

Canada's Sanctions Regimes: An Investigation into  
Canada's Use of Sanctions between 1990 and 2014.

by

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## **Abstract**

This thesis asks a simple question: what is the state of Canada's sanctions practice since 1990? In a post-Cold War environment, sanctions have become one of the most commonly applied tools of statecraft. Sanctions are commonly applied to address all manner of crises be they interstate aggression, intrastate humanitarian crises, civil wars, illegal seizures of power, arms proliferation, and international terrorism. There has been no sustained analysis of Canada's use of sanctions since Kim Richard Nossal's book *Rain Dancing*, which only investigated Canada's application of sanctions in comparison to Australia's until 1990. Therefore, there is a significant gap in the general sanctions literature and, more worrisome, Canada's foreign policy literature. This thesis conducts an investigation into Canada's use of sanctions since 1990 to establish when, why and with whom Canada has applied economic sanctions.

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## **Canada's Sanctions Regimes: An Investigation into Canada's Use of Sanctions between 1990 and 2014.**

### **Chapter 1**

This thesis asks a simple question: what is the state of Canada's sanctions' practice since 1990? Surprisingly, this is a question seldom asked. Indeed, in sanctions' literature generally and Canadian foreign policy literature specifically, Canada's application of sanctions is out of sight and out of mind. This study endeavours to help fill this gap. Given that the rate of application of sanctions by all manner of states, including Canada and international organizations, is on the rise and the fact that sanctions have, historically, had unintended consequences, especially for civilian populations, an appreciation for Canada's use of sanctions is important.

In a post-Cold War environment, sanctions have become one of the most commonly applied tools of statecraft. Sanctions are applied commonly to address all manner of crises be they interstate aggression, intrastate humanitarian crises, civil wars, illegal seizures of power, arms proliferation, and international terrorism.<sup>1</sup> Sanctions can also be applied to appease domestic audiences by showing that their government is 'doing something' to address a crisis without committing troops, aid or other resources. For these reasons, they are readily called for and applied. And yet, sanctions can also have unintended consequences that include barring needed humanitarian aid to civilians caught

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<sup>1</sup> Barry A. Burciul, "UN Sanctions: Policy options for Canada," *Canadian Foreign Policy Journal* 6, no. 1 (1998): 5-50. p. 5.; Andrea Charron, *UN Sanctions and Conflict: Responding to Peace and Security Threats* (New York: Routledge, 2011). ; Clara Portela, *European Union Sanctions and Foreign Policy: When and Why Do They Work?*, (Taylor & Francis: 2009). ; Richard Haas and Meagan O'Sullivan (eds), *Honey and Vinegar: Incentives, Sanctions, and Foreign Policy* (Washington DC: Brookings Institute, 2000).

in the large, nondiscriminatory net that can become sanctions.<sup>2</sup> There are several examples of sanctions having an adverse or negative effect on the populations that live under a sanctioned state. Sanctions tend to increase the impoverishment and marginalization of target economies, particularly in the “global South”.<sup>3</sup> This can make living conditions for the people living in a sanctioned state very dangerous and unstable. What is more, sanctions are increasingly applied against individuals and entities, which means that the whole machinery of a state or several states is/are now focused on particular individuals. Therefore, it is extremely important to understand the reasons and objectives of a government, like Canada, when it applies sanctions.

The main question that this thesis seeks to answer is: **When, why and to what ends has Canada applied sanctions since 1990 until 2014?** This is an important question to answer as there has been no sustained analysis of Canada’s use of sanctions since Kim Richard Nossal’s book *Rain Dancing*<sup>4</sup> which only investigated Canada’s application of sanctions in comparison to Australia’s until 1990. Therefore, there is a significant gap in the general sanctions’ literature and, more worrisome, Canada’s foreign policy literature.

To answer the question, this thesis will examine Canada’s use of sanctions from 1990 to 2014 to establish a complete list of Canada’s sanctions regimes that includes:

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<sup>2</sup> Barry A. Burciul, "UN Sanctions: Policy options for Canada," p. 5.; Thomas Weiss, David Cortright, George Lopez and Larry Minear (eds) *Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions*, (New York: Rowman & Littlefield Publishers, 1997).

<sup>3</sup> Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian & Australian Foreign Policy* (Toronto: University of Toronto Press, 1994). p. 263.

<sup>4</sup> Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian & Australian Foreign Policy*. Andrea Charron and Barry Burciul have written an article each on Canada’s use of sanctions in the 1990s and start of 2000s and various House and Senate Committees have investigated particular sancitons regimes (for example, Canada’s sanctions against Iran), but no one has conducted a thorough investigation of every Canadian sanctions regime applied under Canada’s various sanctions implementation acts between 1990 and 2014. This is especially important given the increased pace at which sanctions have been applied since the end of the Cold War.

- 1) What state and/or entity was targeted?;
- 2) For what stated objective(s)?;<sup>5</sup>
- 3) Using what Canadian legislation?;
- 4) Using which kind of sanctions measure(s) (arms, travel, financial, natural or other resource embargo or diplomatic)?;
- 5) For how long?;
- 6) With what other international partners? (United Nations (UN), European Union (EU) or United States (US)); and
- 7) And were any of Canada's targets, purposes, objectives or measures different from those of partners?

This information will be provided in a table using the coding method used by the International Sanctions Consortium<sup>6</sup> which has completed a study of all UN, regional sanctions regimes and most US regimes. Note the issue of whether or not the sanctions are “effective” is not tackled for three, epistemological reasons. First, it is a hotly contested metric. Second, given that often many organizations and states are sanctioning at the same time, it is very difficult to isolate whose sanctions had what impact. Finally, the purpose of this thesis is to first establish when, why and where Canada has sanctioned given the gap in the literature. The effectiveness piece of the puzzle could be for a later study. For now, it is sufficient to establish what is Canada's record.

It is anticipated, based on the results of Canada's use of sanctions before 1990, that Canada is likely to match partners in its sanctioning activities. It is rare for Canada to apply sanctions unilaterally. The one case that comes to mind is the additional

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<sup>5</sup> The objectives come from the International Sanctions Consortium's list of objectives. See [http://graduateinstitute.ch/home/research/centresandprogrammes/international-governance/research-projects/UN\\_Targeted\\_Sanctions.html](http://graduateinstitute.ch/home/research/centresandprogrammes/international-governance/research-projects/UN_Targeted_Sanctions.html) The international consortium has undertaken a 10 year study of all of the UN and regional sanctions since 1990s. The consortium has established 11 objectives. 1) Counter – Terrorism 2) Cease hostilities; 3) Negotiation of peace agreement 4) peace enforcement 5) support peace building 6) Democracy support 7) Good Governance 8) Human Rights 9) Protect Population under R2P 10) Support Humanitarian Efforts and 11) Non-proliferation

<sup>6</sup> The international sanctions consortium is a team of 20 academics from around the world who have been studying and collecting data on UN, EU, African, US and other sanctions since 2005. They have a database of over 400 variables for 63 sanctions regimes' to which I have been granted access by one of the key researches, my advisor, Dr. Charron. See <http://graduateinstitute.ch/un-sanctions>

measures placed against Iran in addition to the United Nations' (UN), European Union's (EU) and the United States' (US) measures resulting from the death of a Canadian journalist while in the custody of Iranian authorities.<sup>7</sup> However, as a study of Canada's frequency and use of sanctions has not been studied systematically, the Canadian public does not have a full understanding of Canada's use of this important foreign policy tool.

Sanctions are used in all sorts of contexts. For example, as a verb, "to sanction" a decision or as a noun, "to apply sanctions". This thesis explores Canadian sanctions - the noun. However, this is still a very broad category of measures. There are "trade" sanctions and there are "economic" sanctions. Trade sanctions are measures put in place to restrict the import or export of goods into and out of Canada that are tied to an international or bilateral trade deal or Canadian regulations. (For example the trade in endangered species is prohibited and controlled by the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* ("CITES"))<sup>8</sup> or the trade in harmful and dangerous goods (which is covered under the *Exports of Hazardous Chemicals and Environmentally-Harmful Substances* and is regulated under the *Canadian Environmental Protection Act, 1999*). These sanctions apply all of the time and only if an application is made to the Federal government and an exception granted are the goods allowed to be traded.

There are also trade sanctions applied after a trade dispute. For example, in the past, Canada has restricted softwood lumber exports to the US before the Canada-US

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<sup>7</sup> Zahra "Ziba" Kazemi-Ahmadabadi was an Iranian-Canadian freelance photographer who was killed 11 July 2003 by Iranian officials following her arrest in Iran.

<sup>8</sup> *Canadian Trade Law at a Glance*, Cassel Brock Lawyers, International Trade Group found at [http://www.casselsbrock.com/files/file/cb\\_cdntradelawataglance\\_1202\\_v06.pdf](http://www.casselsbrock.com/files/file/cb_cdntradelawataglance_1202_v06.pdf) Accessed on 21 January 2015.



Free Trade Agreement and later North American Free Trade Agreement were created<sup>9</sup> in order to help leverage a bargaining position. These are not the sanctions this thesis explores. Rather, it is the broadly categorized “economic” sanctions that are applied by Canada, usually in response to an event in the world that violates a core Canadian value, (such as extreme violations of human rights in Burma/Myanmar) damage to international peace and security, (such as, a war in another state like Côte d’Ivoire) or some other egregious event (such as a terrorist attack against our ally, the US). These sanctions are usually applied by many states either as a coalition or at the behest of an international organization of which Canada is a member (such as the UN). These are the sanctions that are important to study because they are:

- a) In the news a lot;
- b) Canada continues to apply them and at an increased rate since 1990;
- c) They are not studied in the literature. They are simply assumed to be a tool of statecraft without specific study of how **Canada** uses them.

Before further discussing the issue of sanctions, it is important to define what they are.

According to the Department of Foreign Affairs, Trade, and Development Canada (DFATD) sanctions are:

Measures, including limitations on official and diplomatic contacts or travel, the imposition of legal measures to restrict or prohibit trade or other economic activity between Canada and the target state, or the seizure or freezing of property situated in Canada. In order to maximize the effectiveness of a sanctions regime, particularly one involving trade and economic measures, Canadian policy seeks to ensure that sanctions measures are applied multilaterally whenever possible.<sup>10</sup>

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<sup>9</sup> Note, the special trade relationship Canada has with Cuba is not a trade sanction. However, given that the US still limits trade with Cuba, Canada has had to impose regulations to protect Canadian-based subsidiaries of US corporations from legal prosecution by enacting the Foreign Extraterritorial Measures Act (FEMA). See *Canadian Trade Law at a Glance*, Cassel Brock Lawyers, International Trade Group found at [http://www.casselsbrock.com/files/file/cb\\_cdntradelawataglance\\_1202\\_v06.pdf](http://www.casselsbrock.com/files/file/cb_cdntradelawataglance_1202_v06.pdf): 12 Accessed on 21 January 2015.

<sup>10</sup> *Canadian Economic Sanctions*, <http://www.international.gc.ca/sanctions/index.aspx>.

Examples of sanctions include preventing military arms and equipment from being exported to other countries or placing a freeze on assets of individuals or companies or preventing someone from travelling internationally. Canada's most common sanctions are measures against individuals that involve travel bans, asset freezes and/or arms embargoes against an entire state. This pattern is similar for the UN, EU and US.

The reason that sanctions are such a commonly used tool, according to Nossal, is because they can punish the wrongdoer, without resorting to war or conflict.<sup>11</sup>

Wallensteen and Staibano referred to sanctions as a tool between "words and war".<sup>12</sup>

This can be a particularly attractive option for smaller states, because, unlike great powers, which have the capacity to deter or repel threats more easily, lesser powers are, by nature, relatively weak and must always seek ways to limit their exposure or losses, especially if sanctioning an equal or greater power. Multilateral sanctions can be an attractive policy option for smaller states because they limit economic exposure to any one state - the assumption being that the smaller states are rarely the sole supplier of goods or services sanctioned.<sup>13</sup>

This issue is extremely important because a cursory glance at Canada's sanctions implementation since 1990 suggests that the rate of application of new sanctions measures has never been higher. Furthermore, there has not been a significant study of Canadian sanctions since Kim Richard Nossal's book, *Rain Dancing: Sanctions in Canadian and Australian Foreign Policy*, which was published in 1994. Nossal concluded that Canada's sanctions resemble a rain dance: "...an activity that actually

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<sup>11</sup> Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian & Australian Foreign Policy*. p. 14.

<sup>12</sup> Peter Wallensteen and Carina Staibano, *Sanctions: Between Words and War*. (Routledge: 2005).

<sup>13</sup> Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian & Australian Foreign Policy*. p. 15. Note, Margaret Doxey has always cautioned those who assume sanctions are not costly for the sender state or its banks and agencies.

accomplishes very little but that makes the participants feel good because something is being done about a serious problem.”<sup>14</sup> Since 1994, there have been a number of institutional developments, including the introduction of new, unilateral Canadian sanctions legislation,<sup>15</sup> (which is stand-alone Canadian legislation in response to a world-wide push to crack down on state-based corruption), and a propensity, given majority government status of successive Canadian administrations, to use sanctions in new and different ways. These developments demand a thorough investigation because there has not been a collective study of Canada’s use of sanctions – especially since the events of 11 September 2001 (9/11). Currently, Canada has sanctions regimes against 22 different states<sup>16</sup> and has established 37 sanctions regimes since 1990. Canada remains actively involved in promoting the United Nations (UN) and other multilateral sanctions on the world stage, but has also applied unilateral and additional measures on a few occasions, most notably against Ukraine and Russia in 2014 that while not UN-led, are coalition<sup>17</sup> supported.

## **Methodology**

In addition to a literature review of the general sanctions literature, the main thrust of this study examines Canada’s sanction regimes since 1990. All of Canada’s mandatory sanctions and Canada’s reasons for choosing to implement sanctions between

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<sup>14</sup> Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian and Australian Foreign Policy* (Toronto: University of Toronto Press, 1994), xiii.

<sup>15</sup> *Freezing Assets of Corrupt Foreign Officials Act* (S.C. 2011, c. 10), <http://laws-lois.justice.gc.ca/eng/acts/F-31.6/>.

<sup>16</sup> *Current Sanctions Measures*: [http://www.international.gc.ca/sanctions/current\\_sanctions\\_actuelles.aspx?lang=eng](http://www.international.gc.ca/sanctions/current_sanctions_actuelles.aspx?lang=eng) and refer to Table 2 in Chapter 4.

<sup>17</sup> The coalition of states sanctioning Russia and the Ukraine include the US, UK, Australia, France, Canada, Japan, Iceland, Switzerland, Norway, Albania, Montenegro

1990 to 2014 are codified in a table using the same variables as used by the International Sanctions Consortium.<sup>18</sup> Variables include targets (state, individual, or entities), measures applied (for example, arms embargo or travel ban), objective sought by Canada especially if different from other states, the sanctioning authority (i.e. UN, coalition or unilateral) and termination/suspension of the measures. All of the primary data required to answer these questions is readily available from the *Canada Gazette* and the DFATD website. The *Canada Gazette* is the official newspaper of the Government of Canada published regularly by the Queen's Printer since 1841. Published within the *Canada Gazette* are new statutes and regulations, proposed regulations, decisions of administrative boards and an assortment of government notices including notices of sanctions regulations which begin with the three-letter regulation code -SOR.<sup>19</sup>

The DFATD website is another excellent source from which to gather data on sanctions. They provide a list of the current sanctions regimes employed by the Canadian government, as well as an overview of the reason for the sanctions. Furthermore, DFATD also provides the legal framework for the application of the sanctions via five legal instruments (i.e. the *United Nations Act*, *Special Economic Measures Act*, *Area Control Lists*, *the Foreign Corrupt Officials Act* and *Diplomatic Sanctions*). This data is used to differentiate between UN mandatory sanctions, versus other unilateral or multilateral efforts.

The Department of Justice's site on Canadian regulations is also of vital importance. The Justice Laws' Website provides an official consolidation, or updated

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<sup>18</sup> The consortium is a group of 30 academics from around the world (including my advisor) led by Thomas Biersteker (Graduate Institute, Geneva ) and Sue Eckert (Brown University) who have been studying UN sanctions since 2005.

<sup>19</sup> *Canada Gazette*: <http://www.gazette.gc.ca/cg-gc/lm-sp-eng.html#i6>

version, of the federal Acts and regulations maintained by the Department of Justice.<sup>20</sup> It tracks any changes to Canadian laws, particularly pertaining to sanctions.

Below is a summary representation of the table:

**Table 1: Example of the Table Summary Representation of Canadian sanctions applied between 1990 and 2014.**

Target	Objective	Purpose	Canadian instrument	Measure(s)	Time frame	Senders beside Canada	Differences to Canada.
State, entity or individual	11 choices	3 choices	4 choices	Arms, travel etc.	Start and end date	UN, US, or EU	including which regime came first, different measures etc
Case 1							
Case 2							

The table is populated using information from the DFATD’s “economic sanctions” website, the *Canadian Gazette* and the Department of Justice’s site on Canadian regulations. Particular attention is paid to the senders (the state that implements sanctions) of sanctions in addition to Canada. The UN-led, US-led and EU-led sanctions are the most common sanctions regimes to which Canada has contributed since 1945. These organizations and states have represented historically the closest allies/important organizations for Canada. This thesis will provide the literature with a database of Canada’s sanctions regimes from which other columns can be added to the table for future studies. Suggestions include: effectiveness, intended and unintended consequences for Canada’s foreign policy and connections to Canada’s wider international objectives. With the table completed, between and within column comparisons are made that lead to

<sup>20</sup> *Justice Laws Website*: <http://laws-lois.justice.gc.ca/eng/regulations/>

policy-relevant findings for DFATD and the government of Canada, such as what types of sanctions does Canada use most, with whom and with what objectives. Based on the number of times the House of Commons' and Senate Foreign Affairs' committees have sought advice on sanctions, this thesis could prove particularly helpful to provide context.

This research will fill a gap in the literature by establishing *Canada's sanctions record* from which one can analyze whether or not there are any trends, or shifts in Canadian sanctions' policy over the years. For example, has there been a shift from UNSC sanctions, to sanctions regimes led by the US and EU? If so, is Canada following suit? Are we continuing to 'rain dance' (i.e. only sanctioning to please the general public and allies without having any measurable impact to a change in behaviour of the target) as suggested by Nossal? This thesis will generate data to answer these important questions. Sanctions are an extremely important tool used by governments; it is absolutely essential that we understand why, how, and when Canada uses sanctions. It not only has implications domestically, but also internationally.

### **Thesis Organization**

This first chapter outlines the research question, the importance of the research and the methodology. Chapter 2 reviews the definition of sanctions (both internationally and domestically) and the four federal Acts from which sanctions stem as well as the government agencies and processes used by Canada to apply sanctions. Chapter 3 provides context – what has been the history of Canada's use of sanctions? Chapter 4 presents the findings of the table to outline Canada's sanctions application since 1990. Finally, Chapter 5 outlines the foreign policy implications of Canada's use of sanctions

given a fuller picture and analysis of all of Canada's sanctions regimes since 1990. As sanctions are still a commonly used foreign policy tool of the Canadian government yet the least studied, now is a propitious time to address this gap.

## Chapter 2: Canadian Sanctions Legislation

Before analyzing the various legislative tools that Canada has to apply sanctions, it is important to define what they are. As a reminder, and as referenced in Chapter One, this thesis is exploring economic sanctions and not trade sanctions.<sup>21</sup> According to the Department of Foreign Affairs, Trade, and Development Canada (DFATD) “economic”<sup>22</sup> sanctions are:

Measures, including limitations on official and diplomatic contacts or travel, the imposition of legal measures to restrict or prohibit trade or other economic activity between Canada and the target state, or the seizure or freezing of property situated in Canada. In order to maximize the effectiveness of a sanctions regime, particularly one involving trade and economic measures, Canadian policy seeks to ensure that sanctions measures are applied multilaterally whenever possible.<sup>23</sup>

This definition is congruent with the spirit of the UN Charter’s Article 41 which states:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.<sup>24</sup>

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<sup>21</sup> Trade sanctions are a penalty applied by one country against another, that restricts trading activity and are connected to specific trade agreements and/or have been internationally agreed and apply continuously (e.g. CITES). For example, restricting the import of Canadian softwood lumber by the US and/or Mexico in response to a perceived or actual violation of the NAFTA agreement between the US, Canada and Mexico. Limiting or preventing the import of Canadian soft wood lumber into Spain by Spain (or a third state for that matter), absent a particular trade deal between the countries for that good would constitute an “economic” sanction according to Canada’s definition.

<sup>22</sup> The “economic” descriptor is meant to distinguish sanctions from trade measures but it causes confusion and unnecessarily limits and obfuscates Canada’s sanctioning activity. For example, it discounts diplomatic sanctions (withdrawing Embassy staff, sending lower ranking officials to events, boycotting meetings etc.), which Canada has used and with success.

<sup>23</sup> *Canadian Economic Sanctions*, <http://www.international.gc.ca/sanctions/index.aspx>. Accessed August 25, 2014.

<sup>24</sup> Article 41, *Charter of the United Nations* (1945).



Both definitions refer to measures that do not involve force and that have a “target” in mind. Neither, however, specify under what conditions sanctions should be employed or to what ends.

It is interesting to note that Canada’s sanctions’ definition emphasizes the fact that Canada seeks to establish sanctions ‘multilaterally whenever possible’. One reason for this may be the notion that, as a middle-power,<sup>25</sup> Canada does not have the economic clout to significantly influence the economy of a state unilaterally to evoke a change in state behaviour. However, the statement ‘whenever possible’ leaves the door open for Canada to apply unilateral sanctions should it wish to do so.<sup>26</sup> There may be instances when Canada wants to ‘send a message’ (in international sanctions parlance “to signal or stigmatize”<sup>27</sup>), and apply sanctions absent an UN Security Council mandatory measure. An example concerns Canada’s sanctions against Myanmar/Burma for its human rights abuses. In 1997, when the UN Security Council was unable reach agreement on measures against Burma, the US, followed ten years later by Canada and then the EU, applied sanctions against the military junta for its large-scale repression of the democratic opposition in Burma.<sup>28</sup> Neither the measures, nor the circumstances for the imposition of

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<sup>25</sup> The idea of a middle power is contested in the literature. By middle power, I mean that Canada is neither a developing state nor a hegemon; Canada falls in between these two poles on a continuum of military power, economic might and political influence. See Paul Gecelovsky, “constructing a Middle Power: Ideas and Canadian Foreign Policy”, *Canadian Foreign Policy*, Vol 15(1) (2009): 77-93. Dr. Gecelovsky notes a middle power is measured by its capabilities and its behaviour.

<sup>26</sup> Andrea Charron, "Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?," *Canadian Foreign Policy* 14, no. 2 (2008): 1-18. p. 3.

<sup>27</sup> Signalling or stigmatizing occurs when the deviation from an international norm is clearly articulated by the Security Council and the broader international community. See “The Graduate Institute Geneva” at <http://graduateinstitute.ch/files/live/sites/iheid/files/sites/internationalgovernance/shared/Effectiveness%20of%20UN%20Targeted%20Sanctions%20-%206.Nov.2013%20.pdf> (accessed 10 March 2015).

<sup>28</sup> The US applied sanctions in May 1997 via a Presidential Executive Order (13047) that prohibited US citizens from doing business with the military junta, freezing financial assets in the US associated with the junta and an arms embargo. See Office of Foreign Assets Control “Sanctions Against Burma” found at <http://www.treasury.gov/resource-center/sanctions/Documents/burma.pdf> (Accessed 7 January 2015). Canada applied very similar sanctions (the asset freezes and arms embargo) on 13 December

sanctions are prescribed which affords Canada flexibility to adjust or change sanction regimes as deemed necessary.

Generally, Canada has applied eight different types of sanctions. All can apply against states, non-state actors (like rebels) or entities (like companies).

1) Arms and Related Materials Embargo. These measures aim to prevent conventional arms and military equipment as well as precursor materials for weapons of mass destruction (WMD) and their delivery systems from leaving or arriving at a targeted country;

2) Asset freeze. These measures aim to prevent a state, individual or entity from gaining access to financial or other property or other assets held in Canadian jurisdiction;

3) Travel bans prevent targeted individuals from arriving in Canada. They can also apply to prevent national airlines or private airlines from landing in Canada or flying over Canadian airspace. Technically, the same could apply to individuals arriving by bus, car train or ships, but the norm is flight bans;

4) Export/Import Restrictions aim is to hinder the economy of the targeted country or individuals. For example Canada restricted the export of luxury goods to Kim Jong Il, the former leader of North Korea and restricted dual use goods to companies in Iran known to be associated with Iran's nuclear weapons program. Likewise, Canada can compel Canadian companies to stop importing goods from states, individuals or entities. Almost any good or service can be restricted including natural resources;

5) Financial Prohibitions aim to prohibit any state, entity or individual from conducting financial transactions with Canadians, whether at home, or abroad;

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2007(SOR/2007-286) (See <http://www.international.gc.ca/sanctions/countries-pays/burma-birmanie.aspx?lang=eng> Accessed 7 January 2015) followed by the EU in early 2008 via Regulation 194/2008 (see [http://eeas.europa.eu/cfsp/sanctions/docs/asures\\_en.pdf](http://eeas.europa.eu/cfsp/sanctions/docs/asures_en.pdf) Accessed 7 January 2015).

- 6) Diplomatic and other measures<sup>29</sup>. Canada can withdraw its Ambassador from countries, prevent states from participating in events hosted by Canada and/or prevent Canadians from participating in international events/conferences etc. (For example, Canada supported the US-led boycott of the 1980 Olympic games hosted by Moscow for its invasion of Afghanistan in 1979).
- 7) Technical Assistance Prohibitions aim to prevent a country, individual or entities under an arms embargo/export ban from obtaining information or services relating to the banned product or spare parts/maintenance assistance.<sup>30</sup>
- 8) Resource. These measures target specific resource sectors in the sanctioned economy. For example, in Haiti (1993), petroleum was the target of UN and OAS sanctions.

In theory, there is no limit as to what or who can be banned, boycotted or restricted. In practice, however, Canada's most common sanctions are measures against individuals that involve travel bans, asset freezes and/or arms embargoes against an entire state. This trend is similar for the UN, EU and US.<sup>31</sup>

Now that the definition of sanctions has been established, it is important to examine the mechanisms that Canada uses to implement these measures short of force.

## **Part I - Canadian Instruments to Apply Sanctions**

There are five legal instruments that Canada can use to apply sanctions. The instrument depends not on the measures or targets, but rather on who or what is the

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<sup>29</sup> Note Canada fails to mention diplomatic sanctions on its Economic Sanctions webpage which is a function of the fact it continues to use "economic" as a descriptor of its sanctions. See <http://www.international.gc.ca/sanctions/index.aspx?lang=eng>

<sup>30</sup> "Types of Sanctions," *Foreign Affairs, Trade and Development Canada*, <http://www.international.gc.ca/sanctions/types.aspx?lang=eng> (accessed January 5, 2015).

<sup>31</sup> See Security Council Report, "Special Research Report: UN Sanctions" (25 November 2013) found at [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special\\_research\\_report\\_sanctions\\_2013.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf). Accessed 7 January 2015.

initiating authority calling for sanctions, i.e. which organization/states or coalitions have decided to apply sanctions measures. Via these standing Acts, Canada creates ad hoc regulations for each sanctions regime. In all cases, a number of federal departments are involved in the drafting of Canada's legislation, most notably Justice and Canadian Customs and Border Services Agency (CBSA). However, the "pen" for all of Canada's sanctions regulations is the DFATD Minister on behalf of the Governor in Council. The Minister of Foreign Affairs, therefore, is ultimately responsible for the administration and enforcement of the Acts listed below. In practice, this power is devolved to the Royal Canadian Mounted Police (RCMP) and the Canada Border Services Agency (CBSA) to enforce the statutes and their regulations.

### **1) United Nations Act**

Under Chapter VII of the *UN Charter*, the Security Council (UNSC) has the power to establish mandatory sanctions against a state, entity or individual in order to restore international peace and security. UN sanctions, however, can only come into existence by member states putting in place national legislation that requires state departments, companies, banks and individuals within the member state to comply with the measures.

As a member of the UN, Canada is required, by international law, to implement UN Security Council (UNSC) mandated sanctions.<sup>32</sup> In order for Canada to apply these mandatory sanctions, Canada requires domestic legislation to give the measures effect.

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<sup>32</sup> On occasion, the UNSC has suggested voluntary sanctions be applied for which Canada is not obligated to apply. However, as outlined in Chapter 4, Canada has complied with all mandatory UN sanctions and voluntary sanctions since 1990.

Canada's *United Nations Act (1985)*<sup>33</sup> provides the legal avenue for the Canadian government to implement these sanctions.<sup>34</sup> It outlines the need for unique, ad hoc regulations to be created for each sanctions regime and it outlines the fines for violating the sanctions regimes.<sup>35</sup> According to the Act, "The Security Council of the United Nations decides on a measure to be employed to give effect to any of its decisions and calls on Canada to apply the measure."<sup>36</sup> The Act is very short and provides very little guidance to maximize Canada's ability to comply with any and all measures that might be developed by the UNSC. Canada converts the measures outlined in a UNSC resolution using the standing UN Act into legislation (designated by "SOR" followed by a unique number). The regulations must be laid before Parliament "forthwith"<sup>37</sup> before the regulations come into effect (usually via open publication in the *Gazette*.) The regulations, over time, have provided more information and context for the sanctions and a contact number at the DFATD is provided to assist the various agencies and members of the public to understand the regulations. Sometimes, however, the UNSC is deadlocked and unable to reach a decision about the application of sanctions. In which case Canada has three other options to impose sanctions barring a UN mandatory mandate either in conjunction with other organizations and allies or unilaterally.

## **2) Special Economics Measures Act**

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<sup>33</sup> The United Nations' Act was first created in 1947 and then updated in 1985.

<sup>34</sup> *United Nations Act*, [http://www.international.gc.ca/sanctions/un\\_act-loi\\_nu.aspx?lang=eng](http://www.international.gc.ca/sanctions/un_act-loi_nu.aspx?lang=eng). (R.S.C., 1985, c. U-2).

<sup>35</sup> Paragraph 3. On summary conviction, to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year, or to both; or (b) on conviction on indictment, to imprisonment for a term of not more than 10 years.

<sup>36</sup> *United Nations Act*, <http://laws-lois.justice.gc.ca/eng/acts/U-2/page-1.html> (Accessed January 16).

<sup>37</sup> Paragraph 4(1).

Canada can still impose sanctions under the authority of the *Special Economic Measures Act* (SEMA) (1992)<sup>38</sup> absent a UNSC resolution. Under this considerably longer and more detailed Act, the Governor in Council may use the SEMA for the purpose of implementing a decision, resolution or recommendation of an international organization of states or association of states, of which Canada is a member, that calls on its members to apply sanctions, or where the Governor in Council is of the opinion that a grave breach of international peace and security has occurred that has resulted or is likely to result in a serious international crisis. The SEMA, therefore, can accommodate sanctions regimes called for by organizations like the Organization of American States (or which Canada is a member) or by the EU, of which Canada is not a member, or if the UN imposes only voluntary sanctions or an association of states (“coalitions of the willing”) imposes measures to which Canada decides to join. Similar to the UNA, the SEMA is the standing Act under which regulations are made and laid before Parliament. Unlike the UNA, however, the SEMA is prescriptive. There are restrictions on the prohibited activities, and as well, the regulations made under the order must be laid before each House of Parliament by a member of the Queen’s Privy Council for Canada within five sitting days of that House, and there is a provision for the Governor in Council to submit a full report on the operation of any order or regulation made pursuant to the Act within sixty sitting days after the said order or regulation has ceased to have effect. The SEMA provides a tighter framework and restrictions on the types of measures applied and the timing of the

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<sup>38</sup> *Special Economic Measures Act*, <http://www.international.gc.ca/sanctions/sema-lmes.aspx?lang=eng> (S.C. 1992, c. 17).

regulations because it can be applied in various situations. What is more, the fines for violating the SEMA are considerably less than violating the UN Act; anyone guilty of an offence punishable on summary conviction is liable to a fine not exceeding twenty-five thousand dollars (75% less than a violation of the UN Act) or to imprisonment for a term not exceeding one year (10 times less than the UN Act), or to both. And if guilty of an indictable offence, the individual is liable to imprisonment for a term not exceeding five years (or half the time prescribed by the UN Act).<sup>39</sup>

### **3)Area Control Lists**

In the event Canada wishes to apply sanctions (either additional measures above and beyond what organizations/coalitions require) or just because a need arises to place limits on exports of goods or technology (the latest category to be added), the Area Control List (ACL) is a sort of “catch all” Act to allow the Government to limit the export of materials/services/technology for any reason to particular states. Provisions for an ACL are found under Section 4 of the *Export and Import Permits Act*.<sup>40</sup> A common example is when Canada wishes to ensure that a country, in the throes of a civil war, does not receive material from Canada to exacerbate the situation. The second function of the *Export and Import Permits Act* establishes an ‘Export Control List’ (ECL)<sup>41</sup>, which is a summary of goods that the Governor in Council deems necessary to control for enumerated purposes. Under the ECL, the Canadian Foreign Affairs Minister, at his/her discretion, can decide whether or not to issue an export

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<sup>39</sup> Paragraph 8.

<sup>40</sup> Export and Import Permits Act (R.S.C., 1985, c. E-19).

<sup>41</sup> *Export and Imports Permit Act*: <http://laws-lois.justice.gc.ca/eng/acts/E-19/page-1.html> (R.S.C., 1985, c. E-19).

permit to particular states. For example, under current export policy guidelines, Canada closely controls the export of military goods and technology to countries: (a) that pose a threat to Canada and its allies; (b) that are involved in or under imminent threat of hostilities; (c) that are under UN Security Council sanctions; and (d) whose governments have a persistent record of serious violations of the human rights of their citizens, unless it can be demonstrated that there is no reasonable risk that the goods might be used against the civilian population.<sup>42</sup> The Act also allows for the creation of an Import Control List but this is used more in the case of a trade dispute. The Act is exceptionally long and detailed. Fines and punishment are similar to those under the SEMA, but there are additional measures that can be considered.<sup>43</sup> Again, however, the bulk of the Act is dedicated to trade issues not sanctions.

#### **4) Freezing Assets of Corrupt Foreign Affairs Act (FACOF)**

Under this new legislation, introduced in 2011, Canada can freeze the assets/property of former and current officials of foreign states, and members of their families, for perceived transgressions. According to this Act, if a foreign state, in writing, asserts to the Government of Canada that a person has misappropriated property of the foreign state or acquired property inappropriately by virtue of their office or a personal or business relationship and asks the Government of Canada to freeze property of the person, the Governor in Council may;

- (a) Make any orders or regulations with respect to the restriction or prohibition of any of the activities referred to in subsection in relation to the person's property that the Governor in Council considers necessary; and
- (b) By order, cause to be seized, frozen or sequestered in the manner set out

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<sup>42</sup> Andrea Charron, "Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?," p. 3-4.

<sup>43</sup> Paragraphs 19.



in the order any of the person's property situated in Canada.<sup>44</sup>

Most recently, this Act was used against officials in Ukraine, who were accused by the Ukrainian government of misappropriating property and acquiring property inappropriately via their office or business.<sup>45</sup> Regulations must be laid before Parliament and punishments are very similar to those for violating the SEMA

### **5) Diplomatic Sanctions**

Most recently, and especially used after 9/11, Canada and many other states have resorted to a “fifth” means by which sanctions could be applied to address the issue of undesirable state representatives in a country. There has always been the diplomatic power of the Minister or Foreign Affairs of a state to stop recognizing the credentials of a foreign dignitary and deport them. There is no legal act associated with such a move but, as it does restrict or limit activity that Canada has with another state (as per Canada's definition of sanctions), it is a “sanction,” albeit of a diplomat sort. The latest example was in 2014 when Canada ejected the Russian military attaché, from Canada for Russia's annexation of Crimea.<sup>46</sup>

The use of travel bans, implemented under the Immigration and Refugee Protection Act, is also a tool of government. If a Canadian citizen is under a travel ban, Canada cannot prevent them from reentering Canada, so essentially a Canadian on a travel ban,

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<sup>44</sup> Freezing Assets of Corrupt Foreign Officials Act, (S.C. 2011, c. 10) <http://laws-lois.justice.gc.ca/eng/acts/F-31.6/page-2.html#docCont> (Accessed January 18).

<sup>45</sup> Freezing Assets of Corrupt Foreign Officials (Ukraine) Regulations SOR/2014-44, <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2014-44/page-1.html> (Accessed January 18).

<sup>46</sup> Lee Berthiaume, "Canada quietly orders a Russian defence attaché at the Ottawa embassy to leave the country," *National Post*, April 8, 2014, [http://news.nationalpost.com/news/canada/canadian-politics/canada-quietly-orders-russian-diplomat-defence-attache-at-ottawa-embassy-to-leave-the-country#\\_\\_federated=1](http://news.nationalpost.com/news/canada/canadian-politics/canada-quietly-orders-russian-diplomat-defence-attache-at-ottawa-embassy-to-leave-the-country#__federated=1) (accessed May 5, 2015).

has a safe haven in Canada.<sup>47</sup> After the deaths of Captain Patrice Vincent and Reservist Nathan Cirillo by suspected Canadian terrorists in October 2014 (presumed radicalized by outside terrorist organizations), the Government began the process of creating legislation to prevent Canadians from leaving Canada especially to aid terrorists overseas.

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## **Part II – What agencies are involved in administering and enforcing sanctions?**

Five government agencies are primarily responsible for the administration and enforcement of sanctions: 1) Department of Foreign Affairs, Trade and Development Canada (DFATD); 2) The Royal Canadian Mounted Police (RCMP); 3) Canadian Border Services Agency (CBSA); 4) Department of Justice; and 5) the Office of the Superintendent of Financial Institutions (OSFI).<sup>49</sup>

DFATD is responsible for implementing the legislation and corresponding regulations that give sanctions the legal authority to be implemented in Canada.<sup>50</sup>

DFATD is responsible for overseeing the *United Nations Act*, the *Special Economic Measures Act*, the *Export and Import Permits Act* (under which the Area Control Lists are created), and the *Freezing Assets of Corrupt Foreign Officials Act*.<sup>51</sup>

The RCMP plays a vital role in the investigation of sanctions violations because

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<sup>47</sup> "Immigration and Refugee Protection Act," (S.C. 2001, c. 27) paragraph 19. *Justice Laws Website*, March 12, 2015, <http://laws-lois.justice.gc.ca/eng/acts/I-2.5/page-11.html#docCont> (accessed March 24, 2015).

<sup>48</sup> Laura Payton, "Anti-terrorism powers: What's in the legislation?," *CBC*, Jan 30, 2015, <http://www.cbc.ca/news/politics/anti-terrorism-powers-what-s-in-the-legislation-1.2937964> (accessed May 8, 2015).

<sup>49</sup> Canadian Sanctions Legislation, <http://www.international.gc.ca/sanctions/legislation-lois.aspx?lang=eng> (accessed January 19). Andrea Charron, "Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?," p. 7.

<sup>50</sup> Andrea Charron, "Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?," p. 8.

<sup>51</sup> Canadian Sanctions Legislation, <http://www.international.gc.ca/sanctions/legislation-lois.aspx?lang=eng> (accessed January 19).

contravention of the various Acts are indictable offences under the Criminal Code. There is no specific sanctions unit within the RCMP, however, it will investigate should it be directed to by DFATD or CBSA.<sup>52</sup>

The role of the CBSA is to ensure the free flow of goods and people at the border, and to monitor, investigate, and detain people or goods responsible for violating relevant laws.<sup>53</sup> Therefore, the CBSA is responsible for ensuring that goods leaving and entering Canada are not listed by DFATD as banned substances destined to or from the targeted country.<sup>54</sup> CBSA, therefore, routinely deals with both trade sanctions and economic sanctions.

The Department of Justice is responsible for assisting DFATD to draft Canadian regulations and legislation to give Canada the legal authority to implement sanctions. The Department of Justice is also responsible for representing the Crown in criminal cases if a violator of the various sanctions Acts is brought to trial.

Finally, the OSFI established in 1996, is responsible for monitoring which lists of individuals under a UN financial asset ban are sent to Canadian banks to have the necessary accounts frozen. The OSFI is tasked with ensuring that these lists remain up-to-date, and accurate to ensure that banks are upholding their legal requirement under the UNA.<sup>55</sup> They are particularly tasked with ensuring that funds do not make their way to sanctioned terrorists.

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<sup>52</sup> Andrea Charron, "Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?," p. 8.

<sup>53</sup> "Securing the Border", *Canada Border Services Agency*. <http://www.cbsa-asfc.gc.ca/security-securite/safety-surete-eng.html> (Accessed January 19, 2015).

<sup>54</sup> Andrea Charron, "Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?," p. 8.

<sup>55</sup> Andrea Charron, "Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?," P. 8.

### **Part III – What are the penalties for violating sanctions?**

The penalties for violating sanctions vary depending on which legislation is contravened. The current punishment for contravening the UNA is: (a) a fine of no more than \$100,000 or to imprisonment for a term of not more than one year, or to both; or (b) on conviction on indictment, to imprisonment for a term of not more than 10 years.<sup>56</sup> Also, any property dealt with contrary to any order or regulation made under this Act may be seized and detained and is liable to forfeiture at the discretion of the Minister of Justice, on proceedings in the Federal Court, or in any superior court, and any such court may make rules governing the procedure on any proceedings taken before the court or a judge thereof under this section.<sup>57</sup>

However, many of the penalties for violating the UNA after its revision in 1985, were implemented using the legislation under the first version of Canada's UNA, established in 1947. These penalties were much less severe. The 1947 Act established maximum fines and penalties of only \$200 and/or three months of jail time for a summary conviction, and \$5,000 and/or five years of jail time for a conviction or indictment.<sup>58</sup> For example, penalties for: (1) Iraq; (2) Libya; (3) the Federal Republic of Yugoslavia (FRY); (4) Angola; (5) Rwanda; (6) individuals indicted by the International

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<sup>56</sup> R.S., 1985, c. U-2, s. 3; 2001, c. 41, s. 112 <http://laws-lois.justice.gc.ca/eng/acts/U-2/page-1.html>

<sup>57</sup> R.S., 1985, c. U-2, s. 3; 2001, c. 41, s. 112

<sup>58</sup> Andrea Charron, "Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?," P. 5.

Criminal Tribunal for the former Yugoslavia (ICTY); (7) Eritrea; and (8) Ethiopia, even though established after 1985 were listed at the “old” rate.<sup>59</sup>

The punishment for violating the SEMA is not as severe as violating the UNA. Every person who willfully contravenes or fails to comply with an order or regulation made under section 4 is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year, or to both; or is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years.<sup>60</sup>

Furthermore, the ECL also has different penalties for contravening its measures. Every person who contravenes any provision of this Act or the regulations is guilty of an offence punishable on summary conviction and liable to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding twelve months, or to both; or an indictable offence and liable to a fine in an amount that is in the discretion of the court or to imprisonment for a term not exceeding ten years, or to both.<sup>61</sup>

There have only been two cases where violators of UNA sanctions were prosecuted. The first case was Canadians attempting to sell stripped down surplus military helicopters to Iraq, while it was under comprehensive UN sanctions (SOR/90-531). Five Canadian businessmen, and four companies participated.<sup>62</sup> The second case involved an individual and business. They were convicted of violating Libya sanctions (S/RES/748) by illegally shipping aircraft parts to Libya. The company was fined

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<sup>59</sup> Andrea Charron, "Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?," P. 5.

<sup>60</sup> Special Economic Measures Act, <http://laws-lois.justice.gc.ca/eng/acts/S-14.5/page-4.html#docCont> (Accessed January 19, 2015).

<sup>61</sup> Export and Import Permits Act, <http://laws-lois.justice.gc.ca/eng/acts/E-19/page-15.html#h-10> (Accessed January 19, 2015).

<sup>62</sup> Andrea Charron, "Canada's Domestic Implementation of UN Sanctions: Keeping Pace?," *Canadian Foreign Policy*, March 2008: 1-18. p. 15.

\$400,000 CAD, and the individual was ordered to complete 100 hours of community service, and sentenced to two years probation in 1992.<sup>63</sup>

Canada has robust, standing legislation to deal with any scenario that may call for the application of sanctions. Though the fines could be increased and the jail terms extended, there have been few cases of known violations. More troubling is the fact that very few companies realize they are responsible to ensure that they are in compliance with sanctions regulations which are constantly changing. This represents an enormous burden on smaller companies and large ones as well. Consider, for example, the need to troll through millions of financial transactions by one of Canada's major banks in search of a particular transaction by a targeted individual or company. The costs can be staggering, but are rarely discussed or calculated.<sup>64</sup> Furthermore, only one bank, the Bank of Montreal, has a dedicated sanctions expert – a potential growing career field for the future.

While DFTAD continues to try and improve their website to provide more information and a contact number, the number of policy officers dedicated to sanctions is very few and the word “economic” in front of sanctions creates confusion; one does not think of travel bans and financial asset freezes as necessarily “economic” which means companies/individuals may discount their application and/or impact on Canadian foreign policy. Chapter 3 explores Canada's sanctioning history to provide context for the analysis in Chapter 4.

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<sup>63</sup> Andrea Charron, "Canada's Domestic Implementation of UN Sanctions: Keeping Pace?," *Canadian Foreign Policy*, March 2008: 1-18. p. 15.

<sup>64</sup> Jim Bronskill, “Confusing sanctions regime irks Canadian banks, financial institutions” (14 August 2014) See <http://globalnews.ca/news/1508267/confusing-sanctions-regime-irks-canadian-banks-financial-institutions/>

### Chapter 3: Setting the Context for Canada's Use of Sanctions

This chapter outlines the changing nature and thinking behind the use of sanctions by states generally since the end of World War I (WWI) and Canada's use and understanding of sanctions specifically. This will provide background context from which to evaluate Canada's use of sanctions since the end of the Cold War in Chapters 4 and 5.

The optimism of states "to promote international co-operation and to achieve international peace and security"<sup>65</sup> via the first universal organization, the League of Nations, relied on sanctions to be their principal coercive tool of statecraft. Canada, while an enthusiastic participant and founding member of the League, was more cautious about the use of sanctions, however. And yet, over the course of the interwar, Cold War and post-Cold War era, Canada played a major role in the application and understanding of sanctions via its diplomats, academics and practitioners.<sup>66</sup> This chapter is divided into three parts corresponding to three time periods and the principal progenitors of sanctions of the times: 1) Canada and the League of Nations; 2) Canada, the Cold War and the United Nations (UN) and 3) the post-Cold War era and Canada's shift from UN-instigated to coalition-led sanctions. Canada turned from an obedient, but reluctant sender state (a state that applies sanctions measures) to a more enthusiastic supporter of sanctions. This enthusiasm for sanctions is largely thanks to three key Canadians – Margaret Doxey, David Malone and Robert Fowler – who were fundamental in shaping how sanctions were applied, studied and monitored, as well as a general reliance on

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<sup>65</sup> *Covenant of the League of Nations*: Preamble (1924).

<sup>66</sup> See for example Andrea Charron, "Three Canadians and their Contribution to UN Sanctions: A Tribute to Margaret Doxey, David Malone and Robert Fowler", *Canadian Foreign Policy Journal*, 16 (3)(Fall 2010): 1-15.

sanctions by states around the world as *the* coercive tool to deal with all manner of crises, especially terrorism.

### **Part I – The League of Nations and Canada’s Tepid Relationship with Sanctions**

While sanctions have been used throughout history as a tool of war (for example, to besiege [or “lay siege to”] a city) and of statecraft (to apply pressure to change state behavior), in the last century, they have been used almost exclusively as a tool to encourage the peaceful settlement of international, state-based disputes to limit or negate the use of force between states. The end of World War I led to the international community adopting sanctions as the preferred alternative to war that would undergird the new world order to be established by the League of Nations.<sup>67</sup> Article XVI of the League’s Covenant stated in part:

Should any Member of the League resort to war ...[the Member] shall ipso facto be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not. ...<sup>68</sup>

Sanctions were to be wielded like a weapon against aggressive states to bring them to their knees. In the words of U.S. President Woodrow Wilson, the primary champion of the League of Nations, “[a] nation that is boycotted is a nation that is in sight of surrender. Apply this economic, peaceful, silent, deadly remedy and there will

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<sup>67</sup> Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian & Australian Foreign Policy* (Toronto: University of Toronto Press, 1994). P. ix.

<sup>68</sup> Article XVI, Covenant of the League of Nations (December 1924).



be no need for force. It is a terrible remedy”.<sup>69</sup> Member states were to end all interactions with the aggressor, from diplomatic, to economic to communications, generally. A pacifist, Wilson was determined that collective measures, like sanctions, could stop war. According to Margaret Doxey, the doyenne of sanctions’ research and a Canadian: “The ‘economic weapon’ [of League days] was a powerful tool to be employed by governments against aggressors.”<sup>70</sup> The objective therefore, was to punish and coerce.<sup>71</sup> The League’s experience with sanctions, however, was very mixed. The most famous case involved the sanctioning of Italy for its illegal annexation of Abyssinia (modern-day Ethiopia) in 1935. At the time, Canada was represented by Walter A. Riddell in Geneva, the headquarters of the League. Riddell, lacking instructions from Ottawa,<sup>72</sup> wanted Canada to apply additional sanctions against Italy’s aggressive actions. Therefore, Riddell recommended that petroleum, coal, iron and steel be added to the list of goods Canada and the other League Member States banned for export to Italy,<sup>73</sup> such as the

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<sup>69</sup> Woodrow Wilson, Indianapolis, 4 September 1919 in Saul K. Padover, *Wilson’s Ideals* (Washington DC: American Council on Public Affairs, 1942): 108.

<sup>70</sup> Margaret P. Doxey, *International Sanctions in Contemporary Perspective: Second Edition*. (Houndmills: MacMillan Press LTD, 1996). P.3.

<sup>71</sup> Kim Richard Nossal, “International sanctions as international punishment”. *International Organization* (1989): 301-322.

<sup>72</sup> To be fair to Riddell, Canada was in the throes of a federal election. Italy invaded on 3 October 1935, 10 days before polls opened. Incumbent Conservative Bennett was against Liberal, Mackenzie King. Mackenzie King won easily on the 15 October but then promptly left on holiday to Georgia. Canada, therefore, was led by a Liberal care-taker government in the midst of the crisis. Parliament was dissolved for the elections and since any sanctions applied by Canada requires Parliamentary confirmation, Ferguson had to equivocate lacking explicit direction from Ottawa. When the Bennett government fell, Ferguson resigned, and his advisor, Riddell, was installed as Canada’s League representative. Riddell, a very pro-UK, pro-League supporter was at odds with Mackenzie King’s anti-imperialism anti-League predilections. Still left without any clear direction from Ottawa, Riddell proceeded to recommend additional measures be applied (the infamous “Canadian” Proposal 4A). Being as Canada had limited trade with Italy, it was presumed a safe suggestion limiting costs to Canada but showing support for the UK. Riddell guessed wrongly. See Brock Millman, “Canada, Sanctions and the Abyssinian Crisis of 1935”, *The Historical Journal*, 40(1) (1997): 143-168.

<sup>73</sup> John Hilliker, *Canada’s Department of External Affairs: The Early Years 1909 – 1946 Volume 1* (Montreal/Kingston: McGill-Queen’s University Press): 174-175.

already prescribed weapons ban against Italy and Abyssinia and loans to Italy,<sup>74</sup> because they were vital to Italy's military and its ability to occupy Ethiopia. This suggestion, however, was counter to Prime Minister Mackenzie King's desires and Riddell was rebuked sharply.<sup>75</sup> Article X of the Covenant stated that:

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.<sup>76</sup>

Given that Member States were not compelled to apply sanctions against Italy as per Article X of the Covenant, only consider the advice of the League's Council, many chose not to apply the measures - or did so half-heartedly - having weighed the economic cost-benefit analysis of applying such measures (which included stopping Italian exports and imports - especially the famed Italian leather goods). According to John Hilliker, Department of Foreign Affairs historian, Mackenzie King's:

view of international relations remained firmly rooted in this concern from the domestic situation, especially the need to preserve national unity, which he believed would be threatened by public controversy over foreign policy. Thus he

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<sup>74</sup> Cristiano Andrea Ristucca, "1935 Sanctions against Italy: Would Coal and Crude Oil have made a difference?" found at <http://www.nuffield.ox.ac.uk/economics/history/paper14/14paper.pdf>. The weapons ban was called Proposal 1, and the loan ban was called Proposal 2, Proposal 3 included all goods from Italy (other than gold or silver) and Proposal 4 included any other items necessary for the conduct of war. It is the Proposal 4a goods, the so-called Canadian (read Riddell) proposal - that included petroleum, pig iron and steel, that were never imposed. Ultimately, the author concludes that the addition of the 4a and oil embargo sanctions would not have made a difference to the outcome of the conflict. Proposals 1 - 4 were considered applied between 3 October 1935 and 15 July 1936.

<sup>75</sup> As punishment for his overstretch of authority (referred to in the Canadian Press as the "Riddell Affair"), he was quickly posted to Washington and then New Zealand. (See Historica Canada, "Walter A. Riddell" at <http://www.thecanadianencyclopedia.ca/en/article/walter-alexander-riddell/> (Accessed 19 November 2014). In a telegram to Riddell, Mackenzie King wrote: "I have noted with much surprise.. that without express authorization you took the initiative in moving certain additional articles be added to the list in Proposal No. 4.... Every effort will be made to give prompt instructions but in any case you should not take action any question of importance such as those recently considered without definite and positive instructions." Reprinted in Brock Millman, "Canada, Sanctions and the Abyssinian Crisis of 1935", *The Historical Journal*, 40(1) (1997):160.

<sup>76</sup> Covenant of the League of Nations, Article X (1924). This is the Article that convinced the U.S. Congress not to join the League of Nations lest they be pulled into another war not of their choosing.

was reluctant to have Canada assume an active role in the Commonwealth and the League of Nations ...<sup>77</sup>

Furthermore, given that the US was never a member of the League, it was unlikely that the collective application of sanctions would bite sufficiently to force Italy to change course. Collective action that included the US and that did not damage Canadian unity therefore mattered to Canada. While Canada continued to support the League of Nations, its support of economic sanctions under Mackenzie King was tepid. Such limited support of sanctions was not unreasonable given that Canada was a “middle power”<sup>78</sup> and much of its foreign policy after the war was dedicated to gaining independence, while managing relations between its two, major allies: the US and the UK.

## **Part II, Canada, the United Nations and the Cold War**

Despite the checkered history of the League of Nations and its utter failure to prevent the world from sliding into World War II, sanctions were still considered an important tool of collective security; indeed, there was no question that sanctions would not be employed by the League’s successor, the United Nations (UN). The article in the Charter that authorizes the Security Council to apply mandatory sanctions (Article 41) is in the same Chapter VII as the article to apply force (Article 42). They were considered, therefore, on par with force in terms of potential coerciveness. While the UN Security

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<sup>77</sup> John Hilliker, *Canada’s Department of External Affairs: The Early Years 1909 – 1946 Volume* p. 176.

<sup>78</sup> The designation of a state as a Middle Power is controversial because of the variances in definitions. Generally, it is used to refer to states that are neither Great Powers, nor developing states. The more academic of definitions to define the Canadian context was provided by Paul Gecelovsky who stated that a Middle Power was a measure of state’s capacity (including economic, military and influence) and behaviour (i.e. did it seek to act as the intermediary between Great Powers and developing states.) See Paul Gecelovsky “Constructing a Middlepower: Ideas and Canadian Foreign Policy”, *Canadian Foreign Policy Journal* (Spring 2009): 77-93.

Council could apply sanctions under Article 41 of the Charter,<sup>79</sup> it was stymied by the threat of veto by the five Great Powers (the Soviet Union, China, France, the UK and the US). During the entire Cold War, the Permanent five members could only agree to apply mandatory sanctions twice: against apartheid South Africa (and only an arms embargo)<sup>80</sup> and against Southern Rhodesia for its illegal white minority rule led by Ian Smith and his Rhodesian Front (but in this case, comprehensive economic sanctions were applied).<sup>81</sup> Instead, unilateral sanctions (especially during the 1950s and 1960s at the height of the Cold War), were an integral part of an American-led strategy against the Soviet Union, China, and their allies, North Korea, North Vietnam, and Cuba.<sup>82</sup> Despite being an ally of the US, Canada did not apply sanctions to match the US's in the early days of the Cold War (except for sanctions against Afghanistan in 1979), preferring instead to apply sanctions when compelled by the UN Security Council or as a condition of membership to a regional organization. Between 21 August 1960 and 4 January 1962, for example, the OAS applied sanctions against the Dominican Republic.<sup>83</sup> The UN Security Council adopted a resolution on 9 September 1960, which merely stated that they noted the

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<sup>79</sup> Article 41 under Chapter VII reads: The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations. Charter of the United Nations (24 October 1945).

<sup>80</sup> S/RES/418 (1977). The arms embargo was lifted by S/RES/919 (1994) when elections were held and Nelson Mandela became the first, democratically-elected President of South Africa.

<sup>81</sup> See S/RES/221 (1966) and S/RES/232 (1966) which began with an oil embargo later expanding into comprehensive sanctions against the racist regime. These measures were lifted by the Security Council by S/RES/460 (1979) after conclusion of the Lancaster House Agreement and Robert Mugabe's rule over an independent Zimbabwe.

<sup>82</sup> Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian & Australian Foreign Policy* (Toronto: University of Toronto Press, 1994). P. ix.

<sup>83</sup> Chris Lloyd Brown-John, "Economic Sanctions: The case of the OAS and the Dominican Republic: 1960-1962", *Caribbean Studies*, 15(2) (1975): 73-105. The Dominican Republic was sanctioned for its part in the attempted assassination of Venezuelan President, Romulo Betancourt by the regime of Rafeal Trujillo (for 30 years, the Dominican Republic's President). The measures involved barring the Dominican Republic from the OAS and partial interruption of economic relations beginning with an immediate suspension in the trade of arms to the Dominican Republic.

decision taken by the OAS, but did not call for or require states to follow suit.<sup>84</sup> Lacking the mandatory requirement, Canada did not apply sanctions even though it was a permanent observer of the OAS from 1962 until 1990 when it achieved full membership status.<sup>85</sup> Canada was not obliged to apply the measures and so it chose not to do so even if it could have curried favour with the US and was an observer to the OAS.

Sanctions were used increasingly throughout the 1970s as they became the primary instrument to deal with wrongdoing in the international system.<sup>86</sup> However, given that the Security Council was often deadlocked along political lines, unilateral sanctions, rather than mandatory UN sanctions, were more common. The US and the Soviet Union routinely sanctioned proxy adversaries (like Cuba and European states). That being said, the UN Security Council did manage to garner support for “voluntary” sanctions (similar to the League of Nations’ measures in which Member States were not obliged to apply them). Voluntary measures were applied against participants of the Arab-Israeli war,<sup>87</sup> North Korea,<sup>88</sup> the Congo,<sup>89</sup> Portugal,<sup>90</sup> South Africa<sup>91</sup> and Southern

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<sup>84</sup> S/RES/156 (1960). (The Soviet Union and Poland abstained). Canada had been a member of the Security Council the year previously from 1958-1959.

<sup>85</sup> Department of Foreign Affairs, Development and Trade. Canada and the Organization of American States (OAS) see [http://www.international.gc.ca/american\\_states-etats\\_americaains/oas-oea/oas-oea.aspx?lang=eng](http://www.international.gc.ca/american_states-etats_americaains/oas-oea/oas-oea.aspx?lang=eng) . Accessed 27 December 2014.

<sup>86</sup> Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian & Australian Foreign Policy* (Toronto: University of Toronto Press, 1994). p. ix.

<sup>87</sup> S/RES/50 (1948). Voluntary arms embargo.

<sup>88</sup> S/RES/82 (1950). Refrain from providing military aid to North Korea,

<sup>89</sup> S/RES/169. Voluntary arms embargo.

<sup>90</sup> S/RES/180, 183, 218. Any aid that would help the Portuguese government suppress its colonies.

<sup>91</sup> S/RES/181, 182, 191, 282, 417, 569, 591. Urged states to suspend new investments with South Africa, prohibit the sale of kruggerands and all other coins minted in South Africa, restrict sports and cultural relations, suspend guaranteed export loans, prohibit new contracts in the nuclear field, and prohibit sales of computer equipment that may be used by South African police or army. Commends those states, which have already adopted voluntary measures against the Pretoria government and urges them to adopt new provisions and invites those which have not yet done so to follow their example. As well, sanctions were placed against South Africa S/RES/269, 276, 283, 284, 301 for its aggression against Namibia.

Rhodesia.<sup>92</sup> Canada supported most with either a process verbale or Canada's *Export and Import Permits Act* - the Canadian legislation of choice to screen and monitor what exports were sent to states. The advantage was that products had to be listed and, therefore, could either be fast-tracked (for example, needed supplies to allied partners in Europe) or banned products (especially destined for Soviet-bloc partners).<sup>93</sup>

During the 1970s and 1980s, Canada and the US often sanctioned states that were pursuing nuclear technology to make weapons (like Pakistan, India and South Korea). Canada's CANDU reactors, while highly sought after for civilian power-generating capacity, could be modified to make weapons' grade plutonium. Canada restricted the sale of CANDU reactors and related supplies to countries that refused to adhere to international nuclear proliferation safeguards.<sup>94</sup>

Canada did, eventually, sanction the Soviet Union during the Cold War. In 1979, when the Soviet Union invaded Afghanistan, Canada applied sanctions against the Soviets, matching its American ally, in response to the clear violation of international law.<sup>95</sup> The Canadian response almost exactly mirrored the actions of the US. These measures included the restriction of the sale of grain, tightening the sale of high-tech goods, banning high level visits between the two countries, and urging the International Olympic Committee to move the Games to a city outside the Soviet Union.<sup>96</sup> While the initial Canadian reaction to the Soviet attack on Afghanistan had been muted, sanctions

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<sup>92</sup> S/RES/216, 217, 333, 445. These measures included voluntary ban on mineral sales from Southern Rhodesia among others.

<sup>93</sup> Andrea Charron, "Canada's Domestic Implementation of UN Sanctions: Keeping Pace?", *Canadian Foreign Policy Journal* ():

<sup>94</sup> Gary Clyde Hufbauer, Jeffrey J. Schott, Kimberly Ann Elliott, and Barbara Oegg, *Economic Sanctions Reconsidered, 3<sup>rd</sup> Edition*, (Washington DC: Institute for Peterson International Economics, 2007): 12.

<sup>95</sup> Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian & Australian Foreign Policy*. p. 132.

<sup>96</sup> Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian & Australian Foreign Policy*. p. 132.

were implemented shortly after the invasion, following the lead of the U.S.<sup>97</sup> The UN could not apply sanctions in this case because the Soviet Union was the intended target, and it was a veto-wielding member of the Security Council. Instead, individual states and coalitions of states were instrumental in the sanctions against the Soviets.

The cautious use of sanctions by Canada during the Cold War when suggested or compelled by organizations like the UN, belied the intensive efforts made by Canada, via organizations like the Commonwealth, to promote decolonisation, contain communism, support allies and end white minority rule in South Africa and Southern Rhodesia.

While UK's Prime Minister Margaret Thatcher was reticent to heed the calls for more punitive measures against South Africa, for example, Canada's Prime Minister, Brian Mulroney rallied members of the Commonwealth (and La Francophonie) to support the UN voluntary sanctions and to take other measures, including banning the import of world-renowned South African wine and barring its cricket and rugby teams from participating in international sporting events between 1985 and 1989.<sup>98</sup>

While Mulroney chose to apply sanctions in opposition to the UK's foreign policy goal of support to South Africa, early support of the UK was achieved by Prime Minister Trudeau's decision to apply sanctions against Argentina during the Falkland Islands crisis in 1982.<sup>99</sup> In a rare moment for the UN Security Council, S/RES/502 (1982) was passed with a Soviet abstention rather than a veto demanding that Argentina, which had "invaded" the islands, immediately withdraw its troops. No further action by the Security

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<sup>97</sup> Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian & Australian Foreign Policy*. P. 130-1.

<sup>98</sup> David Kirton, "Mulroney Years", *Canadian Foreign Policy in a Changing World* (Toronto: Thomas Nelson, 2007): 147.

<sup>99</sup> Lisa Martin, "Institutions and Cooperation: Sanctions During the Falkland Islands Conflict", *International Security* (Spring 1992) 16(4): 142-178. The Falkland Islands are disputed islands located in the South Atlantic Ocean claimed by both the UK and Argentina. In 1982, a military conflict was ignited to defend the UK claim to the islands. The UK held on to the islands but several British and Argentina soldiers lost their lives.

Council was taken.<sup>100</sup> Instead, the European Economic Council chose to mirror UK measures (which included a ban on arms to Argentina, a freeze of any financial assets of Argentina in British banks and a ban on Argentinean imports) and apply sanctions against Argentina. As a member of the Commonwealth, Canada heeded the call of the UK to adopt similar measures and withdrew its Ambassador from Argentina.<sup>101</sup>

Prime Minister Joe Clark, in power for less than ten months between two of Trudeau's three terms, managed to be one of the few Prime Ministers (until recently under Harper) to see Canada threatened with sanctions.

During campaign elections, Joe Clark promised to move Canada's embassy located in Tel Aviv, Israel (the capital of Israel) to Jerusalem.<sup>102</sup> This move was highly significant. First, it signified support for Israeli efforts to gain control of Jerusalem and recognize it as a city of importance to Israel and second, it represented a marked shift in Canadian foreign policy at the time. When elected, On 4 June 1979, Flora MacDonald, Clark's Minister of Foreign Affairs, announced the move of the Canadian Embassy. Within days, the Arab League, in a show of support for the Palestinian people, who also considered Jerusalem a city of great import, threatened sanctions against Canada. Canadian business would likely suffer and Canada's proposed move risked upsetting progress made to date to inch toward a solution to the Arab-Israeli conflict. And given the power of many of the Arab states (especially with respect to oil supplies), this threat to ban certain goods to Canada quickly raised alarm bells in Canada. In the end, Clark

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<sup>100</sup> The UK was not convinced it could count on the USSR not using a veto and so it did not ask for further measures to be taken by the Security Council instead relying on other international institutions and allies.

<sup>101</sup> Martin: 150.

<sup>102</sup> Jean-Marc Blanchard and Norrin Ripsman "Asking the Right Questions: When Do Economic Sanctions Work Better?", in *Power of the Purse: Economic Statecraft, Interdependence and National Security*, Jean-Marc Blanchard, Edward Mansfield and Norrin Ripsman (eds) (Lodon: Frank Cass, 2000):237-240.



appointed former Conservative leader, Robert Stanfield, to undertake a fact-finding mission in the Middle East.<sup>103</sup> Standfield's recommendation not to move the Embassy was the "out" Clark needed to reverse his decision which had proven a giant political miss-step.

Canada's Cold War use of sanctions is in line with the cautious use of sanctions at the time. The threat of the veto at the UN Security Council meant that other institutions and allies had to be relied upon for support. Canada provided this support (for example withdrawing its Ambassador from Argentina in a show of support for the UK and the Commonwealth) if the issue was not of vital importance to its national interest (such as national unity). However, when it felt an issue was of great importance (apartheid in South Africa or CANDU reactors used in violation of international law), Canada worked with allies; indeed, in the case of South Africa, it rallied allies, to apply multilateral sanctions.

### **Part III: Growing Canadian Sanctions Enthusiasm and the Post-Cold War Era**

With the end of the Cold War and the end to political deadlock in the UN Security Council, sanctions became a popular foreign policy tool of choice to deal with all manner of crises around the world. And Canada willingly, followed suit. However, the Security Council's enthusiasm to tackle crises around the world soon led to difficulties; in the 1990s, the comprehensive sanction regimes against Iraq,<sup>104</sup> the former Yugoslavia,<sup>105</sup> and

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<sup>103</sup> Historical Canada, "Elections of 1979-1980"  
<http://www.thecanadianencyclopedia.ca/en/article/elections-of-1979-and-1980-feature/> (accessed 16 December 2014).

<sup>104</sup> S/RES/660: Condemns Iraqi Invasion of Kuwait; demands that Iraq immediately withdraws from Kuwait. S/RES/661; S/RES/662; S/RES/664; S/RES/665; S/RES/670; S/RES/678; S/RES/687: program of sanctions stayed in place.

one of the poorest countries in the world, Haiti<sup>106</sup> showed the devastating effects that sanctions had on the economies of these states, and the humanitarian crises that followed.

The UN adopted its most comprehensive program of mandatory sanctions under Article 41 against Iraq when it invaded Kuwait on 2 August 1990. The Security Council adopted resolution 661 which banned the import and export of commodities originating from, and destined to, Iraq and Kuwait. It also froze the assets of the Iraqi government officials and nationals abroad.<sup>107</sup> The original intent of the sanctions was to compel Iraq to withdraw from Kuwait. When Iraq did not comply, sanctions were expanded under resolution 666. To minimize sanctions evasion, the Security Council argued that humanitarian shipments of foodstuffs and medical supplies should be provided under the auspices of humanitarian agencies, not the government.<sup>108</sup> Canada fully complied and adopted regulations. It did not add or deviate from the prescribed list of sanctions measures.

The mandatory UN sanctions against Iraq were controversial in part due to the harm that it caused to the Iraqi people, albeit manipulated by Saddam Hussein.<sup>109</sup> The sanctions caused economic collapse, which hit the poor particularly hard.<sup>110</sup> By mid-1994, inflation since 1990 had reached 6,000 percent. The prices of necessities, such a

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<sup>105</sup> S/RES/713, 724, 727, 740, 743, 749, 752, 757, 760, 771, 787, 843, 845, 942, 943, 970, 988, 1003, 1015, 1021, 1022. Established an arms embargo against FRY. Expansive, mandatory trade embargo –oil was an important target of the sanctions. S/Res/1074 terminated sanctions in 1996.

<sup>106</sup> S/RES/841, 861, 862, 867, 873, 875, 917, 933, 940. Arms embargo, prohibit the sale of petroleum products, freezing of assets. S/Res/944, 948: lifted sanctions after restoration of democracy in Haiti, return of President Jean-Bertrand Aristide and lifting of the sanctions in accordance with resolution 944.

<sup>107</sup> The Situation between Iraq and Kuwait: S/RES/660 (1990).

<sup>108</sup> Michael Reisman and Douglas Stevick, "The applicability of International Law Standards to United Nations Economic Sanctions Programmes," *European Journal of International Law*, 1998: 86-141. P. 101.

<sup>109</sup> George Lopez and David Cortright, "Containing Iraq: Sanctions Worked", *Foreign Affairs*, (July 2004): 1-14.

<sup>110</sup> Michael Reisman and Douglas Stevick, "The applicability of International Law Standards to United Nations Economic Sanctions Programmes," *European Journal of International Law*, 1998: 86-141. P. 101.

bread, infant formula, and flour rose by several thousand percent, and the World Food Program estimated that the average basket of goods had increased 50 times by 1993.<sup>111</sup>

Following the disastrous, unintended consequences of the comprehensive sanctions regimes against Iraq, Haiti, and the former Yugoslavia, the UN abandoned their use in 1994 largely in response to calls from academics like David Malone and Margaret Doxey and practitioners like Canada's UN Ambassador to the UN, Robert Fowler, to use sanctions differently. Rather than using sanctions like a blunt instrument designed to punish, the new thinking was to apply "smart" sanctions to target the decision-makers and elites of a state. The trend now is to "target" sanctions to minimize the humanitarian impact on the general population. Targeted sanctions have become the norm for the UN in order to limit the negative humanitarian effects on innocent civilians, and instead, to focus on targeted measures against leaders, decision-makers, and their principal supporters, or on single sectors of the economy.<sup>112</sup>

Canada has given significant support to UN sanctions following the Cold War. In 1999-2000, Canada sought to be elected to one of the non-permanent positions of the Security Council, and the Canadian government decided that, during its tenure on the Council, it would seek to improve the effectiveness of sanctions as its contribution to international peace and security. This was an important priority due to the lack of success of many of the sanction regimes at the time.<sup>113</sup> Much of the credit goes to David

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<sup>111</sup> Michael Reisman and Douglas Stevick, "The applicability of International Law Standards to United Nations Economic Sanctions Programmes," pp. 102-103.

<sup>112</sup> Thomas J. Biersteker and Sue E. Eckert, "Evaluating the Impacts and Effectiveness of UN Targeted Sanctions," *The Graduate Institute Geneva*, June 2013, [http://graduateinstitute.ch/files/live/sites/iheid/files/sites/internationalgovernance/shared/PSIG\\_images/Sanctions/Project%20Description%20June%202013%20\(2\).pdf](http://graduateinstitute.ch/files/live/sites/iheid/files/sites/internationalgovernance/shared/PSIG_images/Sanctions/Project%20Description%20June%202013%20(2).pdf) (accessed October 20, 2014).

<sup>113</sup> Andrea Charron, "Three Canadians and their Contributions to United Nations Sanctions: A Tribute to Margaret Doxey, David Malone, and Robert Fowler," *Canadian Foreign Policy*, Fall 2010: (1-14). p.7. For

Malone (former Canadian Deputy Permanent Representative to the UN), who was instrumental in Canada's bid to obtain a seat on the Council. One of the trends that he recognized was the importance, yet relative ineffectiveness, of sanctions. This was particularly concerning because of the rapid increase in the number of sanctions, from two mandatory sanctions during the Cold War, to fifteen afterwards.<sup>114</sup>

Malone's work led to the commissioning of two major books on sanctions written by David Cortright and George Lopez. These books sought to provide policy makers with advice on what type of sanctions worked, and strategies to improve their effectiveness.<sup>115</sup> Canada was also a participant in three major international sanctions' conferences the Interlaken (1998-2001), the Bonn-Berlin (1999-2001), and the Stockholm (2001-2002) aimed at improving the effectiveness of targeted sanctions.<sup>116</sup>

It is also important to note the contributions of Canadian Margaret Doxey who is the leading academic in sanctions' research. She has been instrumental in shaping both policies and discussion regarding the application and enforcement of sanctions. Her book entitled "Economic Sanctions and International Enforcement" (1980), examined sanctions as a collective security tool with reference to modern day regimes.<sup>117</sup> She was also the first to argue that the goal of sanctions was not solely designed to punish senders.

Doxey believed that there were other important goals, such as deterrence, compliance,

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example, sanctions had been placed against Somalia, the Former Yugoslavia, Liberia, Angola and other states with little progress toward peace and security.

<sup>114</sup> Andrea Charron, "Three Canadians and their Contributions to United Nations Sanctions: A Tribute to Margaret Doxey, David Malone, and Robert Fowler," P.7.

<sup>115</sup> Andrea Charron, "Three Canadians and their Contributions to United Nations Sanctions: A Tribute to Margaret Doxey, David Malone, and Robert Fowler," P. 8.

<sup>116</sup> Andrea Charron, "Canada's Domestic Implementation of UN Sanctions: Keeping Pace?," *Canadian Foreign Policy*, March 2008: (1-18). P. 12.

<sup>117</sup> Andrea Charron, "Canada's Domestic Implementation of UN Sanctions: Keeping Pace?," *Canadian Foreign Policy*, March 2008: (1-18). P. 4-5.

punishment, destabilization, limitation of conflict, solidarity, symbolism, and signaling.<sup>118</sup>

Continuing Canada's contribution to international sanctions, while on the UNSC, Canadian Ambassador to the UN, Robert Fowler, actively sought to chair the Council Committee on sanctions against the *União Nacional para a Independência Total de Angola* (UNITA) and its rebel leader, Jonas Savimbi in Angola.<sup>119</sup> He transformed its role from one of a passive listener, to an active monitor. The Council had applied sanctions against UNITA for its role in prolonging the civil war in Angola by illegally selling diamonds from Angola in exchange for arms and weapons. The initial arms embargo applied against Angola was totally ineffective because it did nothing to stop the UNITA rebel group from acquiring arms.<sup>120</sup> Fowler sought more information, sanctions experts and a hands-on investigation *in Angola* (a novel idea) to determine the kinds of sanctions required to stem the flow of arms into the state. This meant that banks and other sources of financial information were required to provide written reports in order to track the finances of UNITA and its senior officials.<sup>121</sup> As a result, Fowler was able to conclude that UNITA was able to rearm and pay for the war through the sale of "blood diamonds."<sup>122</sup> And of course, the history of Canada's sanctions up to 1990 was captured

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<sup>118</sup> Andrea Charron, "Three Canadians and their Contributions to United Nations Sanctions: A Tribute to Margaret Doxey, David Malone, and Robert Fowler," P. 5-6.

<sup>119</sup> Andrea Charron, "Three Canadians and their Contributions to United Nations Sanctions: A Tribute to Margaret Doxey, David Malone, and Robert Fowler," P. 9.

<sup>120</sup> Andrea Charron, "Three Canadians and their Contributions to United Nations Sanctions: A Tribute to Margaret Doxey, David Malone, and Robert Fowler," P. 9.

<sup>121</sup> Andrea Charron, "Three Canadians and their Contributions to United Nations Sanctions: A Tribute to Margaret Doxey, David Malone, and Robert Fowler," P. 9.

<sup>122</sup> "Final Report of the Monitoring Mechanism on Angola Sanctions," *Global Policy Forum*, December 21, 2000, <https://www.globalpolicy.org/component/content/article/202/41483.html#X> (accessed March 10, 2015).

in Kim Richard Nossal's book *Rain Dancing*; the only book to date dedicated, in part, to a review of Canada's sanctioning activity.

Throughout the 1990s (dubbed the "Sanctions Decade"<sup>123</sup> after the book by George Lopez and David Cortright thanks to David Malone), Canada dutifully enacted the necessary national regulations to give effect to the myriad of UN sanctions regimes. Indeed, so concerned was Canada with making sure that the Canadian sanctions regulations were effective, especially against Iran given its nuclear ambitions, that the Senate Standing Committee on Foreign Affairs and Trade launched an in-depth study into the effectiveness of its measures.<sup>124</sup> The Senate Committee recommended that: "Having heard testimony about Canada's complex and decentralised sanctions regulations, the Committee suggests that the Government of Canada look into simplifying and coordinating regulatory efforts regarding financial transactions with Iran (emphasis in the original)"<sup>125</sup> Sadly, very few changes were made.

Sanctions are no longer a tool used solely against a state. Today, sanctions are most likely to target individuals and non-state entities. Rebel groups have been the subject of sanctions in Angola, Sierra Leone, Côte d'Ivoire, and the Democratic Republic of the Congo (DRC). Since 2001, a series of Security Council resolutions have approved sanctions against terrorist groups – specifically Al-Qaeda, the Taliban, al Shabaab, Boko Haram and the Islamic State of the Levant (ISIL). There has always been concern about

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<sup>123</sup> George Lopez and David Cortright, *The Sanctions Decade: Assessing UN Strategies in the 1990s*, (NY: International Peace Academy, 2000).

<sup>124</sup> Senate Standing Committee on International Affairs and Trade, "Iran in Focus: Current Issues for Canadian Foreign Policy" <http://www.parl.gc.ca/Content/SEN/Committee/411/aefa/rep/rep09dec12-e.pdf> (December 2012) See <http://www.parl.gc.ca/Content/SEN/Committee/411/aefa/rep/rep09dec12-e.pdf>

<sup>125</sup> Ibid p.2.

internal conflicts in Africa, and in 2006, the Council imposed sanctions against both Iran and North Korea, seeking to halt their production of nuclear weapons.<sup>126</sup>

There is evidence to suggest that the UN is not sanctioning at the same rate as it did in the 1990s. There have only been five new sanctions regimes since 2011 while there were eight new sanctions between 2003-2006.<sup>127</sup> Yet, Canada and the West appear to be sanctioning in the absence of a UNSC decision. One of the reasons for this decline in UN sanctions may be the fact that one or more of the permanent five veto-wielding members of the Security Council (the P5) refuse to sanction to protect its own interests, or the interests of its allies.<sup>128</sup> The latest example of such protection includes Russia's refusal to entertain sanctions against the Assad regime's actions in Syria since 2011. Doxey argues that there are three basic facts about Security Council resolutions to explain this lack of agreement to apply sanctions: (1) Council sanctions may or may not be achievable; (2) the terms of any resolution will inevitably reflect compromise; (3) there will be varying degrees of enthusiasm for implementation.<sup>129</sup> Sanctions are generally seen to be more 'legitimate' when they are implemented by the UN, due to the appearance of a 'global effort' against a perceived wrongdoing. However, a cursory glance at the evidence of the most recent sanctions, especially post 2003 when the UNSC was divided by the US's military launch against Iraq without UNSC authorization, suggests that the states (including members of the P5) are imposing sanction regimes in

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<sup>126</sup> Margaret Doxy, "Reflections on the Sanctions Decade and Beyond," *International Journal* 64, no. 2 (2009): 539-549. P.541.

<sup>127</sup> Against Libya, the Taliban (to separate them from sanctions against Al Qaeda), Guinea Bisau and the Central African Republic. See UN Security Council Sanctions Committees <http://www.un.org/sc/committees/> (Accessed 27 December 2014). This is in contrast to the 8 regimes created between 2003 – 2006.

<sup>128</sup> Margaret Doxy, "Reflections on the Sanctions Decade and Beyond," *International Journal* (2009): 540.

<sup>129</sup> Margaret Doxy, "Reflections on the Sanctions Decade and Beyond," p. 541.

the absence of UN action and/or when the UNSC is blocked. Rather than “going it alone” or applying unilateral measures, Canada tends to bandwagon with allies (especially the EU and the US) and apply similar sanctions measures.

### **Most Recent Sanctions – Russia and the Ukraine**

One of the most recent examples of multilateral, but not UNSC-blessed sanctions is the US, EU, and Canadian sanctions against Ukraine and Russia. In the spring of 2014, immediately after the Winter Olympics hosted by Russia, Russia annexed the Autonomous Republic of Crimea located within sovereign Ukraine. This blatant act of aggression, which involved one sovereign state invading and annexing the territory of another sovereign state, has not been witnessed since Iraq annexed Kuwait in 1990. In both instances, much of the world reacted by applying sanctions. However, whereas the UN Security Council (UNSC) applied sanctions (and comprehensive ones at that) against Iraq, the UNSC has not been able to sanction Russia because Russia is a permanent member of the Security Council and has a veto. Instead, the US, the EU and their allies have applied sanctions against Russia. Technically, Canada has no obligation to apply sanctions in support of those applied by the US or by the EU (Canada is a sovereign state and has no treaty or other agreement that requires it to apply sanctions when the US or the EU does) and yet Canada has been a keen supporter of the sanctions. The question, however, is whether or not Canada has applied measures that are either different from those applied by the U.S. or EU and/or applies measures with a different objective? In other words, is Canada simply matching allied efforts as it does if compelled by the UN, or is Canada applying sanctions to pursue, separate foreign policy goals?



Canada responded with sanctions to the situation in Ukraine much more quickly than did the EU. On 5 March 2014, under the *Freezing Assets of Corrupt Foreign Officials Act* (FACFOA), Canada froze the assets of 18 individuals. Targeted were those “people responsible for the escalating situation in Crimea”.<sup>130</sup> According to the Department of Foreign Affairs, Trade and Development (DFATD), the objectives of these sanctions were to “Ensure that misappropriated assets held by officials of the former government are frozen so that politically exposed foreign persons may be held accountable; and signal Canada’s support for accountability, rule of law and democracy in Ukraine.”<sup>131</sup> In this particular case, it is important to note is that: 1) Canada was very quick to apply measures but; 2) they are not unlike the measures applied by the EU and US. The focus of the sanctions is on targeting Russia’s elites and limiting their impact to ordinary Russians; and 3) Canada’s focus on sanctions is just one of several foreign policy decisions made to support Ukraine. This demonstrates consistency with Canada’s history of sanctions generally in that Canada is not acting as a “lone wolf” – key allies are applying similar measures. Therefore, Canada’s general preference for sanctioning as part of a group is still apparent. However, there is attention and proactiveness to this sanctions regime not evident since Mulroney’s focus on the apartheid policy of South Africa; Prime Minister Harper has announced no less than 10 additions to the measures in less than a year. Russia too, has played “tit-for-tat” targeting several Canadians, including Conservative Members of Parliament (notably with Ukrainian heritage), with

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<sup>130</sup> "Ukraine," *Foreign Affairs, Trade and Development Canada*, <http://www.international.gc.ca/sanctions/ukraine.aspx?lang=eng> (accessed August 18, 2014).

<sup>131</sup> "Freezing Assets of Corrupt Foreign Officials (Ukraine) Regulations," *Canada Gazette*, <http://canadagazette.gc.ca/rp-pr/p2/2014/2014-03-26/html/sor-dors44-eng.php> (accessed August 23, 2014).

travel bans.<sup>132</sup> On the one hand, this demonstrates the Prime Minister's personal interest in seeing that sanctions are a visible part of Canada's foreign policy. On the other hand, there is little evidence that the Canadian sanctions alone are what will cause the Russian government to reconsider its current policy. However, perhaps, as part of a concert, the collective sanctions may have an effect.

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<sup>132</sup> Susana Mas, "Russian sanctions against Canadians a 'badge of honour'," *CBC*, March 24, 2014, <http://www.cbc.ca/news/politics/russian-sanctions-against-canadians-a-badge-of-honour-1.2584137> (accessed May 5, 2015).

## Chapter 4

### Targets, Senders, Objectives and Measures of Canadian Sanctions

This chapter looks closely at the types of sanctions regimes Canada has employed since 1990. The chapter is divided into four main sections corresponding to an analysis of the targets of Canadian sanctions, the senders Canada chooses to join (UN, US, EU or unilaterally), the Canadian objectives for the sanctions, especially if different from other senders and finally, the measures employed. This then sets the stage for the final chapter to pull together the implications for Canadian foreign policy given Canada's sanctioning patterns.

#### Part 1: Targets

Targets are the states, people, organizations, and non-state actors that are the subject of sanctions. The general sanctions' literature has studied, extensively, the shift in targets, especially of the UN Security Council (UNSC). In the early days of the Cold War, the UNSC applied comprehensive sanctions, most famously to target the white regime of Ian Smith in Southern Rhodesia, but applied against the entire state.<sup>133</sup>

Essentially no goods, services or individuals were allowed in or out, and the main target was the state proper even if it was the policies of Ian Smith that were of concern. Over time, and with the experience of disastrous comprehensive sanctions applied in the early

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<sup>133</sup> S/RES/232 (1966) The sanctions established an import ban on asbestos, iron ore, chrome, pig-iron, sugar, tobacco, copper, meat and meat products (hides, skins, leather) from Southern Rhodesia and all activities which promoted export of these commodities from Southern Rhodesia. It all established an arms embargo including ammunition, military vehicles and equipment for manufacture and maintenance of arms. Subsequent resolutions applied a ban on all other relations including financial transaction and travel against any person with a South Rhodesian passport and no flights in or out of Southern Rhodesia. (S/RES/253). Sanctions were not terminated until 21 December 1979 via S/RES/460. For a wonderful overview of the history of UN sanctions see Margaret Doxey, "Reflections on the Sanctions Decade and Beyond", *International Journal* Vol 64(2) 2009:539-549.

1990s against states including the former Yugoslavia,<sup>134</sup> Iraq<sup>135</sup> and one of the poorest states in the world, Haiti,<sup>136</sup> the UNSC began to rethink who or what they were targeting. There was increasing concern that the unintended consequences of sanctions, especially when comprehensive measures were applied against an entire state, were harming the innocent civilians rather than the elite decision-makers of states under sanctions.

Following the collapse of the Soviet Union, and the end of the Cold War, there was relative harmony on the UNSC, especially among the permanent members of the Security Council and an increased appetite to tackle many conflicts in the world with sanctions. This led to many instances of UNSC-led mandatory sanctions, which by law, as a member of the UN, Canada is obligated to follow.<sup>137</sup> Indeed, UNSC sanctions are not given effect unless member states apply the necessary legislation to enforce the sanctions. An analysis of *Table 2: Canadian Sanctions Regimes 1990 - 2014* clearly shows that the majority of the targets of UN sanctions were African countries, especially during the 1990s. For example, of the 14 mandatory UN sanction regimes that began in the 1990s, 8 of them targeted African states.<sup>138</sup> Africa continued to be the main target of UN sanctions in the post 9/11 era as well. Angola, Central African Republic, Côte d'Ivoire, Democratic Republic of Congo, Ethiopia, Eritrea, Guinea Bissau, Liberia, Libya, Rwanda, Sierra Leone, Somalia, Sudan, and South Sudan have all been targets of the UN.<sup>139</sup> Statistically speaking, there have been more armed conflicts in Asia during

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<sup>134</sup> Beginning with S/RES/713 (1991).

<sup>135</sup> Beginning with S/RES/661 (1990).

<sup>136</sup> Beginning with S/RES/841 (1993).

<sup>137</sup> Article 25 UN Charter 1945.

<sup>138</sup> Refer to Table 2.

<sup>139</sup> Refer to Table 2.

this time period<sup>140</sup>; however, the Council has focused its efforts on Africa. Africa has become the ‘testing ground’ for UN sanctions<sup>141</sup> and Canada has lawfully followed suit. In the early 1990s, therefore, Canada sanctioned if the UNSC imposed mandatory sanctions. Therefore, Canada matched each UNSC resolution with corresponding Canadian regulations to give the UNSC measures effect.

Over time, there is a shift from sanctioning only the state in the 1990s to a focus on sanctions against individuals and entities, especially post-9/11. This is a function of the increased attention on terrorism and the amorphous, transient nature of terrorist organizations.<sup>142</sup> The shift is especially acute after 2001 and the sanctions against Al Qaeda and the Taliban. The change to targeting individuals is also a function of the unintended consequences against the citizens of a targeted state, such as the degradation of infrastructure, and impoverishment of populations. Sanctions against states were too indiscriminant in their impact and so now sanctions are focused on individuals and entities such as companies, which are thought most likely to effect a change in the undesired behavior or action. These “targeted” sanctions are designed to focus measures against leaders, decision-makers, and their principal supporters or certain key sectors, rather than focusing on the entire economy of a state thus limiting the burden on innocent civilians. All UN sanctions since 1994 have been targeted as a result of a letter penned

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<sup>140</sup> Statistically more armed conflicts are based in Asia. See Stockholm International Peace Research Institute (SIPRI Yearbooks between 1991 and 2009) *SIPRI Yearbook: Armaments, Disarmament and International Security*, Oxford: Oxford University Press): 70.

<sup>141</sup> Andrea Charron, *UN Sanctions and Conflict: Responding to Peace and Security Threats* (New York: Routledge, 2011). p. 8.

<sup>142</sup> *Terrorism and the UN: Before and After September 11th* Jane Boulden and Tom Weiss (eds) (Bloomington In: Indiana University Press, 2004).

by the P5 to the President of the Security Council at the time promising to consider the humanitarian impacts of sanctions.<sup>143</sup>

**Table 2: Canadian Sanctions Regimes 1990 - 2014**

	Target	Objective	Canadian instrument	Measure(s)	Time frame	Senders beside Canada	Differences to Canada.
	State, entity or individual	11 choices	4 choices - list	Arms= A, travel = T, Financial = F, Resources = R, Diplomacy = D, Asset Freeze (AF), Economic =E, Technical Assistance (TA), Export/Import restrictions (EIR – mostly for trade sanctions)	Start and end date	UN, US, EU or unilateral	including which regime came first, different measures etc
1	Somalia /Eritrea	Counter-terrorism, cease hostilities, negotiate settlement, peace enforcement, support peace building, good governance, Human rights, support humanitarian efforts	United Nations Act (UNA) and Immigration and Refugee Protection Act (IR/2009-92)	A,T,F	1992-ongoing	UN	No differences
2	Liberia	Peace enforcement, cease hostilities, support peace building, democracy support, good governance, support Judicial Process	UNA	A	1992-2001	UN	No differences
3	UNITA (Angola)	Democracy support, cease hostilities, peace enforcement	UNA (SOR/94-44)	A, R = petroleum and diamonds, D, T (aviation and travel), F	1993-2002	UN	No differences
4	Sierra Leone	Cease hostilities, peace enforcement, support peace building, democracy support, good governance, support judicial process	UNA (SOR/98-400)	A, T, R - petroleum and diamonds	1997-2010	UN	No differences
5	Rwanda	Human rights, cease hostilities, negotiate	UNA SOR/94-582	A (Rwandan government cannot resell arms)	1994-2008	UN	No differences

<sup>143</sup> S/1995/300 and the UNSC created an *Informal Working Group on General Issues of Sanctions*. The group met between 2000 and 2006. In 2006 the Working Group submitted its report to the Council, which contained recommendations and best practices on how to improve sanctions (S/2006/997).

	Target	Objective	Canadian instrument	Measure(s)	Time frame	Senders beside Canada	Differences to Canada.
		settlement, peace enforcement, support peace building					
6	Ethiopia/Eritrea	Cease hostilities, negotiate settlement	UNA (SOR/2000-289)	A (sale and supply)	1999-2001	UN	No differences
7	Liberia II	Peace enforcement, cease hostilities, support peace building, democracy support, good governance, support Judicial Process	UNA (SOR/2001-261)	A, T, R = diamonds and timber	2001-2003	UN	No differences
8	DRC	Cease hostilities, peace enforcement, democracy support, good governance, human rights	UNA (SOR/2004-222)	A, T = aviation and individual, F, TA = financial, technical or other forms of support to Rwandan groups and due diligence guidelines drafted for mineral products from DRC. Arms + property ban of property in Canada owned or controlled by individual on banned list.	2003-ongoing	UN	No differences
9	Liberia III	Peace enforcement, cease hostilities, support peace building, democracy support, good governance, support Judicial Process	UNA, Immigration/ refugee protection Act (SOR/2004-153)	A, T, R = diamond and timber, F	2003-ongoing	UN	No differences
10	Côte D'Ivoire	Cease hostilities, peace enforcement, support peace building, democracy support, human rights	UNA (SOR/2005-127)	A, T, F, R = diamond	2004-ongoing	UN	No differences
11	Libya I	Counter-terrorism	UNA (SOR/92-222)	A, T (aviation and travel), D, F, E = goods used in the refinement and export of oil, including pumps, boilers, furnaces and catalysts	1992-2003	UN	No differences
12	Sudan I	Counter-terrorism, support judicial process	UNA	D, T (travel and aviation sanctions but latter never came into effect) V = D (int'l conferences)	1999-2001	UN	No differences
13	Sudan II	cease hostilities, negotiate settlement, peace	UNA / Immigration and	A, T (including military over flights), F	2004-ongoing	UN	No differences

	Target	Objective	Canadian instrument	Measure(s)	Time frame	Senders beside Canada	Differences to Canada.
		enforcement, human rights	Refugee Protection Act (SOR/2004-197)				
14	Haiti	Peace enforcement, democracy support	SEMA SOR/92-369	R = Petroleum, A, F, T (aviation and travel), E = imports and exports)	1993-1994	UN / OAS	Note all Canadian regulations for Haiti were passed under SEMA (SC. 1992 c.17) because the sanctions were imposed by the UN and the OAS (Resolution 610). Trade between Canada and Haiti were subject to measures taken pursuant to the <i>Export and Import Permits Act</i> since Oct. 31, 1991. Additional measures were taken against Haiti in July 1992, when regulations were adopted pursuant to the new Act to prohibit Haitian and other ships violating the embargo from entering Canadian ports.
15	Suppression of Terrorism	Counter-terrorism	UNA (SOR/99-444)	A, asset freeze, list of entities	1999-ongoing	UN	No differences
16	Al-Qaeda/Taliban and Associates	Counter-terrorism	UNA (SOR/99-444)	A, F, T (aviation and travel), D, E = chemical, TA	1999-2002 / 2002-ongoing	UN	No differences
17	North Korea	Non-proliferation	UNA/ SEMA (SOR/2006-287)	A (nuclear related and later conventional), T, F, E (luxury goods) (reverse arms embargo), TA	2006-ongoing	UN	The UN Security Council did not impose additional sanctions against the DPRK in response to the <i>Cheonan</i> sinking. The sanctions implemented in the <i>Special Economic Measures (Democratic People's Republic of Korea) Regulations</i> are comprehensive in nature and go beyond the existing UN Security Council sanctions that were last modified in 2009.
18	FRY I	Cease hostilities, negotiate settlement, peace enforcement, human rights	UNA/ ACL	A, E (import and export of commodities and products), F, T (aviation and travel), D (including sports and cultural sanctions). R (crude oil, petroleum, iron, steel, rubber, chemicals)	1991-1996	UN	No differences
19	Kosovo	Cease hostilities, negotiate settlement, peace	UNA	A	1998-2001	UN	No differences



	Target	Objective	Canadian instrument	Measure(s)	Time frame	Senders beside Canada	Differences to Canada.
		enforcement, human rights, support humanitarian efforts					
20	FRY II	Cease hostilities, negotiate settlement, peace enforcement, human rights	UNA	A, E = imports and exports and activities in support of Bosnian Serb forces, F, T = river and individual	1993-1996	UN	No differences
21	Iraq I	Cease hostilities, negotiate settlement, peace enforcement, human rights	UNA (SOR/90-531)	A, D, E (import and export of commodities and products), F, T (aircraft)	1990-1991	UN	No differences
22	Iraq II	After the US-led Gulf War Non-proliferation	UNA	A (WMD, training and financing), F, T, R = petroleum and related products, E = (all imports and exports) A - lifted in 2010		UN	No differences
23	Iraq III	support peace building, good governance	UNA (SOR/2003-221)	A (conventional and WMD) F (A terminated in 2010)	2003-ongoing	UN	No differences
24	Iran	Non-proliferation	UNA/SEMA (SOR/2007-44)	A (nuclear related and heavy weapons and later conventional) E (material associated with weapons programs), F, T, TA	2006-ongoing	UN also, US + EU for additional measures	On December 11, 2012, further sanctions were introduced against Iran under the <i>Special Economic Measures Act</i> in response to Iran's continued lack of cooperation with the IAEA and the P5+1 group, and to maintain unity and consistency with the European Union and other countries and for torturing and killing Canadian journalist Zahra Kezemi.
25	Hariri (Lebanon)	Counter-terrorism, support judicial process	UNA (SOR/2007-204)	F, T, A	2006-ongoing	UN	No differences
26	Burma (Myanmar)	Human Rights	SEMA (SOR/2007-285)	Blocking Property and Prohibiting Certain Transactions Related to Burma	2007-ongoing (although many have been lifted)	US + EU	No differences
27	CAR	Cease hostilities Democracy support	UNA (SOR/2014-163)	A, asset freeze, T	2013-ongoing	UN	No differences
28	Guinea-Bissau	Democracy Support	Immigration and Refugee Protection Act	T	2012-ongoing	UN	No differences
29	Libya II	Cease hostilities, peace enforcement, support peace building,	UNA/SEMA (SOR/2011-52)	A, Asset Freeze, F, Export/Import, Technical Assistance Prohibition	2011-ongoing	UN, US + EU (additional measures)	No differences

	Target	Objective	Canadian instrument	Measure(s)	Time frame	Senders beside Canada	Differences to Canada.
		democracy support, good governance, human rights, R2P					
30	Russia	Cease hostilities, democracy support	SEMA (SOR/2014-59)	T, Asset Freeze, Military assets, TA	2014-ongoing	US + EU	In the main similar. <sup>144</sup>
31	Syria	Cease hostilities, R2P	SEMA (SOR/2011-114)	F, E, T.A, investments	2011-ongoing	US +EU	No differences
32	Tunisia and Egypt	Democracy Support	FACFOA (SOR/2011-78)	P, F	2011-ongoing	EU	No differences
33	Ukraine	Cease hostilities, democracy support	FACFOA/SEMA (SOR/2014-44)	T, Asset Freeze, Military assets	2014-ongoing	US + EU	No differences
34	Zimbabwe	Democracy support, human rights	SEMA (SOR/2008-248)	A, TA Asset freeze, Aircraft flying over or landing in Canada banned	2008-ongoing	US + EU	No differences
35	Belarus	Human Rights	Export and Import Permits Act	Exports	2007-ongoing	US + EU	No differences
36	South Sudan	Cease hostilities Democracy support	SEMA (SOR/2014-235)	T (UN), Asset freeze (UN, US and EU), F (US, EU)	2014-ongoing	UN, US + EU	No differences
37	Yemen	Cease hostilities Democracy support Counter-terrorism	UNA (SOR/2014-213)	Asset freeze, T	2014-ongoing	UN	No differences

**Table 3: Sanctions Activity Broken Down by Regions**

Region	# of sanctions cases	% of Total	Partners
Africa	19	51	All, except 1 are UN-led sanctions
Americas	1	3	UN, OAS

<sup>144</sup> On 2 March 2014 Canada and other G-7 leaders issued a joint statement condemning the Russian Federation’s clear violation of the sovereignty and territorial integrity of Ukraine. In addition, they announced that they will “suspend our participation in activities associated with the preparation of the scheduled G-8 Summit in Sochi in June, until the environment comes back to where the G-8 is able to have a meaningful discussion.”<sup>144</sup> Also on December 19, 2014, Prime Minister Stephen Harper announced that Canada would introduce restrictions on the export of technology in relation to Arctic, deep water and shale oil explorations and extraction to Russia. These actions complement similar measures being undertaken by the European Union and the United States. PMO’s Backgrounder Report issued 19 December 2014.

Region	# of sanctions cases	% of Total	Partners
Asia	2	5.5	UN, US, EU
Europe <sup>145</sup>	6	16	UN, US, EU
Middle East	7	19	UN, US, EU
Terrorism	2	5.5	UN
Total	37	100	UN alone = 25/37 = 68%

19 of the 37 sanctions cases or over 50% were sanctions against African states and all but one of those (against Tunisia and Egypt) involved the UN. Therefore, Canada's sanctions record closely accords with the UN's in that, because the UN sanctions African states frequently, so does Canada. Moreover, the UN is clearly the most active sanctioning authority given that 25 of the 37 cases or 68% were UN stand alone sanctions cases – two involving terrorism – the latest and dominating topic on the UN Security Council's agenda since 9/11. The next most often sanctioned region is the Middle East with 19% of the cases or 7 regimes against Iran, Iraq, Lebanon (via the assassins of slain Prime Minister Rafik Hariri), Syria, Tunisia/Egypt and Yemen. This is curious given one does not often think of Canada as being heavily involved in the Middle East. Overtime and through sanctions activity, however, Canada's foreign policy attention does indeed seem to be shifting toward the Middle East.

That six of the cases involve sanctions against European states or 16% of Canada's cases is not surprising as Canada, traditionally, has been interested in and involved with Europe via its foreign policy because of its membership in the Commonwealth and La Francophonie, and because of historical ties with the United

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<sup>145</sup> Russia is categorized as part of Europe even though its capital Moscow is geographically part of Asia because the sanctions are for the conflict in Ukraine, which is part of Europe.

Kingdom. Canada's foreign policy vis-a-vis Asia<sup>146</sup> has always been the least developed of the regions despite being the region with the most number of conflicts<sup>147</sup> and largest population. Canada has only two sanctions cases in Asia, both involving nuclear proliferation and abuse of human rights, not conflict per se.

What is surprising, given that the Americas form part of Canada's "back yard", is that there has only been one case since 1990 against a state in the Americas (Haiti) and two since the Cold War (against Argentina<sup>148</sup> as well) and this is despite the fact that the US has sanctioned several American states (including Venezuela and Cuba).<sup>149</sup> Despite the fact that the US is Canada's most important trading and defence partner, Canada does not sanction with just the US.

Broken down by time periods, most of the targets of sanctions during the 1990s were states, along with key individuals. For the most part, Canada did not implement additional measures. Canada implemented the sanctions it was obligated to apply by international law, but did not apply additional measures and therefore, Canada's targets were mostly states and some key individuals in the 1990s. After 9/11 and the initial enthusiasm to work together to tackle this common threat, the UNSC became more gridlocked, and sanctions became a less viable option for the UN because there were

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<sup>146</sup> See Department of Foreign Affairs, Development and Trade, "Priorities for 2015-2016" found at <http://www.international.gc.ca/departement-ministere/priorities-priorites.aspx?lang=eng>. Given Canada's status as a Commonwealth state and our relationship with the US, Canada's focus has always prioritized these regions before any others. Only recently, with new trade deals, the US pivot to Asia and Canada's involvement in Afghanistan, has DAFTD concentrated more attention on Asia as a region.

<sup>147</sup> Between 1989 and 2011 there have been 44 cases of conflict in Asia. See Stockholm International Peace Research Institute: <http://www.sipri.org/yearbook/2013/files/sipri-yearbook-2013-chapter-1-section-2>.

<sup>148</sup> In support of the UK and the Falkland Islands' dispute. While the US did not sanction Argentina, it did support the UK militarily – a positive sanction of sorts. See Lisa Martin, "Institutions and Cooperation: Sanctions During the Falklands Islands Conflict", *International Security* 16:4, (1992): 151.

<sup>149</sup> US Treasury, "Sanctions Programs and Country Information", found at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

growing disagreements between, especially, the P5 members.<sup>150</sup> While, there were eight new cases of UNSC sanctions between 2001 and 2010,<sup>151</sup> there have only been six new sanctions regimes since 2011.<sup>152</sup> One of the reasons for this decline in rate of application of UN sanctions is the fact that one or more of the permanent five veto-wielding members of the Security Council refused to sanction to protect its own interests, or the interests of its allies.<sup>153</sup> The latest example of such protection includes Russia's refusal to entertain sanctions against President Assad's actions in Syria since 2011.

## **Part II – Senders**

Senders are the states and/or organizations that impose sanctions. Canada has always sanctioned with the UNSC. However, it has also sanctioned with allies in the absence of a UNSC resolution. For example, Trudeau's decision to apply sanctions against Argentina during the Falkland Islands' crisis in 1982 in support of the UK is a classic example<sup>154</sup> There was still, however, tacit UNSC approval. The UN Security Council passed resolution S/RES/502 (1982), with a Soviet abstention<sup>155</sup> rather than a veto, demanding that Argentina, which had "invaded" the islands, immediately withdraw its troops and that hostilities between the UK and Argentina cease. No further action by

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<sup>150</sup> The Conversation, "Hard Evidence: who uses veto in the UN Security Council most often – and for what?" (18 July 2014) found at <https://theconversation.com/hard-evidence-who-uses-veto-in-the-un-security-council-most-often-and-for-what-29907> The US is now the most frequent user of the veto having resorted to the veto 16 times between January 1990 and the present – the overwhelming majority of which (14) pertain to the Israel/Palestine situation.

<sup>151</sup> Against Libya, the Taliban (to separate them from sanctions against Al Qaeda), Guinea Bissau and the Central African Republic. See UN Security Council Sanctions Committees <http://www.un.org/sc/committees/> (Accessed 3 March 2015). This is in contrast to the 8 regimes created between 2003 – 2006.

<sup>152</sup> Libya, the Taliban, Guinea Bissau, Central African Republic, South Sudan

<sup>153</sup> Margaret Doxy, "Reflections on the Sanctions Decade and Beyond," *International Journal* (2009): 540.

<sup>154</sup> Lisa Martin, "Institutions and Cooperation: Sanctions During the Falkland Islands Conflict", *International Security* (Spring 1992) 16(4): 142-178.

<sup>155</sup> The full voting record is as follows: 10 yes (UK, US, France, Guyana, Ireland, Jordan, Japan, Togo, Zaire and Uganda) 4 abstentions (USSR, China, Poland and Spain) and 1 No (Panama).

the Security Council was taken.<sup>156</sup> Instead, the European Economic Council chose to mirror UK measures (which included a ban on arms to Argentina, a freeze of any financial assets of Argentina in British banks and a ban on Argentinean imports) and apply sanctions against Argentina.<sup>157</sup> As a member of the Commonwealth, Canada heeded the call of the UK to adopt similar measures and withdrew its Ambassador from Argentina.<sup>158</sup> This was a rare case during the Cold War of Canada sanctioning with a coalition, in the absence of an express requirement mandated by the UNSC.

More recently, the UNSC has not levied sanctions at the same rate it had during the 1990s. Although the sanctions' literature has generally supported the idea that sanctions are more 'legitimate' when they are implemented by the UN due to the appearance of a 'global, universal effort' against a perceived wrongdoing or law-breaking activity of individuals,<sup>159</sup> coalition sanctioning is becoming a new trend. Examining the evidence of the most recent sanctions, especially post-2003<sup>160</sup> when the UNSC was divided by the US's military launch against Iraq without UNSC authorization, suggests that the states (including members of the P5) are imposing sanction regimes in the absence of UN action and/or when the UNSC is blocked. While Canada has the option to apply unilateral measures, it is clear from Table 2 that rather than "going it alone" or applying unilateral measures, Canada prefers to bandwagon with allies (especially the EU and the US) and apply similar sanctions measures absent a UNSC resolution. However,

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<sup>156</sup> The UK was not convinced it could count on the USSR to not cast a veto and so it did not ask for further measures to be taken by the Security Council instead relying on other international institutions and allies.

<sup>157</sup> Council Regulation (EEC) 877/82, OJ 1982 (L 102), p.1 (16 April 1982).

<sup>158</sup> Martin: 150.

<sup>159</sup> See Ian Hurd, "Legitimacy, Power and the Symbolic Life of the UN Security Council", *Global Governance* 8 (2002): 35-51.

<sup>160</sup> In 2003, the US went to war against Iraq without the requisite authorization from the UNSC. See Alex Bellamy, "International Law and the War with Iraq". *Melbourne Journal of International Law*, Vol 4 (2003) see <http://www.law.unimelb.edu.au/files/dmfile/downloadadd4651.pdf>

overwhelmingly 31 of the 37 sanctions cases were in response to UNSC sanctions resolutions (and the US and EU would apply additional measures as well) and 25 cases were UN only sanctions. Who or what Canada sanctions seems to be dictated by the UNSC and so Canada's targets will follow the same trends as the UNSC.

Canada continues to apply sanctions at a similar rate to what was established during the 1990s immediately after the Cold War, but does so in concert with its closest allies - the US and EU. As seen by Table 2, since 1990, Canada only sanctions with coalitions (i.e. UN, US, or EU). There has not been one case where Canada has used sanctions unilaterally. It is also interesting to note that in the absence of UN sanctions, Canada rarely sanctions without both the US and EU. There were no cases in which just Canada and the US sanctioned together, and there was only one case where Canada sanctioned with just the EU (Tunisia and Egypt), without the US. This shows that Canada seeks to sanction as part of a larger group, rather than with a single partner.

On the occasions when the UNSC cannot agree to sanctions, such as the case against Russia and the Ukraine, Canada follows the lead of the EU and US. Canada, the US, and EU also levied sanctions against Burma (Myanmar) 2007 to protect human rights, Belarus (2007), and South Sudan (2014). This shows that Canada also sanctions as part of a coalition. However, as Table 2 shows, of the 9 cases of coalition sanctions, all of them are against individuals and entities, not states. Coalition sanctions, therefore, target differently.

For example, Canada has levied sanctions against Burma, Libya (additional measures to those applied by the UN), Syria, Tunisia/Egypt, Iran (additional measures to those applied by the UN), Belarus, Zimbabwe, Ukraine, and Russia, all in concert with

allies.<sup>161</sup> The case of Russia is of particular interest due to the fact the Russian is a member of the Security Council and the only example of Canada sanctioning a “great” power. Despite this fact, Canada was very quick to implement sanctions in this case.

There are also instances when Canada does not follow its allies. For example, US unilateral sanctions (especially during the 1950s and 1960s at the height of the Cold War), were an integral part of an American-led strategy against the Soviet Union, China, and their allies, North Korea, North Vietnam, and Cuba.<sup>162</sup> Despite being an ally of the US, Canada did not apply sanctions to match the US’s in the early days of the Cold War (except for sanctions against Afghanistan in 1979), preferring instead to apply sanctions when compelled by the UN Security Council or as a condition of membership to a regional organization.

More recently, Canada has not participated in US sanctions against Venezuela. In March of 2015, the US imposed travel restrictions on seven Venezuelan government officials. These officials were singled out for allegedly participating in human rights violations against opposition activists, and engaging in corrupt activities.<sup>163</sup> As well, Canada has not established or imposed sanctions against persons involved in malicious cyber attacks as has the US.<sup>164</sup> This suggests that Canada will not sanction with just with the US. Rather, Canada prefers to sanction with a coalition, instead of just one partner.

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<sup>161</sup> Refer to Table 2.

<sup>162</sup> Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian & Australian Foreign Policy* (Toronto: University of Toronto Press, 1994). P. ix.

<sup>163</sup> Nagel, J. C. (2015, April 2). Busting myths about the Latest U.S. Sanctions on Venezuelans. *Foreign Policy*.

<sup>164</sup> White House, Executive Order, “Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities” (1 April 2015) found at <https://www.whitehouse.gov/the-press-office/2015/04/01/executive-order-blocking-property-certain-persons-engaging-significant-m>. (Many questioned the 1 April date.)



### Part III: Objectives

According to the international sanctions consortium, the UN has applied sanctions to achieve 11 objectives often more than one objective will be sought via the same sanctions regime. The objectives are: 1) Counter –Terrorism; 2) Cease hostilities; 3) Negotiation of peace agreement; 4) peace enforcement; 5) support peace building; 6) Democracy support; 7) Good Governance; 8) Human Rights; 9) Protect Population under R2P; 10) Support Humanitarian Efforts; and 11) non-Proliferation.<sup>165</sup> This list was created by the Targeted Sanctions Consortium (TSC), which was formed to conduct a systematic, comprehensive, and multinational study of the impacts and effectiveness of UN targeted sanctions.<sup>166</sup> Counter-terrorism is one of the newest areas of focus of the UN. As noted above, the attacks of 9/11 prompted the UNSC to adopt a working committee designed to combat terrorism through mandatory, international cooperation, as opposed to measures on a case-by-case basis.<sup>167</sup>

As a member of the UN, Canada must comply with international law and implement sanctions in concert with the UN. For example, in the case of the ongoing sanctions against Somalia/Eritrea, the government of Canada states: “[Regulations] are necessary in order for Canada to fulfill its international legal obligation to implement the additional sanctions imposed by the Security Council in Resolution 1844 (2008).”<sup>168</sup> Canada then applied the necessary legislation to give effect to the sanctions regardless of whether or not Canada’s application of the UNSC sanctions would have any effect.

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<sup>165</sup><http://graduateinstitute.ch/files/live/sites/iheid/files/sites/internationalgovernance/shared/Effectiveness%20of%20UN%20Targeted%20Sanctions%20-%206.Nov.2013%20.pdf>

<sup>166</sup>[http://graduateinstitute.ch/files/live/sites/iheid/files/sites/internationalgovernance/shared/PSIG\\_images/Sanctions/Designing%20UN%20Targeted%20Sanctions.pdf](http://graduateinstitute.ch/files/live/sites/iheid/files/sites/internationalgovernance/shared/PSIG_images/Sanctions/Designing%20UN%20Targeted%20Sanctions.pdf)

<sup>167</sup> Andrea Charron, *UN Sanctions and Conflict: Responding to Peace and Security Threats* (New York: Routledge, 2011):153-4.

<sup>168</sup> <http://canadagazette.gc.ca/rp-pr/p2/2009/2009-04-01/html/sor-dors92-eng.html>

Therefore, since the UNSC's most common objective for applying sanctions is to 'cease hostilities' this becomes the de facto objective for Canadian sanctions as well regardless of wider or different foreign policy goals<sup>169</sup> Indeed, 17 of the 37 cases or 46% list "cease hostilities" as the main objective and only 3 of those cases were not associated with the UN.<sup>170</sup>

When Canada sanctions without the UN, the objectives usually match those of the EU and US which often include support to democracy and respect for human rights. For example, in the case of sanctions in 2010 against Iran, Canada added additional sanctions to those already implemented by the UN. According to the government of Canada, "The objectives of the Regulations are to add further obstacles to Iran's efforts to build its nuclear program, and to persuade Iran's leadership to resume negotiations with respect to its nuclear program"<sup>171</sup> to match US and EU sanctions at a time when the UNSC looked to be at a stalemate. Canada also had additional issues with Iran. Zahra Kazemi, a Canadian journalist, was tortured and killed in Iran in 2003. The Canadian government demanded an investigation into her death, and also supported a lawsuit filed by Kazemi's son targeting the Iranian regime.<sup>172</sup> This stands out as one of the rare cases of Canada sanctioning for additional, national objectives.

In addition to the coalition sanctions against Iran, Canada, the US, and EU have all levied sanctions against Russia in response to its annexation of Crimea. The objectives of these Canadian sanctions were to: "Ensure that misappropriated assets held by officials of the former government are frozen so that politically exposed foreign persons may be

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<sup>169</sup> Table 2.

<sup>170</sup> EU and US sanctions against Russia, Syria and Ukraine listed this as a main objective.

<sup>171</sup> <http://canadagazette.gc.ca/rp-pr/p2/2013/2013-01-02/html/sor-dors283-eng.html>

<sup>172</sup> <http://www.cbc.ca/news/world/canada-renews-call-for-kazemi-probe-1.928935>

held accountable; and signal Canada's support for accountability, rule of law and democracy in Ukraine."<sup>173</sup> Canada's language was much more forceful than that of the US and EU. While the US and EU limited the actions required by Russia to lift sanctions to concrete actions (e.g. removal of Russian troops), Canada also made reference to the support to democracy, respect for human rights, and rule of law.

The language from the Canadian government is much more about 'punishing' Russian activity than the wording used by the US and the EU, which emphasized the need to return to status quo pre the annexation of Crimea. In international relations parlance, whereas the US and EU are "realist" in their language, Canada is "idealist" in its language. Kim Richard Nossal may even suggest "sanctimoniously idealist".<sup>174</sup> For example, Prime Minister Harper said on 17 March 2014 referring to the implementation of new sanctions against Russia, "These measures demonstrate that Canada will not stand by while Russia violates Ukrainian sovereignty and territorial integrity, and that Russia's actions will have consequences."<sup>175</sup> In contrast, the European Council President, Herman Van Rompuy, stated, "Sanctions are not a question of retaliation; they are a foreign policy tool, not a goal in themselves, but a means to an end. Our goal is to stop Russian action against Ukraine, to restore Ukraine's sovereignty – and to achieve this we need a negotiated solution. Europe stands ready to facilitate and engage in a meaningful dialogue involving Ukraine and Russia and supports all multilateral initiatives towards

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<sup>173</sup> "Freezing Assets of Corrupt Foreign Officials (Ukraine) Regulations," *Canada Gazette*, <http://canadagazette.gc.ca/rp-pr/p2/2014/2014-03-26/html/sor-dors44-eng.php> (accessed April 9, 2015).

<sup>174</sup> Kim Richard Nossal, "Right and Wrong in Foreign Policy 40 Years on: Realism and Idealism in Canadian Foreign Policy," *International Journal*, 2007: 263-277.

<sup>175</sup> "Statement by the Prime Minister of Canada Announcing Additional Sanctions," *Prime Minister of Canada Stephen Harper*, <http://pm.gc.ca/eng/news/2014/03/17/statement-prime-minister-canada-announcing-additional-sanctions> (accessed April 9, 2015).

that aim."<sup>176</sup> What is more, whereas the US and EU have added a few additional names to their lists of Russian government officials to be banned from travelling or accessing financial assets within the US or EU, Canada has updated its sanctions list 11 times. In the case of Russia, therefore, Canada seems determined to attach its own national objectives to the sanctions above and beyond those agreed to collectively by the EU and US.

#### **Part IV: Measures**

Measures are an instrumental part of sanctions because different measures (such as financial, travel ban, arms embargo, etc) will have different targets and aid with different objectives. Almost every UN sanction that was levied against a state in the post-Cold War era included an arms embargo (albeit not for Sudan I). This is the most common measure used against a state<sup>177</sup> in line with the UNSC's primary responsibility to maintain international peace and security<sup>178</sup> and is perfectly in keeping with the objective to "cease hostilities". This trend to apply an arms embargo has not continued to the same degree in the post 9/11 sanctions levied by Canada, the US, and EU. The most recent sanctions implement by these states have been against Russia/Ukraine (2014), South Sudan (2014), Syria (2011), Tunisia and Egypt (2011)

Canada, UNSC, EU and US all seem keen to apply measures to be applied against individuals, which is in keeping with the trend toward targeting individuals as opposed to states. And, as in the case of sanctions against Russia, Canada can be very personal about

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<sup>176</sup> "EU strengthens sanctions against actions undermining Ukraine's territorial integrity," *Council of the European Union*, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/141741.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/141741.pdf) (accessed April 9, 2015).

<sup>177</sup> Andrea Charron, *UN Sanctions and Conflict: Responding to Peace and Security Threats* (New York: Routledge, 2011). P. 14.

<sup>178</sup> Article 27 UN Charter.

who they target. Despite having eight options of sanctions measures to apply, Canada applies asset freezes and travel bans most often and economic and diplomatic sanctions sparingly – a completely reversal from the very early days of Canada’s sanctions’ history.

In conclusion, Canada’s sanctioning history matches that of the UNSC. It began by instituting comprehensive sanctions against states, matching the UN. However, following the disastrous, unintended consequences of the comprehensive sanctions regimes against Iraq, Haiti, and the former Yugoslavia, the UN abandoned their use in 1994. Instead, there has been a shift towards targeted sanctions, which have become the norm for the UN – to limit the negative humanitarian effects on innocent civilians, and instead, to focus on targeted measures against leaders, decision-makers, their principal supporters, or single sectors of the economy, rather than on the general population.

Canada’s sanctioning history is predetermined by measures employed by UNSC or absent that, by the EU and US as part of a coalition. It is only in the very rarest of occasions that Canada will seek to sanction for very particular, Canadian goals.

## Chapter 5

This thesis asked a simple question: what is the state of Canada's sanctions practice since 1990 until 2014? Surprisingly, this is a question seldom asked. Indeed, in sanctions' and Canadian foreign policy literature, Canada's application of sanctions is out of sight and out of mind in that it gets scant attention or study. This thesis attempted to help fill this gap. Given that the rate of application of sanctions by all manner of states, including Canada and international organizations, is on the rise and the fact that sanctions have, historically, had unintended consequences, especially for civilian populations, an appreciation and study of Canada's use of sanctions was an important task to undertake.

Throughout the 1990s (dubbed the "Sanctions Decade"<sup>179</sup> after the book by George Lopez and David Cortright thanks to Canadian David Malone), Canada dutifully enacted the necessary national regulations to give effect to the myriad of UN sanctions regimes. Indeed, so concerned was Canada with making sure that the Canadian sanctions regulations were effective, especially against Iran given its nuclear ambitions, that the Senate Standing Committee on Foreign Affairs and Trade launched an in-depth study into the effectiveness of its measures.<sup>180</sup> The Senate Committee recommended that: "Having heard testimony about Canada's complex and decentralised sanctions regulations, the Committee suggests that the Government of Canada look into simplifying and

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<sup>179</sup> George Lopez and David Cortright, *The Sanctions Decade: Assessing UN Strategies in the 1990s*, (NY: International Peace Academy, 2000). David Malone, a Canadian, was a senior bureaucrat for the Department of Foreign Affairs, Director of the American think tank the International Peace Academy and is now Director of the United Nations University in Tokyo. See <http://unu.edu/about/unu/leadership/rector-malone>

<sup>180</sup> Senate Standing Committee on International Affairs and Trade, "Iran in Focus: Current Issues for Canadian Foreign Policy" <http://www.parl.gc.ca/Content/SEN/Committee/411/aefa/rep/rep09dec12-e.pdf> (December 2012) See <http://www.parl.gc.ca/Content/SEN/Committee/411/aefa/rep/rep09dec12-e.pdf>

coordinating regulatory efforts regarding financial transactions with Iran (emphasis in the original).”<sup>181</sup> Changes have yet to be made.

Since the 1990s, there has been a shift in terms of the most common targets of sanctions. Sanctions are no longer a tool used solely against states. Today, sanctions are most likely to target individuals and non-state entities. Rebel groups have been the subject of sanctions in Angola, Sierra Leone, Ivory Coast and the Democratic Republic of the Congo. Since 2001, a series of Security Council resolutions have approved sanctions against terrorist groups – specifically Al-Qaeda, the Taliban, al Shabaab, Boko Haram and the Islamic State of the Levant (ISIL). There has also been concern with the internal conflicts in Africa, and in 2006, the Council imposed sanctions against both Iran and North Korea, seeking to halt their production of nuclear weapons.<sup>182</sup> Canada has supported all of these sanctions regimes.

There is evidence to suggest, however, that the UN is not sanctioning at the same rate as it did in the 1990s. There have only been five, new sanctions regimes since 2011 but eight new sanctions between 2003-2006.<sup>183</sup> Yet, Canada and the West appear to be sanctioning in the absence of a UNSC decision. One of the reasons for this decline in UN sanctions may be the fact that one or more of the permanent five veto-wielding members of the Security Council refuse to sanction to protect their own interests or the interests of its allies.<sup>184</sup> The latest example of such protection includes Russia’s refusal to entertain sanctions against the Assad regime’s actions in Syria since 2011. Sanctions are generally

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<sup>181</sup> Ibid p.2.

<sup>182</sup> Margaret Doxy, "Reflections on the Sanctions Decade and Beyond," *International Journal* 64, no. 2 (2009): 539-549. P.541.

<sup>183</sup> Against Libya, the Taliban (to separate them from sanctions against Al Qaeda), Guinea Bisau and the Central African Republic. See UN Security Council Sanctions Committees <http://www.un.org/sc/committees/> (Accessed 27 December 2014). This is in contrast to the 8 regimes created between 2003 – 2006.

<sup>184</sup> Margaret Doxy, "Reflections on the Sanctions Decade and Beyond," *International Journal* (2009): 540.

seen to be more ‘legitimate’ when they are implemented by the UN, due to the appearance of a ‘global effort’ against a perceived wrongdoing. However, after examining the evidence of the most recent sanctions, especially post 2003 when the UNSC was divided by the US’s military launch against Iraq without UNSC authorization, suggests that states (including members of the P5) are imposing sanction regimes in the absence of UN action and/or when the UNSC is blocked. Rather than “going it alone” or applying unilateral measures, Canada tends to bandwagon with allies (especially the EU and the US) and apply similar sanctions measures.

Overall, Canada’s sanctioning history matches that of the UNSC. It began by instituting comprehensive sanctions against states, matching UN measures. However, following the disastrous, unintended consequences of the comprehensive sanction regimes against Iraq, Haiti, and the former Yugoslavia, the UN abandoned their use in 1994. Instead, there has been a shift toward targeted sanctions, which have become the norm for the UN – to limit the negative humanitarian effects on innocent civilians, and instead, focus on targeted measures against leaders, decision-makers, their principal supporters, or single sectors of the economy, rather than on the general population. Canada’s sanctioning history is predetermined by measures employed by UNSC or, absent that, with the EU and US as part of a coalition. It is only in the very rarest of occasions that Canada will seek to sanction for very particular Canadian goals. For example, the latest sanctions against Russia and against Ukraine, while broadly in line with the objectives set out by the US and by the EU, target individuals and entities with a Canadian connection. This is a function of both the legislation that Canada has (it does not have extra territorial reach and therefore, can only target individuals in Canada or



Canadians abroad) but is also symptomatic of the desire for the current government to send a Canadian “signal” with the message that Russia’s actions in Ukraine are of particular concern to it.

Canada’s sanctions’ record since 1990 therefore, can be summarized in two parts. First, Canada has and continues to support mandatory UN measures which, by international law, it must. However, whereas Canada was very active in shaping how UNSC sanctions were applied (Canadians Doxey, Fowler and Malone have changed, fundamentally, how the UN thinks about and uses sanctions), it is no longer taking an active interest in the UN regarding the status of sanctions. Second, absent a UNSC resolution to apply sanctions, Canada supports a coalition of sanctions applied by the US and the EU. Surprisingly, despite the US being Canada’s biggest trading partner and most important ally, Canada does not, to date, sanction with the US alone.

This record of sanctioning has significant policy implications for Canada. First, Canada applies sanctions in support of the UN and a coalition of particular allies that include the US and EU which means its potential range of sanctioning activity is 1) potentially very broad geographically and ideologically depending on what the UNSC and/or EU and US choose to sanction; and 2) may or may not align or benefit Canada’s foreign goals. Canada has little choice but to match the UNSC measures, but it does when it comes to applying sanctions with the US and EU absent a UNSC resolution. However, there has yet to be a discussion in parliament or in public about what purpose sanctions serve, what measures should be applied and who or what should be targeted by Canada. Sanctioning activity by Canada is verging on automatic because it is unquestioned when it comes to the UNSC, and to date, Canada has matched all sanctions

applied by a coalition composed of the US and EU. This is not problematic so long as the states/entities/individuals sanctioned are targets Canada may have sanctioned unilaterally and/or would not have disagreed to sanction unilaterally. Second, Canada is not sanctioning just with the US which is curious given what an important ally the US is and has been. This research did not investigate the implications of this activity but it is a rich area for future research.

The third implication of Canada's sanctions activity and the sum of the first two is that, as Kim Richard Nossal concluded nearly 20 years ago, Canada may still be "rain dancing" or doing "...an activity that actually accomplishes very little but that makes the participants feel good because something is being done about a serious problem."<sup>185</sup> Based on this thesis, it is only possible to conclude that Canada wants to appear to be doing something by sanctioning even if it is highly unlikely that Canada's sanctions are the reason for any of the changes to a targets' behavior. Whether or not bureaucrats, politicians or the public "feel good" about the sanctioning wasn't specifically tested.

Since Canada seems to apply sanctions consistently in response to UNSC and EU/US coalition sanctions, there is an automatism to Canada's sanctions activity which suggests the impact of the sanctions is not as important as the application of sanctions in support of these multilateral fora. That Canada does not sanction with just the US means that Canada prefers to be one of at least 29 states (28 EU members + US) applying sanctions and not one of two. This limits Canada's exposure to any consequences of sanctioning. What this research cannot ascertain, however, is whether or not the government or the Canadian public are aware that they are still "rain dancing" rather than

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<sup>185</sup> Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian and Australian Foreign Policy* (Toronto: University of Toronto Press, 1994), xiii.

affecting change as a result of sanctioning activity. Furthermore, Canada has yet to be put in a position where the EU/US or UNSC is sanctioning a state or individual Canada does not wish to sanction. Whether or not Canada would actively defy the UN or choose not to apply the sanctions in the case of an US/EU coalition is in the realm of speculation. What is more, no one is sure what the costs may be to Canada if it chooses to defy the UN or a US/EU coalition. This lack of understanding of Canada's true sanctioning record is exacerbated by the fact that Canada no longer has any sanctions' "champions", like Doxey, Malone, Folwer or Nossal in academia or at the UN. This can be potentially problematic for two reasons. 1) Canadian policy makers, who rarely have time to reflect on trends, have no one to turn to ask about Canada's more current sanctioning activity. There has been no significant or long-term study of Canada's application of sanctions since Nossal's book "Rain Dancing". Foreign policy analysts today, therefore, may be unaware of Canada's rich history of sanctioning. 2) Changes to sanctions thinking (either who or what should be targeted, objectives sought, new measures etc.) will not benefit from a Canadian point of view. After all, it was a Canadian who changed, fundamentally, the role of UN Sanctions Committee chairs (Robert Fowler) that also led to the creation of the Kimberley Diamond Certificate program which protects Canadian diamond companies.<sup>186</sup> While this was never the goal of Fowler's actions at the UN, foreign policy "tools", like sanctions, usually have domestic repercussions and one is better placed to anticipate these consequences if directly involved.

This research suggests, therefore, that rhetoric around sanctions that suggests Canada is getting "tough" when it sanctions really needs to be interpreted as Canada

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<sup>186</sup> Natural Resource Canada, "Kimberley Process for Rough Diamonds". See <https://www.nrcan.gc.ca/mining-materials/kimberley-process/8222>

doing what UNSC or coalition partners are doing which may or may not be “tough”.

Canada has not levied unilateral sanctions since 1990. When Canada has decided to add ‘additional measures’, they have generally been consistent with those applied by the US and EU. So in practice, it appears that Canada is essentially following its allies, which may or may not mean all of these states are also “rain dancing”.

There are many issues that can be researched in more depth as a result of this thesis. This research did not examine the effectiveness of sanctions for a number of reasons. First, the effectiveness of Canadian sanctions would be difficult to measure, since they are always implemented with partners. Second, analyzing Canada’s record of sanctioning since 1990 filled a significant gap in the literature and was sufficient given the size and scope of this project. Further research could look at whether or not Canada’s sanctions are effective vis-à-vis Canada’s wider foreign policy goals. Indeed, given the lack of research on Canada’s sanctioning activity, no one can be certain if Canada’s sanctioning activity is not working at cross purposes with wider policy goals. There are also a number of administrative and logistical issues that need to be investigated further associated with Canada’s sanctioning legislation, fines and enforcement. However, so long as Canada remains in “automatic” mode and is happy to apply sanctions with little direct impact on the change of behaviour of targets, these issues are less likely to be pursued except for in academic studies.

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## Annex: 1

**Table 2: Canadian Sanctions Regimes 1990 - 2014**

	Target	Objective	Canadian instrument	Measure(s)	Time frame	Senders beside Canada	Differences to Canada.
	State, entity or individual	11 choices	4 choices - list	Arms= A, travel = T, Financial = F, Resources = R Diplomacy = D, Asset Freeze (AF), Economic =E Technical Assistance (TA) Export/Import restrictions (EIR – mostly for trade sanctions)	Start and end date	UN, US, EU or unilateral	including which regime came first, different measures etc
1	Somalia /Eritrea	Counter-terrorism, cease hostilities, negotiate settlement, peace enforcement, support peace building, good governance Human rights, support humanitarian efforts	United Nations Act (UNA) and Immigration and Refugee Protection Act (R/2009-92)	A,T,F	1992-ongoing	UN	No differences
2	Liberia	Peace enforcement, cease hostilities, support peace building, democracy support, good governance, support Judicial Process	UNA	A	1992-2001	UN	No differences
3	UNITA (Angola)	Democracy support, cease hostilities, peace enforcement	UNA (SOR/94-44)	A, R = petroleum and diamonds, D, T (aviation and travel), F	1993-2002	UN	No differences
4	Sierra Leone	Cease hostilities, peace enforcement, support peace building, democracy support, good governance, support judicial process	UNA (SOR/98-400)	A, T, R - petroleum and diamonds	1997-2010	UN	No differences
5	Rwanda	Human rights, cease hostilities, negotiate settlement, peace enforcement, support peace building	UNA SOR/94-582	A (Rwandan government cannot resell arms)	1994-2008	UN	No differences
6	Ethiopia/Eritrea	Cease hostilities, negotiate settlement	UNA (SOR/2000-289)	A (sale and supply)	1999-2001	UN	No differences
7	Liberia II	Peace enforcement, cease hostilities, support peace building, democracy support, good governance, support Judicial Process	UNA (SOR/2001-261)	A, T, R = diamonds and timber	2001-2003	UN	No differences

8	DRC	Cease hostilities, peace enforcement, democracy support, good governance, human rights	UNA (SOR/2004-222)	A, T = aviation and individual, F, TA = financial, technical or other forms of support to Rwandan groups and due diligence guidelines drafted for mineral products from DRC. Arms + property ban of property in Canada owned or controlled by individual on banned list.	2003-ongoing	UN	No differences
9	Liberia III	Peace enforcement, cease hostilities, support peace building, democracy support, good governance, support Judicial Process	UNA, Immigration/ refugee protection Act (SOR/2004-153)	A, T, R = diamond and timber, F	2003-ongoing	UN	No differences
10	Côte D'Ivoire	Cease hostilities, peace enforcement, support peace building, democracy support, human rights	UNA (SOR/2005-127)	A, T, F, R = diamond	2004-ongoing	UN	No differences
11	Libya I	Counter-terrorism	UNA (SOR/92-222)	A, T (aviation and travel), D, F, E = goods used in the refinement and export of oil, including pumps, boilers, furnaces and catalysts	1992-2003	UN	No differences
12	Sudan I	Counter-terrorism, support judicial process	UNA	D, T (travel and aviation sanctions but latter never came into effect) V = D (int'l conferences)	1999-2001	UN	No differences
13	Sudan II	cease hostilities, negotiate settlement, peace enforcement, human rights	UNA / Immigration and Refugee Protection Act (SOR/2004-197)	A, T (including military over flights), F	2004-ongoing	UN	No differences
14	Haiti	Peace enforcement, democracy support	SEMA SOR/92-369	R = Petroleum, A, F, T (aviation and travel), E = imports and exports)	1993-1994	UN / OAS	Note all Canadian regulations for Haiti were passed under SEMA (SC. 1992 c.17) because the sanctions were imposed by the UN and the OAS (Resolution 610). Trade between Canada and Haiti were subject to measures taken pursuant to the <i>Export and Import Permits Act</i> since Oct. 31, 1991. Additional measures were taken against Haiti in July 1992, when regulations were adopted pursuant to the new Act to prohibit Haitian and other ships violating the embargo from entering Canadian

							ports.
15	Suppression of Terrorism	Counter-terrorism	UNA (SOR/99-444)	A, asset freeze, list of entities	1999-ongoing	UN	No differences
16	Al-Qaeda/Taliban and Associates	Counter-terrorism	UNA (SOR/99-444)	A, F, T (aviation and travel), D, E = chemical, TA	1999-2002 / 2002-ongoing	UN	No differences
17	North Korea	Non-proliferation	UNA/SEMA (SOR/2006-287)	A (nuclear related and later conventional), T, F, E (luxury goods) (reverse arms embargo), TA	2006-ongoing	UN	The UN Security Council did not impose additional sanctions against the DPRK in response to the <i>Cheonan</i> sinking. The sanctions implemented in the <i>Special Economic Measures (Democratic People's Republic of Korea) Regulations</i> are comprehensive in nature and go beyond the existing UN Security Council sanctions that were last modified in 2009.
18	FRY I	Cease hostilities, negotiate settlement, peace enforcement, human rights	UNA/ACL	A, E (import and export of commodities and products), F, T (aviation and travel), D (including sports and cultural sanctions). R (crude oil, petroleum, iron, steel, rubber, chemicals)	1991-1996	UN	No differences
19	Kosovo	Cease hostilities, negotiate settlement, peace enforcement, human rights, support humanitarian efforts	UNA	A	1998-2001	UN	No differences
20	FRY II	Cease hostilities, negotiate settlement, peace enforcement, human rights	UNA	A, E = imports and exports and activities in support of Bosnian Serb forces, F, T = river and individual	1993-1996	UN	No differences
21	Iraq I	Cease hostilities, negotiate settlement, peace enforcement, human rights	UNA (SOR/90-531)	A, D, E (import and export of commodities and products), F, T (aircraft)	1990-1991	UN	No differences
22	Iraq II	After the US-led Gulf War Non-proliferation	UNA	A (WMD, training and financing), F, T, R = petroleum and related products, E = (all imports and exports) A - lifted in 2010		UN	No differences
23	Iraq III	support peace building, good governance	UNA (SOR/2003-221)	A (conventional and WMD) F (A terminated in 2010)	2003-ongoing	UN	
24	Iran	Non-proliferation	UNA/SEMA (SOR/2007-44)	A (nuclear related and heavy weapons and later conventional) E (material associated with weapons programs), F, T, TA	2006-ongoing	UN also, US + EU for additional measures	On December 11, 2012, further sanctions were introduced against Iran under the <i>Special Economic Measures Act</i> in response to Iran's continued lack of cooperation with the

							IAEA and the P5+1 group, and to maintain unity and consistency with the European Union and other countries and for torturing and killing Canadian journalist Zahra Kezemi.
25	Hariri (Lebanon)	Counter-terrorism, support judicial process	UNA (SOR/2007-204)	F, T, A	2006-ongoing	UN	No differences
26	Burma (Myanmar)	Human Rights	SEMA (SOR/2007-285)	Blocking Property and Prohibiting Certain Transactions Related to Burma	2007-ongoing (although many have been lifted)	US + EU	No differences
27	CAR	Cease hostilities Democracy support	UNA (SOR/2014-163)	A, asset freeze, T	2013-ongoing	UN	No differences
28	Guinea-Bissau	Democracy Support	Immigration and Refugee Protection Act	T	2012-ongoing	UN	No differences
29	Libya II	Cease hostilities, peace enforcement, support peace building, democracy support, good governance, human rights, R2P	UNA/SEMA (SOR/2011-52)	A, Asset Freeze, F, Export/Import, Technical Assistance Prohibition	2011-ongoing	UN, US + EU (additional measures)	No differences
30	Russia	Cease hostilities, democracy support	SEMA (SOR/2014-59)	T, Asset Freeze, Military assets, TA	2014-ongoing	US + EU	In the main similar. <sup>187</sup> 188
31	Syria	Cease hostilities, R2P	SEMA (SOR/2011-114)	F, E, T,A, investments	2011-ongoing	US +EU	No differences
32	Tunisia and Egypt	Democracy Support	FACFOA (SOR/2011-78)	P, F	2011-ongoing	EU	No differences
33	Ukraine	Cease hostilities, democracy support	FACFOA/SEMA (SOR/2014-44)	T, Asset Freeze, Military assets	2014-ongoing	US + EU	No differences
34	Zimbabwe	Democracy support, human rights	SEMA (SOR/2008-248)	A, TA Asset freeze, Aircraft flying over or landing in Canada banned	2008-ongoing	US + EU	No differences

<sup>187</sup> On 2 March 2014 Canada and other G-7 leaders issued a joint statement condemning the Russian Federation's clear violation of the sovereignty and territorial integrity of Ukraine. In addition, they announced that they will "suspend our participation in activities associated with the preparation of the scheduled G-8 Summit in Sochi in June, until the environment comes back to where the G-8 is able to have a meaningful discussion."<sup>187</sup>

<sup>188</sup> Also on December 19, 2014, Prime Minister Stephen Harper announced that Canada would introduce restrictions on the export of technology in relation to Arctic, deep water and shale oil explorations and extraction to Russia. These actions complement similar measures being undertaken by the European Union and the United States. PMO's Backgrounder Report issued 19 December 2014.

35	Belarus	Human Rights	Export and Import Permits Act	Exports	2007-ongoing	US + EU	No differences
36	South Sudan	Cease hostilities Democracy support	SEMA (SOR/2014-235)	T (UN), Asset freeze (UN, US and EU), F (US, EU)	2014-ongoing	UN, US + EU	No differences
37	Yemen	Cease hostilities Democracy support Counter-terrorism	UNA (SOR/2014-213)	Asset freeze, T	2014-ongoing	UN	No differences