni agli oligarchi russi: aspetti giuridici e conseguenze', (2022), Office Advice, https://officeadvice.it/riflessioni-giuridiche/congelamento-dei-beni-agli-oligarchi-russi/ Accessed 5 June 2023;
[210] Lauria Baldassare, 'Sanzioni contro gli oligarchi, c'è qualcosa che non torna', *Il Riformista,* (11 March 2022) https://www.ilriformista.it/sanzioni-contro-gli-oligarchi-ce-qualcosa-che-non-torna-285734/, Accessed 7 June 2023;

and "*natural or legal persons, entities or bodies providing material or financial support to or benefiting from the Russian leaders responsible for the annexation of Crimea or the destabilization of Ukraine*"[211].

Because of this broadening of the designation criteria, the Council expanded the list of those subject to sanctions through specific implementing regulations, adding several Russian oligarchs known for their alleged economic, personal or political ties to Russian perpetrators of the war in Ukraine[212]. In general, this refers to individuals from outside the public sector who, often as a result of the collapse of the Soviet Union and the subsequent privatization of the vast communist-era production systems, have accumulated considerable wealth and gained considerable economic and political power. This privileged position enables them to influence the decisions of the Russian government apparatus[213]. Among the best-known Russian Oligarchs is Roman Abramovich, of Jewish origin and with a fortune of $8.7 billions and holds the shares of the major player in the steel industry Evraz and the nickel producer Norilsk Nickel; Alisher Usmanov, the Uzbec-Russian owner of the USM Group and Metallinvest, one of the leading steel companies. In addition, he claims ownership of the world's largest yacht, currently under seizure in Hamburg and whose value is estimated at $600 millions. He asked for the sanctions imposed on him to be lifted in April 2022; Alexey Mordashov, major shareholder of the metallurgical giant Severstal, who is trying to free his assets from sanction constraint, transferring them to a trust or investment fund. In May 2022 he appealed the to the EU court, an attempt also made by two other investors, Mikhail Fridman and Pyotr Aven.

In the wake of the announcement of economic sanctions, legal scholars have investigated their effects over firms headed by Russian Oligarchs[214]. There exists consensus in published research that, under ordinary circumstances, the presence of political elites in managerial positions of companies raises their value[215]. Thanks to their strong ties to policymakers, they are more experienced in

[211] Article 1(a) and (d) of Council Regulation (EU) 330/2022, amending Article 3 of Council Regulation (EU) 269/2014; Article 1(2)(a) and (d) of Council Decision 2022/329/CFSP, amending Article 2 of Council Decision 2014/145/CFSP;
[212] Andrea Saccucci, Fabrizio Ciancio and Roberta Greco, 'Congelamento dei beni in attuazione delle sanzioni UE contro la Russia', (2022), Saccucci & Partners Studio Legale Internazionale https://www.saccuccipartners.com/2022/08/01/congelamento-dei-beni-in-attuazione-delle-sanzioni-ue-contro-la-russia/, Accessed 9 June 2023;
[213] Sergei Guriev and Andrei Rachinsky, 'The Role of Oligarchs in Russian Capitalism' (2005), 19(1), Journal of Economic Perspectives;
[214] Franziska Bremus and Pia Huttl, 'Sanctions against Russian oligarchs also affect their companies' (2022), 12(21), DIW Weekly Report;
[215] Eitan Goldman, Jorg Rocholl and Jongil So, 'Do Politically Connected Boards Affect Firm Value?' (2009), 22(6), Review of Financial Studies; Sheng-Syan Chen et al., 'Board structure, director expertise, and advisory role of outside directors' (2020), 138(2), Journal of Financial Economics;

handling bureaucratic processes, possess an easier access to confidential information and enjoy preferential treatment in the selection of contracts. In the event that they were subject to restrictive measures, their room for maneuver would be greatly reduced and this would cause negative spillover effects over the firm's performance. Targeted executive or board members could yield legal and economic ambiguities and instabilities, in that they would no longer be able to devote themselves fully to their jobs, concentrating instead on avoiding the effect of sanctions, through the sale or relocation of assets. Economic warfare impacts far beyond the welfare of tailored individuals, potentially inhibiting economic expansion or resulting in a currency crisis[216]. In addition, the most affected segment of the population would be the poorer one, inducing a further divergence in the poverty gap[217].

The present table establishes a comparison between companies with sanctioned oligarchs and companies with unsanctioned oligarchs. The analysis reveals that the former experienced a more substantial decline in the value of its shares than the latter, minus 31 percent against minus 19 percent respectively.

Table 1: Characteristics of the companies analyzed

	Not sanctioned	Sanctioned
Oligarch in a senior position	57	72
Oligarch on executive board	43	17
Oligarch as founder	0	11
Change in stock price (Jan 31 - Feb 25)	−18.7	−30.9
No. of firms in sample	7	18
No. of sanctioned persons (average)	0	1.1

Source: Franziska Bremus and Pia Huttl, 'Sanctions against Russian oligarchs also affect their companies' (2022), 12(21), DIW Weekly Report, p. 144;

Moreover, as demonstrated in the figure, although there has been a decline in the cumulative stock return of both types of firms, in the case of Russian oligarchs it is more alarming and below expectations.

[216] Dursun Peksen and Byunghawan Son, 'Economic coercion and currency crises in target countries' (2005), 52(4), Journal of Peace Research; Matthias Neuenkirch and Florian Neumeier, 'The Impact of UN and US economic sanctions on GDP growth' (2015), 40, European Journal of Political Economy;
[217] Sylvanus K. Afesorgbor and Reuka Mahadevan, 'The impact of sanctions on income inequality of target states' (2016), 83, World Development;

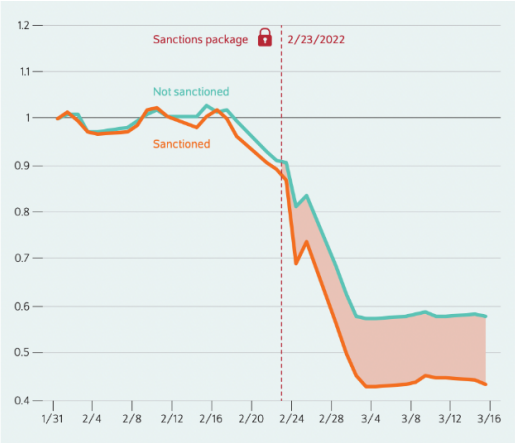

Figure 1: Comparison of cumulative stock returns of companies with and without sanctioned executives

Source: Franziska Bremus and Pia Huttl, 'Sanctions against Russian oligarchs also affect their companies' (2022), 12(21), DIW Weekly Report, p. 145

3. 5 The use of economic sanctions at the national level

Following the initiation of Russia's military operations in Ukraine, with troops entering the nation from Crimea and Belarus, an efficient sanction network developed, encompassing over thirty countries across the world. The coercive measures endorsed by each country are diverse in terms of the individuals that they target or the dates in which they are assigned, depending on the legal system under which in nation operates[218].

The United States has been one of the most active players in condemning Russia's violations of international law, instituting restrictive measures since 2014 with the destabilization in Crimea, targeting Russia's energy and defense industries, banks and other monetary organizations and outlawing export financing and business development initiatives. Subsequently, in an instant reaction to the Russian recognition of the Donetsk People's Republic and the Luhansk People's Republic as sovereign states on February 21st 2022, American President Joe Biden signed an executive order forbidding new trade, investment and financing in the DPR and LPR and established an *ad hoc* Taskforce, KleptoCapture, tasked with the supervision of the US sanction policy against Russia[219]. Within two days of the invasion, the US began a series of individual sanctions aimed at the Russian leadership, among which President Vladimir Putin and Russian Foreign Minister Sergey Lavrov along with their families as well as Sergei Shoigu, the Russian Minister of Defense and Valery

[218] Claire Mills, 'Sanctions against Russia' (21 July 2023), House of Commons Library, https://commonslibrary.parliament.uk/research-briefings/cbp-9481/. Accessed 1 September 2023;
[219] US Department of Justice, 'Press Release' (2 March 2022);

Gerasimov, the head of the Russian military's general staff[220]. Later on, economic warfare was also imposed on other members of the Russian Parliament, senior Kremlin and Officials and other individuals in government[221]. In addition to the latter, those who somehow facilitated Russia's actions are also held responsible by the United States. For this reason, penalties were also provided for officials in the annexed regions of Ukraine designated or supported by Russia[222] and leaders and personnel from the Russian armed forces, carrying out human rights violations or breaches of international law.

In the course of the Russo-Ukrainian War, the US also arranged a series of financial restrictions. The first among these were directed at the major financial organizations in Russia, accounting for approximately 80% of the of the total Russian assets, preventing the clearance of payments in US dollars or raising capital on US markets. Besides the banks themselves, their managers were also sanctioned as well as branches of those banks in foreign countries[223]. The energy sector was also negatively impacted by these measures as in 2022 any kind of U.S. investment in the Russian energy sector, either directly or indirectly through foreign companies, has been prohibited[224]. Considering more recent measures, as a result of the US's implementation of a reporting requirement on Russian government assets, it will be able to "fully map holdings of Russia's sovereign assets that will remain immobilized in G7 jurisdictions until Russia pays for the damage it has caused to Ukraine"[225].

Ultimately, the US sanctions also affected the trade sector, first aimed at weakening its capabilities by subjecting to a ban about half of Russia's imports of high-tech goods[226]. With regards to imports, President Biden signed an Executive Order on March 8, 2022, prohibiting the import of coal, crude oil, liquified natural gas and specific petroleum items[227].

In concert with the EU, the USA and other G7 countries, also Australia has played an important role in enforcing coercive measures towards Russia. As in the previous case of the United States, also Australia was already an ally against Russia in 2014, proclaiming a series of supplementary restraint policies in 2022. The initial wave on new sanctions were enacted on 23 February 2022. Firstly, they extended the standards for designating sanctions towards people and

[220] Secretary of State Anthony Blinken 'Press Statement: Imposing Sanctions on President Putin and Three Other Senior Russian Officials' (25 February 2022). https://www.state.gov/imposing-sanctions-on-president-putin-and-three-other-senior-russian-officials/ Accessed 1 September 2023;
[221] US State Department, 'Press Release' (15 March 2022); US Department of the Treasury, 'Press Release' (24 March 2022); US State Department, 'Fact Sheet' (7 April 2022); US Department of State, 'Press Statement' (2 August 2022); US Department of State, 'Press Release' (30 September 2022);
[222] US State Department, 'Press Release' (28 June 2022); US Department of State, 'Fact Sheet' (8 May 2022);
[223] US Department of the Treasury, 'Press Release' (8 May 2022);
[224] White House, 'Fact Sheet' (8 March 2022);
[225] US Department of the Treasury, 'Press Release' (19 May 2023);
[226] US Department of the Treasury, 'Press Release' (24 February 2022);
[227] White House, 'Background Press Call' (8 March 2022);

organizations deemed of "strategic and economic significance to Russia"[228]. Second, they maintained the pre-existing bans on trade with Sevastapol and Crimea[229] as well as the names of those occupying leadership positions in Russia, most prominently the Wagner Group[230]. One change from the previous years was to punish individuals and entities accountable for spreading misinformation, such as state-run media outlets and pro-Kremlin news outlets[231]. Furthermore, along with other sanctioning countries, Australia declared on 31 March 2022 that it would revoke the MFN status from Russia and Belarus. Finally, entities and individuals engaged in the manufacture and transportation of unmanned aerial vehicles (UAV) to Russia for employment in Ukraine were subjected to restrictions.

As for other geographical areas, Singapore marked the first country in the South East Asian region to participate in the enforcement of sanctions towards Russia, particularly on materials suitable for weaponry, electronic equipment and technology, to be followed by Japan.

3.6 Legal safeguards against the use of economic sanctions in the EU and international framework

Individuals subjected to economic sanctions have a dual appeal mechanism at their disposal. On the one hand an international one and subsequently also a protection under domestic law, which will be described in the subsequent section. In general, recipients of restrictive measures have the option of appealing to the Court of Justice, which does not examine the appropriateness of the sanctions imposed by the Council, but merely verifies that the Council has not manifestly exceeded the bounds of its discretion in imposing them. In other words, the Court examines that such measures do not contravene the foundations of the Union, are not excessive, or do not target individuals outside the administration involved and it assesses an appropriate balance between safeguarding international peace and security and protecting the fundamental rights of the individual involved[232].

To become effective, the list of persons subject to sanctions must follow European Union rules. Thus, taking the February 2022 restrictive measures as an example, these are duly (and promptly) published in the Official Journal of the European Union L 59/1 of Feb. 28, 2022, as a "nonlegislative act" of the relevant European Council Decision 2022/337 listing 26 individuals (and the joint-stock company Sogaz), considered to be Putin supporters and promoters, who came under

[228] Australian Ministry of Foreign Affairs, 'Media Release' (23 February 2022);
[229] *Ibid*;
[230] Australian Government, Federal Register of Legislation (23 February 2023);
[231] Australian Ministry of Foreign Affairs, 'Media Release' (8 March 2022);
[232] Vitalba Azzolini, 'Come funziona il congelamento dei beni agli oligarchi russi?' (2022), Start Magazine, https://www.startmag.it/economia/come-funziona-il-congelamento-dei-beni-agli-oligarchi-russi/, Accessed 15 June 2023;

Brussels' crosshairs. In a 15-page document, the Official Gazette presents biographical profiles of important oligarchs in an organized manner, providing details such as their names (also in Cyrillic alphabet), personal details such as date and place of birth, gender and nationality, and why they were "blacklisted." For each individual, a brief description in about forty lines illustrating their close relationship with Putin, exchanges of favors, financial support, in some cases shared experience in the KGB, active participation and support in the supervision of the Russian national economy and "active involvement" in actions that have undermined Ukrainian sovereignty in recent years[233]. The 26 individuals are added to another 670 individuals already subject to EU restrictive measures (but the number listed is expected to grow further). As an example, the individual blacklisted under No. 688 is accompanied by the following account:

"Function: Activist, journalist, propagandist, host of a talk show named "The Antonyms" on RT, Russian state-funded TV channel." – "[Mr. X.]37 is a journalist, who hosts the "The Antonyms" talk show on RT, Russian state-funded TV channel. He has spread anti-Ukrainian propaganda. He called Ukraine a Russian land and denigrated Ukrainians as a nation. He also threatened Ukraine with Russian invasion if Ukraine was any closer to join NATO. He suggested that such action would end up in "taking away" the constitution of Ukraine and "burning it on Khreshchatyk" together. Furthermore, he suggested that Ukraine should join Russia."[234]

For these individuals, an asset freeze is activated and a ban on entry or transit through the territories of EU member states is imposed[235].

To further strengthen the argument that listed individuals have the right to invoke the removal of their name, one can cite the example of a person that possibly was exonerated from the EU sanctions list. It is the case of Saodat Narzieva, sister of the Russian oligarch Alisher Usmanov, blacklisted on April 2022, on charges of having taken part to the Organized Crime and Corruption Reporting Project (OCCRP). Restrictive measures envisioned a ban on travelling in Europe as well as on resources that

[233] Council Implementing Regulation (EU) 2022/336 (28 February 2022), putting into effect Regulation (EU) No. 269/2014 regarding restraints on activities that threaten Ukraine's territorial integrity, sovereignty and independence;
[234] Michael Kilchling, "Beyond Freezing? The EU's Targeted Sanctions against Russia's Political and Economic Elites, and their Implementation and Further Tightening in Germany", in Didier Reynders, 'War in Ukraine: Legal and Political Challenges for the EU' (2022) 2, The European Criminal Law Associations' Forum, p. 140;
[235] Vittorio Nuti, 'La "black list Ue contro il cerchio magico di Putin", *Il Sole 24 ore* (1 March 2022), https://www.ilsole24ore.com/art/sanzioni-bruxelles-vara-la-black-list-oligarchi-AEC7m5GB?refresh_ce=1, Accessed 16 June 2023;

are situated in member states. The Council of the EU eventually lifted the sanctions against Narzieva, as they were based on unfounded claims that have been rebutted persuasively and conclusively[236].

Although the reasons behind the sanctions in the most recent regulations may seem too general and lack clear rationale, it is clear that they are in line with the designation criteria set out in the regulations. The broad scope of the regulations, which in part may seem excessive compared to the mere preventive function of the system, paradoxically makes the reasons given for inclusion more powerful than they may seem at first glance[237].

As correctly stated by EU Spokesperson Daniel Ferrie,

"Since sanctions are progressive/regressive depending on whether the actions/behaviour of those targeted persists or changed, it is a natural part of the sanctions regime not only to list but also de-list people if there are reasons for it"[238].

In contrast to 2014, the current human rights violations attributed to Russia are clearly visible and have been the subject of attention in the international political sphere for several months. Furthermore, European sanctions should be easier to challenge than US sanctions. For this very reason, there have been numerous petitions to the Court of Justice of the European Union in recent years.

There is a divergence of views among countries regarding sanction regimes against Russia[239]. A great deal of nations, such as Southeast Asia nations, China and states comprising the African Union uphold the permissibility only of restrictive measures regulated by the Security Council of the European Union; sanctions adopted unilaterally, on the other hand, are considered a breach of the principle of fair and equal treatment and an unwarranted intrusion into the internal affairs of the country. Beijing's Foreign Ministry Spokesman denounced the use of financial punitive policies as ineffective and illegal because of their negative impacts on civilians and the abuse of power by states that exploit them. It is not just a matter of political positioning, rather it expresses a different

[236] Simon Goodley, 'Sister of oligarch Alisher Usmanov removed from EU sanctions list', *The Guardian* (16 September 2022), https://www.theguardian.com/world/2022/sep/16/alisher-usmanov-removed-eu-sanctions-list-saodat-narzieva, Accessed 22 June 2023;
[237] Roberta Barberini, 'Il congelamento dei beni degli oligarchi', (2022), Questione Giustizia, https://www.questionegiustizia.it/articolo/il-congelamento-dei-beni-degli-oligarchi, Accessed 12 June 2023;
[238] Leonie Kijewski, 'The oligarch sanctions runaround: Freeze, lose in court, and still keep the money' *Politico* (15 November 2022) https://www.politico.eu/article/russian-oligarch-european-union-sanctions-lose-in-court-still-keep-money/ Accessed 22 June 2023;
[239] Mirko Sossai, 'Sanzioni, Ritorsioni E Contromisure: Presupposti Di Legittimità Della 'Diplomazia Coercitiva' (2022), EticaEconomia, https://eticaeconomia.it/sanzioni-ritorsioni-e-contromisure-presupposti-di-legittimita-della-diplomazia-coercitiva/ Accessed 23 June 2023;

perspective on the international legal order, which mainly upholds the principle of coexistence and sovereign equality of states. G7 countries, on the other hand, do not take this view; they assert the compliance of sanctions with international law and the recent jurisprudence on the issue. The main thesis they put forward is that the main purpose of restrictive measures is to pressure the accountable countries in restoring compliance with the law as well as the *status quo ante*, not to inflict a position. States sharing this perspective organized a multilateral taskforce named 'Russian Elites, Proxies and Oligarchs (REPO) to promote cooperation and communication in freezing operations[240].

3.7 Judicial protection for individuals sanctioned at the national level: the Italian case

It is of utmost importance to ensure the effectiveness of individual measures at the national level through proper enforcement. Member states must designate the national competent authorities and provide domestic sanctions to ensure that these measures are properly implemented. In the Italian legal system, economic warfare has been transposed by legislative decree 109/2007, which prescribes freezing measures to "prevent, counter and suppress the financing of terrorism and the activities of countries that threaten international peace and security, implementing Directive 2005/60/EC"[241]. Initially this act was designed for economic sanctions as part of the fight against international terrorism, only to be adapted to new threats that have arisen, such as the occupation of Crimea in 2014 and later the aggression against Ukraine[242].

In 2017, the statutory instrument underwent a major change, which is also in line with the decisions of the Court of Justice, namely the requirement to elucidate the reasons why the subject was tailored by authorities, in order to grant the faculty to make any observations and, if necessary, request its removal from the registry. The individual must also be provided with information about authorities, both domestic and international, to which appeals against the decisions taken can be submitted[243]. At the pratical level, the authority responsible to enforce asset and resource freezing is the Financial Security Committee, a body consisting of fifteen members drawn from various ministerial departments, public financial institutions and security organizations and chaired by the Treasury's Director General or one of his or her delegates. The Committee, which also comprises a representative of the State Property Agency, is actively engaged in enacting the restrictive measures prescribed by the United Nations, the European Union and the Minister of Economy and Finance. In

[240] *Ibid;*
[241] Legislative Decree 109/2007 (22 June 2007);
[242] Andrea Saccucci, Fabrizio Ciancio and Roberta Greco (supra n. 212);
[243] Barberini (supra n.237);

fact, the aforementioned Committee only plays a role of proposal and initiative, whilst it is up to the Ministry of Economy to concretely implement EU sanctions through the freezing of funds and economic resources held, including through third parties, by individuals, groups or legal entities[244]. Therefore it is administrative rather than judicial in nature. As far as guarantees as concerned, from 2017 onwards, individuals targeted by economic sanctions have the opportunity to appear before an ordinary judge, in this case the Regional Administrative Court located in the Italian territory of Lazio, in order to challenge the legality of the freezing of their economic resources and property, according to the practice established by Legislative Decree 109/2007[245].

As already established by the Kadi judgement, the limitation of property right cannot be considered ineffective and disproportionate, "in the face of an objective of general interest so fundamental to the international community as combating by all means, in accordance with the Charter of the United Nations, threats to international peace and security arising from acts of terrorism"[246].

The first ruling by the Administrative Regional Court of Lazio on the sanctions during the Russian-Ukrainian war is dated June 27, 2022. Through the latter, it ratified the validity of the decision in which the Financial Security Committee had ordered the suspension of the activities of a motor yacht anchored in the port of Imperia since it was believed to be connected to a well-known Russian oligarch inserted in the blacklists[247]. In essence, the Administrative Court ruled that the infringement of the rights to procedural participation provided for in Law n. 241/1990 does not exist and considered the use of "public sources" as legitimate to prove the indirect connection between the object in question and the tailored individual[248]. In a subsequent order of 14th July 2022, the Court accepted the request for a precautionary measure made by several Italian companies concerning the freezing of corporate holdings and assets (movable and immovable) owned by these companies, based on their alleged indirect connection with a sanctioned individual by means of a trust intermediary[249]. In April 2023, the Regional Administrative Court was confronted with a peculiar type of individual sanctions. This is the situation where the person listed had previously delegated the control and management of his assets to a trust. Several Italian companies filed an administrative appeal following a freezing action carried out by the Financial Security Committee, based on the assumption that these

[244] Article 3 (supra n. 20);
[245] Renato Amorosa (supra n. 11); Gli oligarchi russi che fanno causa contro le sanzioni, *Il Post* (7 June 2022) https://www.ilpost.it/2022/06/07/oligarchi-causa-sanzioni/, Accessed 14 June 2023;
[246] Joined Cases C-402/05 P and C-415/05 P, Kadi and Al Barakaat International Foundation v Council and Commission, European Court of Justice, 3 September 2008;
[247] Judgement n. 887, Administrative Regional Court of Lazio, 27 June 2022;
[248] *Ibid;*
[249] Ordinance n. 4557, Administrative Regional Court of Lazio, 14 July 2022;

firms may be indirectly connectable to the tailored subject. In this case the Court raised three questions:

1. Is a listed person who confers his or her assets to a trust liable to an asset freeze?
2. Is an associate of the listed person who confers his or her assets to a trust liable to an asset freeze?
3. Can the assets transferred to a trust by an entity that controls those assets be subject to freezing?

As stated earlier, the Tribunal encountered a novelty in the merits of the case, namely the presence of a trust. On account of that, not possessing the expertise to be able to reach a conclusion that does not unduly harm the person concerned, through Ordinance N. 6256/2023, the Court ordered a preliminary referral to the Court of Justice of the European Union. From all this it can be inferred that, although the Italian Tribunal has not ruled on the judgement, it cares about respecting the rights of the individuals concerned. The court defers the issue to those who dictate the guidelines in order to give more relevance to the individual's judicial protection.

Measures of economic warfare take effect on the day following the date of publication in the Official Gazette for a period of six months, which may be extended as long as the circumstances persist. The freeze "shall not affect the effects of any seizure or confiscation orders, taken in criminal or administrative proceedings, involving the same funds or economic resources"[250]. Once the sanction regime has been triggered, assets are subject to a constraint of unavailability, that is to say that it is not permitted to transfer, dispose or use such resources in a way for the purpose of obtaining funds, goods or services[251]. The State Property Agency is in charge of the custody and administration of the fortune, which remains in the hands of Russian Oligarchs and is not usable by third parties. Moreover, the freezing provision prevents the assets from being sold at auction or assigned to groups and organizations, as it is the case with holdings confiscated from the Mafia. In the event in which the economic penalties were lifted towards a particular individual, the special currency police unit of the Guardia di Finanza (Financial Guard) has the task of informing the interested party directly, which has a period of 180 days to collect the goods. After that time has elapsed, possessions can be put up for sale and the revenue obtained is transferred to the Treasury.

[250] Article 3, Paragraph 8, Legislative Decree 109/2007 (22 June 2007)
[251] *Ibid*;

3.8 The problem of the effectiveness of economic sanctions against Russia

Once this detailed analysis of economic sanctions has been conducted, it is appropriate to ask whether they have been effective in achieving their intended goals. Economic warfare is a powerful tool, nevertheless it also possesses a double-edged sword. On the one hand these measures can be utilized to exert pressure or impose penalties over an entity that infringes universal standards or jeopardizes international peace and security, like Russia in the case under examination; on the other hand, they might inadvertently have spillover effects or negative consequences over the organizations or entities implementing them[252]. This can take the form of interrupting the flow of trade, restricting market access, rising expenses or declining consumer welfare. An additional factor that could in the long run reduce the effectiveness of sanctions concerns the duration of these measures. Maintaining a sanction regime in place is a costly operation. On top of that, some entities may be skeptical of prolonging or amplifying restrictive measures because of their close ties to Russia or close dependence on the country's resources[253]. Early termination of measures could lead to a failure to achieve the target. A further element to consider in the evaluation is the level of integration existing among the sanctioning subjects. Although there has been coordination among certain actors, such as the European Union and some states that acted unilaterally, for example the United States, other countries did not want to take part in sanction regimes and remained neutral. There has not been a unanimous voice to definitely condemn Russia and persuade Putin to call off armed conflict, rather the country was given the possibility to identify alternatives and proceed with its economic activities elsewhere.

To a certain extent economic sanctions succeeded in their intent of damaging the Russian economy. Indeed, over 1.000 Western companies abandoned the market, bringing about a raising in unemployment levels and lowering foreign investment[254]. The pressure exerted over Russian leadership, through asset freezing and travel bans, also caused difficulties. In addition, the nation experienced international isolation, being unable to gain entry to the SWIFT banking system or administer financial resources efficiently. Nonetheless, despite these negative implications and contrary to expectations, the Russian economic system has shown resilience. The value of the ruble remained moderately unstable and the decline in GDP has been milder than initially anticipated. As there was no universal support for economic warfare, Russia directed its trade in oil, gas and energy

[252] Annie Lowrey, 'Can sanctions stop Russia?' (10 March 2022), *The Atlantic*, https://www.theatlantic.com/ideas/archive/2022/03/russia-sanctions-economic-policy-effects/627009/, Accessed 4 September 2023;
[253] *Ibid;*
[254] Jamie Shea, 'Sanctions against Russia: are they working?' (7 April 2023), Friends of Europe, https://www.friendsofeurope.org/insights/sanctions-against-russia-are-they-working/ Accessed 4 September 2023;

towards the remainder entities that have not proven to be enemies. Finally, the country's large size and the sharing of boundaries with many non-Western countries, gave Russia the strategic advantage of importing prohibited items and minimize the unfavorable consequences of maritime restrictions. Overall, economic sanctions constitute a practical policy instrument, easier to manipulate than the use of force and offering a variety of alternatives. The European Union, G7 countries and other allies should reinforce their coalition and sanctioning efforts. Nevertheless, the strategy of economic warfare is not sufficient in this peculiar instance, it ought to be integrated in a multi-faceted approach[255].

3.9 Evaluating the economic sanctions against Russia in the framework of the Kadi standards

The analysis has shown that the economic warfare against Russia constitutes one of the harshest and most comprehensive sanctioning frameworks ever implemented. Nonetheless, it has also been corroborated that, in line with the jurisprudence established by Kadi, sanctioned individuals enjoy remedies from both domestic and international perspectives. Despite the fact that appeals to the court may take long periods of time before they are granted and considered, very often also because of the overcrowding of appeals that the court has to deal with, there is a jurisdictional protection. Tailored subjects may take matters into their own hands, not having to passively accept the effect of punitive measures. The lessons gained from the Kadi Saga have been properly applied in the case under examination. Although the two judgments differ on the merits, in the sense that they originate from different circumstances and situations, in terms of the judicial protection they seek to offer the individual, they travel along the same lines. They are based on the particular historical reality. While in the period of the Kadi Saga the main threat was terrorism, given also the proximity of the events of 9/11, in the case of the Russian oligarchs a broader view of human rights and their respectability is outlined. The sanctions on the Russian oligarchs are legitimate in that they were adopted according to due legal standards and there is an appropriate balance between the objective they are intended to achieve and the potential limitations on some of the oligarchs' rights. Various heads of state and country leaders lend support to this thesis. In the words of Former British Prime Minister Boris Johnson: "There can be no safe havens for those who supported Putin's vicious assault on Ukraine"[256]. On a similar strand, the US Secretary of State Antony Blinken argues: "We are sanctioning the oligarchs who support Putin's unwarranted war in Ukraine and targeting assets and luxury goods that

[255] *Ibid;*
[256] Vincenzo R. Spagnolo, 'Così vengono congelate le ricchezze degli oligarchi', *Avvenire* (12 March 2022) https://www.avvenire.it/economia/pagine/cos-litalia-congela-le-ricchezze-degli-oligarchi Accessed 25 June 2023;

have been smuggled out of the Russian Federation, to make sure that those who are propagating this war cannot easily enjoy their wealth while Ukrainians suffer"[257].

Stringent rules have been enacted regarding the evasion of sanctions: circumvention of restrictive measures is classified as a criminal offense. As stated by the President of the European Commission, Ursula Von Der Leyen, "We won't let oligarchs thrive off Russia's war machine. Their assets should be seized – and possibly later used to rebuild Ukraine"[258]. Nevertheless, the use of Russian tycoon's assets to assist Ukraine, be it through their confiscation and provision of humanitarian relief or through their employment for post-war recovery, is not without its problems. The case of the United States is particularly emblematic in explaining the dynamic. The Congress filed several pieces of legislation to unfreeze the assets for the advantage of Ukraine, however they may incur violations of customary international law. In principle, in the event of an international emergency, the US President is empowered by the International Emergency Economic Powers Act (IEEPA), dated October 28 1977, to prevent the exchange of foreign capital. The precondition for this to take place is for the state to be personally involved in the conflict. Since this is not the case during the Russian-Ukrainian War, Russian resources cannot be seized by the Executive Branch and devolved to Ukraine. The Asset Seizure for Ukraine Reconstruction Act (ASURA), similarly, gives the President the same function of asset forfeiture. Since there is no possibility for Russian Oligarchs to appear before a court, this bill might infringe the Fifth Amendment's Due Process Clause. Another proposal put forward by the US Congress is asset forfeiture, which might possibly release significant funds for Ukraine. Here, too, there would be due process concerns and, in addition, gaining entry to Russia's Central Bank reserves and sovereign wealth funds would not be enough to make up for the enormous damage caused by the Russian Federation. Overall, the United States agrees with other nations in continuing to undertake a system of multilateral economic coercion by way of a global claims-settlement framework and in line with the international law principle of providing reparations to injured states, keeping in mind that the strategy must be pursued within the boundaries of domestic constitutional law as well as international law. Hasty statutory shortcuts and unauthorized expropriations could have the opposite effect and, playing into Putin's favor that Russia's behavior and other countries' sanctions systems are not so different in nature[259].

---

[257] *Ibid;*
[258] Dall'Ue stretta sugli oligarchi russi: aggirare le sanzioni diventa un reato, *Rai News* (25 May 2022) https://www.rainews.it/articoli/2022/05/stretta-sugli-oligarchi-russi-la-commissione-europea-propone-norme-per-la-confisca-dei-beni-906065dc-c31e-40b1-b7ad-689d7193f58c.html Accessed 27 June 2023;
[259] Evan J. Criddle, 'Turning Sanctions into Reparations: Lessons from Russia/Ukraine', (2023), Harvard International Law Journal.

CONCLUSION

This thesis aimed to explore the topic of economic sanctions as an instrument of war, both from a legal historical perspective and with respect to a specific, contemporary case we are all witnessing. The factor that prompted the pursuit of the work concerns the aspiration to learn more about the ongoing Russian Ukrainian War, a dark chapter in the contemporary history of international relations. The crisis that has developed since 2014 has triggered an armed conflict, which caused severe human suffering and raised important questions about the legality of actions taken by the parties involved and the international community. Considering this, it was interesting to examine the reactions that the incident provoked among states and organizations, mainly in the form of economic sanctions. The inquiry that gave rise to this work concerned precisely the nature of the latter, assessing whether they fall within the parameters established by the existing case law on the matter or whether they are to be considered illegitimate.

Regarding the methodological approach employed to carry out this research, two types of resources were used. On the one hand, a historical and legal analysis of norms and their application; on the other hand, an attempt was made to draw on the heated contemporary debate that has evolved within the academic community around the use of sanctions in the Russian case, which resulted in conflicting views on the matter. The very fact that there has been such a recent case of economic sanctions demonstrates that this debate has not ended but is more alive than ever.

To answer the research question, it was imperative to commence from a prospective analysis of how the concept of economic sanctions arose and was applied. The first chapter of the thesis, in fact, took a historical look at these means from their origins. Since their inception, sanctions were identified as a deterrent and offensive tool. The earliest documented instance of economic warfare dates back to the fifth century, thereby developing alongside conventional war techniques. As witnessed by the example of the Megarian Decree given in the paper, initially these means were designed as a tool to deprive states of their resources and asphyxiate them economically. Globalization and the advent of the two world conflicts further consolidated their use. In both cases, the imposition of economic sanctions was intended to influence the outcome of the war by weakening the economic and military capabilities of enemy countries. The nature of economic sanctions has also undergone changes over time. At first, the ultimate manifestation of which can be considered the sanctions regime against Iraq in 1991 and that against Yugoslavia in 1992, these instruments were used in a comprehensive manner, meaning that they indiscriminately targeted a given entity and even the innocent suffered of their consequences. After 9/11, there was an intensification in the use of these

means; this time, however, directed specifically at those who were responsible for malicious activities. It is precisely the latter type of sanctions that was debated within the thesis.

Given the importance at the historical level of economic sanctions, the question has arisen as to how the use of economic sanctions has been disciplined. In this regard, the second chapter of the thesis laid out the regulatory mechanism of economic sanctions, first at the UN level and then at the EU level. The main difference between the two regimes is the issuing body and the scope of sanctions: those of the UN are global and binding on all UN member states, whilst those of the EU are specific to EU member states.

September 11 is unanimously recognized as an event that historically, geopolitically, and normatively changed the international landscape. This has had a reflection on the interpretation of international law, representing a watershed moment for sanctions, both from a legal perspective and from the perspective of their utilization. The ultimate expression of this is the Kadi case, which is considered "Child of September 11". This constitutes the most comprehensive case law on economic sanctions and is therefore used as a benchmark to evaluate the economic sanctions against Russia, since it establishes parameters for sanctions to be deemed legal. The main lesson to be drawn from the last pronouncement of the Court of Justice of the EU in 2013 was the development of a sanctioning regime more in line with legal safeguards for the individuals tailored. From then on it was established that the restrictive measures enforced on the targeted subject must be promptly and clearly disclosed to him/her, in conjunction with details supporting the allegation. In order to formulate a suitable defense and refute the charges, the actor involved is granted the chance to review the evidence against him or her. Finally, the person is given the opportunity to appear before a competent court or judicial body, in order to ensure that the penalties imposed are in conformity with principles of justice and legal standards.

After addressing a historical perspective in the first chapter, the legal evolution of economic sanctions especially in relation to the Kadi case in the second one, the third chapter was devoted entirely to the ongoing economic warfare imposed on Russia in the Ukrainian case. This is clearly not a new fact; it is a recrudescence of a latent conflict that has been proceeding at low intensity since 2014. For this very reason, the chapter opens with a description of the origins of the vicissitudes between Russia and Ukraine, with the crisis in Crimea and the destabilization in Ukraine in 2014, along with the first measures that were taken against Russia.

On February 24, 2022, Russian President Vladimir Putin attacks Ukraine. It is a new gamechanger and a new situation. The emotion and cruelty of the conflict mobilizes international organizations and

individual states with a series of punitive measures. The economic warfare envisaged against Russia provided for trade, financial and travel restrictions towards Russian leadership, individuals, and entities, with the intent of weakening the country.
Although prima facie it may appear that these policies encroach excessively upon the fundamental human rights of those tailored, including the right to property and that to privacy, in reality, jurisdictional protections are available both at international and European level, although due to the large number of cases pending before courts it may take time to present evidence and be heard, and in the national system as well. It should also be reminded that the economic sanctions provided for Russia and Russian oligarchs concern an asset freezing of a temporary and reversible nature. This implies that tailored individuals or organizations are prevented from access to their financial resources for a specified period of time, until they remedy for a malicious behavior or activity. Asset freezing is different from the more severe measure of confiscation, which entails the permanent loss of wealth and resources. The research also shed light on the difficulty to strike an effective balance between global security issues and the preservation of fundamental rights. In the case under consideration, however, the measures provided can be deemed proportional to the aim pursued: the weakening of Russia by targeting its leadership figures and, more broadly, its economic system.

While there is still much to be understood and the debate is still wide, varied, and susceptible to great change, the application of sanctions consistently respects the legal framework of origin. The Kadi case has been successful in establishing a solid precedent; economic warfare on Russia can be seen as a final consequence of this jurisprudence. It is precisely because of the human right concerns that have emerged from this recent case law that intervention with over intrusive economic warfare was refrained from.
Moreover, the economic warfare against Russia is a perfect expression of how historically sanctions have represented and continue to represent a tool of war. Although economic sanctions against the country, however severe, have not convinced it to relent in its demands, in the long run they could weaken Russia to such an extent that it gives up its grip. Restrictive measures can be an effective alternative to war, preventing the dire consequences that conventional means of warfare at times cause.

BIBLIOGRAPHY

Monographies

Alexander Kern, *Economic Sanctions – Law and Public Policy*, (Palgrave Macmillan, 2009);

Ali Z. Marossi and Marisa R. Bassett, *Economic Sanctions under International Law : Unilateralism, Multilateralism, Legitimacy and Consequences* (T.M.C, Asser Press 2015);

Annalisa Ciampi, *Sanzioni del Consiglio di Sicurezza e Diritti Umani* (Giuffrè Editore, 2007);

Ben Saul, David Kinley and Jacqueline Mowbray, *International Covenant on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (Oxford University Press, 2014);

Bruno Simma et al., eds; *The Charter of the United Nations: A Commentary* (Oxford University Press, 1994);

Erika De Wet, *The Chapter VII Powers of the United Nations Security Council* (Hart Publishing 2004);

Federico Fabbrini, *Fundamental rights in Europe, Challenges and Transformations in Comparative Perspective* (Oxford University Press, 2014);

Francesco Francioni, 'The Rights of Access to Justice under Customary International Law' in Francesco Francioni (ed), *Access to Justice as a Human Right* (Oxford University Press, 2007);

G Lopez, "Enforcing Human Rights Through Economic Sanctions", in D. Shelton (ed), *The Oxford Handbook of International Human Rights Law* (Oxford University Press, 2013);

Golnoosh Hakimdavar, *A Strategic Understanding of UN Economic Sanctions: International relations, law and development* (Routledge, 2013);

Jan Glete, *War and the State in Early Modern Europe – Spain, the Dutch Republic and Sweden as Fiscal-Military States* (Routeledge, 2002);

Keen Booth and Tim Dunne, *Terror in our time* (Routledge 2011);

Kimberly Ann Elliott, Jeffrey Joseph Schott, Gary Clyde Hufbauer, *Economic Sanctions Reconsidered* (3rd edn, PIIE 2007);

Larissa van den Herik, *Research Handbook on UN Sanctions and International Law,* (Edward Elgar Publishing, 2017);

Lealand M. Goodrich, Edward Hambro, and A.P. Simons, *Charter of the United Nations: Commentary and Documents,* (3rd edn, Columbia University Press, 1969);

Lori Fisler Damrosch, *Enforcing Restraint: Collective Intervention in Internal Conflicts* (Council on Foreign Relations Press, 1993);

Margaret P. Doxey, *International Sanctions in Contemporary Perspective* (Palgrave Macmillan, 1987);

Masahiko Asada, *Economic Sanctions in International Law and Practice* (Routledge 2020);

Matthew Happold and Paul Eden, *Economic Sanctions and International Law* (1st edn, Bloomsbury Publishing 2016);

Michael N. Schmitt, *Tallin Manual on the International Law Applicable to Cyber Warfare* (Cambridge University Press, 2013);

Monica Lugato, 'Sanctions and Individual Rights', in Natalino Ronzitti, *Coercive Diplomacy, Sanctions and International Law,* (Leiden, Brill Nijhoff 2016)

Nicholas Mulder, *The Economic Weapon: The Rise of Sanctions as a Tool of Modern War* (Yale University Press, 2022)

P.J. Kuyper, 'International Legal Aspects of Economic Sanctions' in Petar Sarcevic, Hans Van Houtte, eds., *Legal Issues in International Trade* (Graham and Trotman, 1990);

Paul D. Williams and Matt McDonald, *Security Studies: an introduction* (Routledge 2018);

Payson Sibley Wild, Jr., *Sanctions and Treaty Enforcement* (Harvard University Press, 1934);

Ronald Findlay and Kevin O'Rourke, *Power and Plenty: Trade, War and the World Economy in the Second Millennium* (Princeton University Press, 2007);

Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (3rd edn, Oxford University Press, 2013);

Sergio Marchisio, *L'Onu: il diritto delle Nazioni Unite* (Il Mulino 2000);

Sue E. Eckert, "The Evolution and Effectiveness of UN Targeted Sanctions", in Larissa van den Herik, *Research Handbook on UN Sanctions and International Law*, (Edward Elgar Publishing 2017);

Thomas J. Biersteker, Sue E. Eckert and Marcos Tourinho, *Targeted Sanctions* (Cambridge University Press, 2016)

Torbjorn Andersson, "Developing Multi EU Personalities: Ten Years of Blacklisting and Mutual Trust", in Iain Cameron, *EU Sanctions: Law and Policy Issues Concerning Restrictive Measures,* (Intersentia, 2013);

Woodrow Wilson, *Woodrow Wllson's Case for the League of Nations* (Princeton University Press, 1923);

Academic Articles

Christina Eckes, 'Eu restrictive measures against natural and legal persons: from counterterrorist to third country sanctions' (2014) 51 (3) Common Market Law Review;

Christopher Michaelsen, ‘Human Rights as Limits for the Security Council: A Matter of Substantive Law or Defining the Application of Proportionality’ (2014) 19 Journal of Conflict and Security Law;

Clement Uwayo, ‘The Conflicting Case of Economic Sanctions and Economic Interests under EU Law’, (2017-2018) 54 Jura Falconis;

Daniel Halberstam and Eric A. Stein, ‘The United Nations, the European Union, and the King of Sweden: Economic sanctions and individual rights in a plural world order’ (2018) Common Market Law Review*;*

Devika Hovell, ‘Kadi: King-Slayer or King-Maker? The Shifting Allocation of Decision-Making Power between the UN Security Council and Courts’ (2016) 79 Modern Law Review;

Dursun Peksen and Byunghawan Son, ‘Economic coercion and currency crises in target countries’ (2005), 52(4), Journal of Peace Research;

Eitan Goldman, Jorg Rocholl and Jongil So, ‘Do Politically Connected Boards Affect Firm Value?’ (2009), 22(6), Review of Financial Studies;

Evan J. Criddle, ‘Turning Sanctions into Reparations: Lessons from Russia/Ukraine’, (2023), Harvard International Law Journal;

Franziska Bremus and Pia Huttl, ‘Sanctions against Russian oligarchs also affect their companies’ (2022), 12(21), DIW Weekly Report;

G. R. Popal, ‘Impact of Sanctions on the Population of Iraq’ (2009) 6(4) Eastern Mediterranean Health Journal;

Gabriel Felbermayr, T. Clifton Morgan, Costanstantinos Syropolous, and Yoto V. Yotov, ‘Understanding Economic Sanctions: Interdisciplinary Perspectives on Theory and Evidence’ (2021) 135 European Economic Review;

Idriss Jazairy, ‘Unilateral Economic Sanctions, International Law, and Human Rights’ (2019) 33 Ethics & International Affairs*;*

Iryna Bogdanova, ‘Chapter 2: The Legality of Unilateral Economic Sanctions under Public International Law". In ‘Unilateral Sanctions in International Law and the Enforcement of Human Rights’. (2022) Brill;

J. Boulden and A. Charron, ‘ Evaluating UN sanctions: New ground, new dilemmas, and unintended consequences’ (2009) 65 International Journal;

Jamal I. Haidar, ‘Sanctions and Export Deflection: Evidence from Iran’ (2017) 32(90) Economic Policy;

Jana Ilieva, Aleksandar Dashtevski and Filip Kokotović, ‘Economic Sanctions in International Law’ (2018) 9 UTMS Journal of Economics*;*

Jeffrey A. Meyer, ‘Second Thoughts on Secondary Sanctions’, (2009) 30 (03) University of Pennsylvania Journal of International Law;

Jerg Gutmann, Matthias Neuenkirch, Florian Neumeier, Armin Steinbach, 'Economic Sanctions and Human Rights: Quantifying the Legal Proportionality Principle' (2018), International Institutions: Transnational Networks eJournal;

Joyner, Christopher, 'Collective Sanctions as Peaceful Coercion: Lessons from the United Nations Experience' (1995) 16 Australian Yearbook of International Law

Judith Gail Gardam, 'Proportionality and Force in International Law' (1993) 87 American Journal of International Law;

Juliane Kokott and Christoph Sobotta, 'The Kadi Case – Constitutional Core Values and International Law – Finding the Balance?' (2012) 23(4) The European Journal of International Law;

Kenneth W. Abbott, 'Economic sanctions and international terrorism' (2009) 20 Vanderbit Journal of International Law;

Larissa J. van den Herik, 'Peripheral Hegemony in the Quest to Ensure Security Council Accountability for its Individualized UN Sanction Regimes' (2014), Journal of Conflict & Security Law;

M. Shervin Majlessi, 'Use of Economic Sanctions under International Law: A Contemporary Assessment' (2001) 39 Candian Yearbook of International Law;

Matthias Neuenkirch and Florian Neumeier, 'The Impact of UN and US economic sanctions on GDP growth (2015), 40, European Journal of Political Economy;

Michael Kilchling, 'Beyond Freezing? The EU's Targeted Sanctions against Russia's Political and Economic Elites, and their Implementation and Further Tightening in Germany', in Didier Reynders, 'War in Ukraine: Legal and Political Challenges for the EU' (2022) 2, The European Criminal Law Associations' Forum, p. 140;

Michael N. Barnett, 'Bringing in the New World Order: Liberalism, Legitimacy and the United Nations' (1997) 49 World Politics;

Nadia Zelyova, 'Restrictive measures – sanctions compliance, implementation and judicial review challenges in the common foreign and security policy of the European Union' (2021) 22 ERA Forum;

Noah Birkhauser, 'Sanctions of the Security Council against individuals – some human rights problems' European Society of International Law;

Omer Y Elagab, 'Coercive Economic Measures Against Developing Countries' (1992) 41 International and Comparative Law Quarterly;

Paola Mariani, 'The Implementation of UN Security Council Resolutions Imposing Economic Sanctions in the EU/EC Legal System: Interpillar Issues and Judicial Review' (2009) Bocconi Legal Studies Research Paper No. 1354568. Available at: http://ssrn.com/abstract=1354568 or http://dx.doi.org/10.2139/ssrn.1354568;

Paul C. Szasz, 'The Law of Economic Sanctions' (1998) 71 International Law Studies;

Perry S Bechky, ‘Sanctions and the Blurred Boundaries of International Economic Law’ (2018) 83 Missouri Law Review;

Peter Hilpold, ‘EU Law and UN Law in Conflict: The Kadi Case’ (2009) 13 Max Planck Yearbook of United Nations Law;

Peter Hilpold, ‘UN Sanctions Before the ECJ: The Kadi Case’ (2010) Oxford University Press;

Peter van Elsuwege, ‘Judicial Review of the EU’s Common Foreign and Security Policy: Lessons from the Rosneft Case’ (2017) Verfblog;

Pieter J. Kuyper, ‘Sanctions against Rhodeshia: the EEC and the Implementation of General International Legal Rules’, (1975) Common Market Law Review;

Richard D. Farmer, ‘Costs of Economic Sanctions to the Sender’ (2000) 23(1) World Economy;

Sergei Guriev and Andrei Rachinsky, ‘The Role of Oligarchs in Russian Capitalism’ (2005), 19(1), Journal of Economic Perspectives;

Seung-Whan Choi and Shali Luo, ‘Economic Sanctions, Poverty, and International Terrorism: An Empirical Analysis’ (2013) 39 International Interactions;

Sheng-Syan Chen et al., ‘Board structure, director expertise, and advisory role of outside directors’ (2020), 138(2), Journal of Financial Economics;

Sylvanus K. Afesorgbor and Reuka Mahadevan, ‘The impact of sanctions on income inequality of target states’ (2016), 83, World Development;

T. Clifton Morgan, Constantinos Syropoulos, and Yoto V. Yotov, ‘Economic Sanctions: Evolution, Consequences, anche Challenges’ (2023) 1 Journal of Economic Perspectives;

T. Clifton Morgan, Navin Bapat and Valentin Krustev, ‘The Threat and Imposition of Economic Sanctions, 1971-2000’ (2009) 26 Conflict Management and Peace Science;

Théodore Christakis, ‘Les conflits de sécession en Crimée et dans l’est de l’Ukraine et le droit international’, (2014) 3 Journal du Droit International;

Thomas Biersteker, ‘Targeted sanctions and individual human rights’, (2009) 65 International Journal;

Tibor Besedes, Stefan Goldbach and Volker Nitsch, ‘Cheap Talk? Financial Sanctions and Non-financial Firms’ (2021) 134 European Economic Review;

V. Voinikov, ‘The EU vs. Russia: Legal Nature and Implementation of the Union’s Restrictive Measures’ (2015), 23(1), The Baltic Region;

W.Michael Reisman and Douglas L. Stevick, ‘The Applicability of International Law Standards to United Nations Economic Sanctions Programmes’ (1998) 9 European Journal of International Law;

Legislation

Art 2(1), Council Decision 2014/145/CFSP (17 March 2014);

Article 1(2)(a) and (d) of Council Decision 2022/329/CFSP, amending Article 2 of Council Decision 2014/145/CFSP;

Article 1(a) and (d) of Council Regulation (EU) 330/2022, amending Article 3 of Council Regulation (EU) 269/2014;

Article 2 (1), Council Regulation (EU) 269/2014 (17 March 2014);

Case 732/18, Rosneft Oil Company and Others v Council of the European Union, Court of Justice of the European Union, 17 September 2020;

Case C-402/05 P, Kadi v Council and Commission, Opinion of Advocate General Poiares Maduro, 16 January 2008;

Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America); Merits, International Court of Justice (ICJ), 27 June 1986;

Case T-315/01 *Yassin Abdullah Kadi v Council and Commission*, Court of First Instance, 21 September 2005;

Case T-715/14, Rosneft Oil Company and others v. Council, General Court, 13 September 2018;

Council Implementing Regulation (EU) 2022/336 (28 February 2022), putting into effect Regulation (EU) No. 269/2014 regarding restraints on activities that threaten Ukraine's territorial integrity, sovereignty and independence;

Council of the European Union Basic Principles 10198/1/04 on the Use of Restrictive Measures (7 June 2004);

Council of the European Union Guidelines 11205/12 on implementation and evaluation of restrictive measures in the framework of the EU Common Foreign and Security Policy (15 June 2012);

Council Reg 1686 (EU, 20 September 2016);

Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations, G.A. Res 2625 (24 October 1970);

Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from Threat or Use of Force in International Relations, G.A. Res 43/22 (18 November 1987);

EC Treaty, Article 224;

EC Treaty, Article 307;

EU Charter of Fundamental Rights, Art. 51;

Eu Reg 467 (6 March 2001);

Federal Law No. 281-FZ “On Special Economic Measures” (December 30, 2006);

Federal Law No. 390-FZ “On Security” (December 28, 2010);

First Additional Protocol to the European Convention on Human Rights (ECHR), Article 1;
General Agreement on Tariffs and Trade, Art. XXI;

Internationale HandelsgesellschaftmbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel (Solange I), Federal Constitutional Court (Second Chamber), 29 May 1974, BVerfGE 37, 291, (1974 II) 14 CMLR 540;

James and others v. The United Kingdom, Application no. 8793/79, Judgment of 21 February 1986;
Joined Cases C-402/05 P and C-415/05 P, *Kadi and Al Barakaat International Foundation v Council and Commission,* European Court of Justice, 3 September 2008;

Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, *European Commission and Others v Yassin Abdullah Kadi,* Court of Justice of the European Union, 18 July 2013;

Judgement n. 887, Administrative Regional Court of Lazio, 27 June 2022;

League of Nations, *Covenant of the League of Nations*, 28 April 2019
Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports International Court of Justice (ICJ), 8 July 1996;

Legislative Decree 109/2007 (22 June 2007);

Ordinance n. 4557, Administrative Regional Court of Lazio, 14 July 2022;

Sporrong and Lönnroth, Application no. 7151/75; 7152/75, Judgment of 23 September 1982;

TEU, Article 21(1);

TEU, Article 3(5);

TEU, Article 32;

TEU, Article 34(2);

TEU, Article 42(1);

TEU, Article 47;

TFEU, Article 208(2);

TFEU, Article 214(7);

TFEU, Article 215;

TFEU, Article 288;

TFEU, Article 75;

Trading with the Enemy (Specified Persons) Order of 13th September 1939 (S.R. & O., 1939, No. 1166);

Tre Traktörer Aktiebolag v. Sweden, Application no. 10873/84, Judgment of 07 July 1989:

UN General Assembly, *Convention on the Rights of the Child*, November 20, 1989, 1577 UNTS 3, Articles 6 and 24(2);

UNGA Res 3314 (14 December 1974);

UNGA Sixth Committee (25th Session) Summary record of the 1179th meeting (24 September 1970) UN Doc a/c.6/sr.1179 para 19;

United Nations General Assembly, "Human Rights and Unilateral Coercive Measures," A/70/345;

United Nations High Commissioner for Human Rights Report A/HRC/12/22 on the protection of human rights and fundamental freedoms while countering terrorism (2 September 2009);

United Nations, Article 1, "International Covenant on Civil and Political Rights," March 29, 1967;

United Nations, Article 1, "International Covenant on Economic, Social and Cultural Rights,", December 16, 1966;

United Nations, *Charter of the United Nations,* 1945, Article 103;

United Nations, *Charter of the United Nations,* 1945, Article 103;

United Nations, *Charter of the United Nations,* 1945, Article 2(7);

United Nations, *Charter of the United Nations,* 1945, Article 24(1);

United Nations, *Charter of the United Nations,* 1945, Article 25;

United Nations, *Charter of the United Nations*, 1945, Chapter IX, Article 55;

United Nations, *Charter of the United Nations,* 1945, Chapter VII, Article 39;

United Nations, *Charter of the United Nations,* 1945, Chapter VII, Article 41;

UNODC (2004), *United Nations Convention Against Transnational Organized Crime and The Protocols Thereto*, United Nations, New York, http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf.

UNSC Res 1127 (28 August 1997)

UNSC Res 1267 (15 October 1999)

UNSC Res 1390 (16 January 2002)

UNSC Res 1904 (17 December 2009);

UNSC Res 2083 (17 December 2012);

UNSC Res 387 (March 31, 1976);

UNSC Res 748 (March 31 1992)

UNSC Res 82 (June 25 1950);
UNSC Res 917 (6 May 1994);

Vienna Convention on the Law of the Treaties, 1969, Article 27;

Secondary sources

Letter from Ludwig Meyr to Konni Ziliacus, (March 1925);

Letter from the Permanent Representatives of the United States of America, Northern Ireland, Great Britain, United Kingdom, France, the Russian Federation and China to the President of the Security Council of the United Nations (13 April 1995);

League of Nations, Sean Lester Archives, Diary (1935-1947), vol. 1, entry for 17 November 1935, pp. 24-25 in Mulder (n.3)

Online Sources

Andrea Saccucci, Fabrizio Ciancio and Roberta Greco, 'Congelamento dei beni in attuazione delle sanzioni UE contro la Russia', (2022), Saccucci & Partners Studio Legale Internazionale, https://www.saccuccipartners.com/2022/08/01/congelamento-dei-beni-in-attuazione-delle-sanzioni-ue-contro-la-russia/, Accessed 9 June 2023;

Annie Lowrey, 'Can sanctions stop Russia?' (10 March 2022), *The Atlantic*, https://www.theatlantic.com/ideas/archive/2022/03/russia-sanctions-economic-policy-effects/627009/, Accessed 4 September 2023;

Claire Mills, 'Sanctions against Russia' (21 July 2023), House of Commons Library, https://commonslibrary.parliament.uk/research-briefings/cbp-9481/. Accessed 1 September 2023;

Dall'Ue stretta sugli oligarchi russi: aggirare le sanzioni diventa un reato, *Rai News* (25 May 2022) https://www.rainews.it/articoli/2022/05/stretta-sugli-oligarchi-russi-la-commissione-europea-propone-norme-per-la-confisca-dei-beni-906065dc-c31e-40b1-b7ad-689d7193f58c.html Accessed 27 June 2023;

Federica I Paddeu, 'Countermeasures,', (September 2015), Max Planck Encyclopedia of Public International Law, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1020. Accessed 9 April, 1923;

Gli oligarchi russi che fanno causa contro le sanzioni, *Il Post* (7 June 2022) https://www.ilpost.it/2022/06/07/oligarchi-causa-sanzioni/, Accessed 14 June 2023;

Jamie Shea, 'Sanctions against Russia: are they working?' (7 April 2023), Friends of Europe, https://www.friendsofeurope.org/insights/sanctions-against-russia-are-they-working/ Accessed 4 September 2023;

Jochen A. Frowein, 'Obligations erga omnes', (December 2008) Max Planck Encyclopedia of Public International Law, https://opil.ouplaw.com/home/epil Accessed 13 June, 2023;

Lauria Baldassare, 'Sanzioni contro gli oligarchi, c'è qualcosa che non torna', *Il Riformista,* (11 March 2022) https://www.ilriformista.it/sanzioni-contro-gli-oligarchi-ce-qualcosa-che-non-torna-285734/, Accessed 7 June 2023;

Leonie Kijewski, 'The oligarch sanctions runaround: Freeze, lose in court, and still keep the money' *Politico* (15 November 2022) https://www.politico.eu/article/russian-oligarch-european-union-sanctions-lose-in-court-still-keep-money/ Accessed 22 June 2023;

Mirko Sossai, 'Sanzioni, Ritorsioni E Contromisure: Presupposti Di Legittimità Della 'Diplomazia Coercitiva' (2022), EticaEconomia, https://eticaeconomia.it/sanzioni-ritorsioni-e-contromisure-presupposti-di-legittimita-della-diplomazia-coercitiva/ Accessed 23 June 2023;

Monroe Doctrine (2 December 1823), National Archives, https://www.archives.gov/milestone-documents/monroe-doctrine. Accessed 2 May, 2023;

Patrick Butchard, 'The UN General Assembly condemns Russia: but what can it actually do' (14 October 2022) House of Commons Library. https://commonslibrary.parliament.uk/the-un-general-assembly-condemns-russia-but-what-can-it-actually-do/. Accessed 30 August 2023;

Ranj Alaaldin, 'Economic Sanctions: Past & Future', (16 April 2009), LSE Department of International History Blog, https://blogs.lse.ac.uk/lseih/2015/04/16/economic-sanctions-past-future/ Accessed 1 May 2023;

Renato Amorosa, 'Il congelamento dei beni agli oligarchi russi: aspetti giuridici e conseguenze', (2022), Office Advice, https://officeadvice.it/riflessioni-giuridiche/congelamento-dei-beni-agli-oligarchi-russi/ Accessed 5 June 2023;

Roberta Barberini, 'Il congelamento dei beni degli oligarchi', (2022), Questione Giustizia, https://www.questionegiustizia.it/articolo/il-congelamento-dei-beni-degli-oligarchi, Accessed 12 June 2023;

Secretary of State Anthony Blinken 'Press Statement: Imposing Sanctions on President Putin and Three Other Senior Russian Officials' (25 February 2022). https://www.state.gov/imposing-sanctions-on-president-putin-and-three-other-senior-russian-officials/ Accessed 1 September 2023;

Simon Goodley, 'Sister of oligarch Alisher Usmanov removed from EU sanctions list', *The Guardian* (16 September 2022), https://www.theguardian.com/world/2022/sep/16/alisher-usmanov-removed-eu-sanctions-list-saodat-narzieva, Accessed 22 June 2023;

Thomas Bierstecker, 'Sanctions against Russia and the role of the United Nations' (November 2022), Global Challenges, https://globalchallenges.ch/issue/12/sanctions-against-russia-and-the-role-of-the-united-nations/ Accessed 30 August 2023;

Vincenzo R. Spagnolo, 'Così vengono congelate le ricchezze degli oligarchi', *Avvenire* (12 March 2022) https://www.avvenire.it/economia/pagine/cos-litalia-congela-le-ricchezze-degli-oligarchi;

Vitalba Azzolini, 'Come funziona il congelamento dei beni agli oligarchi russi?' (2022), Start Magazine, https://www.startmag.it/economia/come-funziona-il-congelamento-dei-beni-agli-oligarchi-russi/, Accessed 15 June 2023;

Vittorio Nuti, 'La "black list Ue contro il cerchio magico di Putin", *Il Sole 24 ore* (1 March 2022), https://www.ilsole24ore.com/art/sanzioni-bruxelles-vara-la-black-list-oligarchi-AEC7m5GB?refresh_ce=1, Accessed 16 June 2023;