



RUSSIA AND IRAN: Furthering or Defying UN Security Council Objectives

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Introduction by Ray Finch, FMSO

Many commentators have suggested that the United Nations security structure developed after WW II is in dire need of renewal. According to many observers, the power of UN resolutions and sanctions, as well as the overall effectiveness of its Security Council, has continued to weaken. These pundits point to the issue of non-proliferation and limiting the spread of WMD as a prime example of the UN's declining influence. For instance, while many in the global community strive to deny Iran's quest to develop nuclear weapons, other countries (to include members of the UN Security Council) appear willing to circumvent sanctions to maintain good relations with Iran.

This paper examines recent developments in Russian-Iranian relations, and then presents legal arguments based on custom and written international law. The author suggests that peace and security can and shall be maintained only as far as the relevant legal norms provide. He points out that the entire process of maintenance of peace and security is a legal process, and if the 21st century is to be more peaceful than preceding centuries, mechanisms must be developed whereby states abide by these legal norms. At the end, this paper examines the potential effects of Russian-Iranian relations on the legitimacy of the Security Council and the future of enforcement of sanctions.



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In accordance with Article 16 of the “Vienna Convention on Succession of States in Respect of Treaties,” the Russian Federation accepted to be bound by the treaties of the collapsed Soviet Union, particularly its spot on the UN Security Council.¹ International law is so important to the Russian legal system that the 1993 Constitution of the Russian Federation Article 15(4) states; “the generally recognized principles and norms of international law and the international treaties of the Russian shall constitute an integral part of its legal system.” Such treaties even hold precedence over domestic law; “if an international treaty of the Russian Federation establishes other rules that those stipulated by the law, the rules of the international treaty shall apply.”²

Interpreting the articles by the plain language of the text conveys that international law is heavily influential in Russia. However, many factors define international law’s influence. Nature and applicability of the law, democratic institutions, rule of law, and participation in international institutions are a few factors that determine the actual status of international law.³ Russia’s most important participation in international institutions is its spot on the UN Security Council.

Chapter V of the UN Charter lays out the functions and powers of the Security Council, the foremost being to maintain international peace and security in accordance with the principles and purposes of the United Nations.⁴ A few of the functions listed to maintain international peace and security include; to recommend methods of adjusting disputes or terms of settlement; to formulate plans for the establishment of a system to regulate armaments; and to call on Members to apply sanctions and other measures not involving the use of force to prevent or stop aggression.⁵

A dispute important to the international community and the Security Council is Iran's nuclear proliferation. Since the report in 2006 by the International Atomic Energy Agency regarding Iran's non-compliance with its safeguards agreement on nuclear activities and Iran's rejection to Security Council's demand to suspend all enrichment-related and reprocessing activities, the Security Council passed many resolutions imposing sanctions on Iran.⁶ To reinforce these sanctions, many nations in the East and the West, including the European Union, imposed additional restrictions on Iran's trade, financial services, energy sectors, and technologies.⁷

Despite continuing criticism, Russia has been an active partner with Iran on the nuclear issue and trade. As a result, Russia holds an important place in the Iranian nuclear issue. Russia is helping Iran build nuclear reactors, despite the international community's concerns that Russia does not take proliferation of nuclear weapons seriously.⁸ Russia's change in attitude in the Security Council is an interesting development and should be carefully analyzed in bilateral, regional, and international contexts, especially considering its partnership with Iran on trade and nuclear development.

This paper looks at recent developments in Russian-Iranian relations, and then presents legal arguments based on custom and written international law. Peace and security can and shall be maintained only as far as the relevant legal norms provide. The entire process of maintenance of peace and security is a legal process.⁹ At the end, I will analyze the potential effects of these relations on the legitimacy of the Security Council and the future of enforcement of sanctions.

On December 11, 2013, Russian Foreign Minister Sergei Lavrov met with Iranian leaders in Tehran to discuss various topics, particularly the fate of the Iranian nuclear program, upon which the members of the United Nations Security Council and Iran made an agreement during talks in Geneva a few weeks before. One key stipulation of the Geneva Agreement is that Iran will not develop any new uranium enrichment or nuclear reprocessing facilities, and in return, Iran will receive relief from sanctions and no additional ones will be imposed.¹¹ The following Tehran negotiations resulted in the finalization of an oil trade agreement that consists of Russia acquiring 500 thousand barrels of oil a day in exchange for Russian goods, making Russia the largest importer of Iranian oil and worth \$1.5 billion a month.¹²

According to the West, led by the United States, Russia is breaking international law, and a Russia-Iran oil trade deal will make Tehran less likely to comply with the agreement in Geneva and other sanctions imposed by the Security Council.¹³ However, Russia's representative to the EU Vladimir Chizhov, in anticipation of the Russia-EU summit, which was held on January 28, 2014, stated that Russia is not violating any sanctions against Iran, but rather finds these sanctions illegitimate, and that the agreement allows for trade to start and requires sanctions to be lifted immediately.¹⁴ Furthermore, because of these trade negotiations, Russia and Iran reached a preliminary agreement to build at least two new nuclear power plants in Iran.¹⁵

These conflicting views generate room for legal deliberation. The legal question would be to ask whether Russia is under a legal obligation to implement, accept, and enforce sanctions on Iran. First, I consider whether there is a legal obligation grounded in customary international law. Article 38(1)(b) of the Statute of the International Court of Justice explains customary international law as comprising of (1) a general practice (2) accepted as law.¹⁶ In a series of cases known as the North Sea Continental Shelf Cases, the ICJ confirmed that state practice, an objective element, and *opinio juris*, the subjective element, are essential pre-requisites for the formation of a customary law rule.¹⁷

In its jurisprudence, the ICJ explains that state practice has three elements: (1) generality (2) consistency (3) and duration.¹⁸ Generality encompasses that most states, or a vast majority, accept and apply the law. Since Iran's non-compliance with the safeguard agreement in 2006, there have been eight Security Council resolutions involving sanctions on Iran. China slowed its trade and investment position with Iran to supplement sanctions.¹⁹ Australia imposed further financial sanctions and travel bans on individuals and entities involved in Iran's nuclear program.²⁰ India banned exports on anything that could contribute to the program, and clearly, the EU and the United States have imposed an arms ban and an almost total economic embargo on Iran.²¹

The second element, consistency, looks to the uniformity of the behavior, and the third element is the duration of the action. The above examples demonstrate consistent behavior – nations imposed sanctions on Iran's economy or anything directly related to its nuclear program. Moreover, the duration, twelve years, seems long enough to satisfy the third element.

In contrast, there have been many objections to these sanctions. China shifted trades with Iran into its national currency, which allows Iranian oil to flow to Beijing sanction-less.²² Since the renminbi is not freely convertible like the dollar or the euro, a barter system has been created that allows Iran to spend the currency on goods and services from Chinese companies. To help with this system, Russian banks have stepped in as intermediaries to handle the currency and send it to Tehran. Moreover, China and Russia caused many Security Council resolutions to be amended after vetoing them, and India said it is against expanding sanctions against Iran.²³

Not only must the law in question be a settled a practice, but it should be carried out in a way to show evidence of a belief that this practice is rendered obligatory. This is known as *opinio juris*. State practice is often seen as a reflection of *opinio juris*, which the ICJ explains as:

“For a new customary rule to be formed, not only must the acts concerned ‘amount to a settled practice’, but they must be accompanied by *opinio juris sive necessitatis*. Either the States taking such action or other States in a position to react to it, must have behaved so that their conduct is evidence of a belief that the practice is rendered obligatory by the existence of a rule of law requiring it. The

need for such belief . . . the subjective element, is implicit in the very notion of *opinio juris sive necessitatis*. ”²⁴

The relevant practice must be consistent and uniform to show the legal obligation, and as the aforementioned arguments on Russia’s state practice show, the fluctuations do not show consistent and uniform usage.

Furthermore, when a state acts in a particular way because of political expediency or convenience and not in the belief that the said practice is binding on the state by legal obligation, there is no formation of customary international law.²⁵ Russia is establishing economic ties with Iran because it fears that if it waited until sanctions are lifted, Western countries will infiltrate the Iranian market first.²⁶ Russia is in a favorable situation with Iran; Iran needs the money and goods because sanctions have limited its exportability of oil; and Russia gains political and economical advantages with one of the strongest countries in the region. Russia is seeking mining rights for oil and gas in Iran, which Iranian law forbids, and Russia would then likely sell the oil as its own to the Asian-Pacific market while keeping some of its own, strengthening itself in the regional and global energy market.²⁷

Even if all requirements are met to establish a customary international law, there is still an exception for a persistent objector. When a state has expressly refused to be bound by a customary international law since its inception, it is considered a persistent objector and is exempt from the rule.²⁸ Since the Security Council introduced the first resolution for sanctions against Iran, Russia has disapproved of the sanctions, and it has taken many amendments for resolutions to be approved. President Bush even called President Putin to get him to finally approve a resolution.²⁹ Regardless, although Russia has continuously disapproved sanctions against Iran and has not applied its own, it did approve the resolutions. Is it actually considered a persistent objector? The answer is not clear.

However, it is clear that establishing a customary international law has legal risk because it is difficult to establish. As a result, states have historically resulted to writing, specifically treaties. These may be viewed as a convenient device for guaranteeing that state interests are clear.³⁰ The

law of treaties covers formal agreements that include treaties, conventions, protocols, covenants, and in this case, charters and resolutions. The relationship between the Charter and Security Council Resolutions, as well as treaties between members, is significant. Article 103 addresses the Security Council resolutions' relationship to international law:

“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, the obligations under the present Charter shall prevail.”³¹

The first obvious limit of the article is the resolution must be compatible with the Charter before the article has primacy. Article 103 cannot make a resolution which is contrary to the Charter to prevail over other rules of international law.³² The resolutions for sanctions against Iran do not violate the Charter, but rather the resolutions are legitimate under Chapter VII of the Charter because they are a mechanism for maintaining peace and security.

The plain language of the article suggests that resolutions prevail over international agreements. Conversely, there are jurisprudential views that Article 103 makes Security Council decisions prevail over customary law as well.³³ An essential use of the article for decades has been excusing Members for their non-compliance with trade and economic agreements with states that are subject to sanctions imposed by the Security Council.³⁴ Whether Article 103 applies to sanctions against Iran depends on the clarification of the resolution's meaning by interpretation methods.

Security Council resolutions should be interpreted to have an impact on international law when it has the intention to do so.³⁵ They should “be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”³⁶ The Security Council imposed Resolution 1737 after Iran failed to abide by the injunction of Resolution 1696.³⁷ As stated earlier, Russia voted on the resolution. Although not all resolutions are explicit, Resolution 1737 lays out straightforward terms and organizations to which it applies.³⁸ It imposed a freeze on assets supporting or associated with Iran's nuclear activities and established a committee to oversee the implementation.

The main organization the resolution placed sanctions on is the Atomic Energy Organization of Iran. In March of 2014, representatives of Russia's Rosatom held a series of talks with this organization.³⁹ From these talks, the two countries agreed to build the power plants mentioned earlier. Russia claims that it is not violating any resolution or international law, but rather that this is "peaceful nuclear energy . . . not the case or reason for the restrictions or sanctions imposed by the UN Security Council."⁴⁰ Is this in good faith in accordance with the purpose of the resolution?

Article 49 of Chapter VII of the Charter calls for all members to take on measures to aid decisions by the Security Council.⁴¹ To help members aid sanctions, the Security Council developed a report titled "Best Practices and Recommendations for Improving the Effectiveness of United Nations Sanctions." The report gives many suggestions, including encouragement to members "to establish national coordination mechanisms to improve the implementation of the sanctions."⁴² As I have discussed, most members have implemented their own sanctions to supplement the Security Council sanctions on Iran. Russia has yet to implement its own sanctions.

The principal point of all this, however, is that legal certainty on implementation and punishment are the foundation of UN security goals. This consistency will ensure the legitimacy of the Council's actions. Without consistency, members will continue to stretch their actions despite sanction resolutions. For example, with the recent situation in Ukraine, the West decided to place sanctions on Russia. Iran believes that sanctions are not hurtful, and has notified Russia to not fear sanctions.⁴³ On the other hand, Iran is telling European nations that it will sell oil to them in place of Russia.⁴⁴ Resolutions work on the basis of confidence and trust between the members, and based on the examples, something is missing.

When there is not legal certainty, there is a lack of stability. Stability means legitimacy.⁴⁵ Resolutions require compliance and, more importantly, consistency with legal framework of the Security Council in order to be effective. Without this, sanctions and the UN may have a problem in the long run. Member states will realize that the Security Council is different than what it was originally set out to do, increasingly paralyzing action by the Security Council and making

the adoption of further resolutions more difficult. Even in cases where the Security Council does pass resolutions, non-compliance, protest, and disobedience might be practiced at the state and regional level.

Is there a solution? Of course it will be difficult because state sovereignty is the cornerstone of the world community. Regardless, there is plenty of room for improvement. Interpretation and enforcement should be consistent and transparent, and once sanctions are adopted, they should be respected and implemented accordingly.⁴⁶ Russia and Iran are certainly not the only nations that have been under increased international scrutiny for not following Security Council resolutions, but their relationship has significant economic, political, and legal effects on the world.

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