

SANCTIONING CORRUPTION?  
AN ANALYSIS OF THE RELATIONSHIP  
BETWEEN ECONOMIC SANCTIONS AND  
ANTI-CORRUPTION EFFORTS

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INTRODUCTION

A few years ago, we were already living “in a golden age of economic sanctions.”<sup>1</sup> Today, in the wake of the war in Ukraine, that golden age has entered its shiniest phase.

Time will tell whether the wave of economic sanctions imposed on Russia will succeed, but in the meantime, several questions linger regarding the consequences of such measures: what is the track record of sanctions? Do they achieve their stated objectives? What costs do they impose on the targets, and on national economies at large? This Article will focus on one particular burning question: what is the relationship between economic sanctions and corruption? More specifically, are

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1. Daniel P. Ahn, *Economic Sanctions: Past, Present, and Future*, 20 GEO. J. INT’L AFF. 126, 126 (2019).

economic sanctions an effective tool for fighting corruption or are they a “corruption super spreader?”<sup>2</sup>

Part I briefly summarizes the most relevant types of sanctions, namely international and national comprehensive sanctions, and targeted sanctions (with a focus on anti-corruption targeted sanctions). Part II analyzes the positive and negative consequences of such sanctions programs, especially when it comes to corruption. Finally, Part III presents an overview of some crucial next steps to be followed to ensure that sanctions become more effective both generally, and in the fight against corruption specifically. Due to its brevity, the Article is intended to provide an overview of key problems and potential solutions and is not to be considered as an exhaustive analysis of all the issues presented.

## I. RELEVANT ECONOMIC SANCTIONS PROGRAMS

While the modern origin of economic sanctions as an “economic weapon” can be traced back to Article 16 of the Covenant of the League of Nations<sup>3</sup> as transposed in Article 41 of the United Nations (UN) Charter, its widespread use only surged after the end of the Cold War.

Under Article 41 of the UN Charter, economic sanctions can be applied as an alternative to the use of armed force, encompassing a broad range of enforcement options. Traditionally, this made sanctions the weapon of choice to achieve three main objectives: (1) coercing or encouraging a change in behavior, (2) constraining proscribed activities, and (3) signaling or stigmatizing the violation of international norms.<sup>4</sup>

In recent years, two major changes in the use of sanctions led to this “golden age.” First, UN sanctions programs started decreasing in volume due to governance issues within the UN Security Council. In the Security Council, the strategic use of veto powers by some of the Permanent Five (P5) members has effectively condemned the institution to inaction in matters that could have potentially called for the imposition of economic sanctions. Instead, the volume of national economic sanctions programs skyrocketed. While the United States has by far the most widespread and articulated sanctions regime, the United Kingdom, many states in the European Union (EU), and several other countries around the world have started implementing their

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2. Richard L. Cassin, *Why Sanctions are a Corruption ‘Super Spreader’*, FCPA BLOG (Mar. 1, 2022), <https://fcpablog.com/2022/03/01/why-sanctions-are-a-corruption-super-spreader> [<https://perma.cc/8AGX-ZE37>].

3. Nicholas Mulder, *The Rise of Sanctions as a Tool of Modern War*, YALE UNIV. PRESS 130 (1st ed. 2022).

4. Thomas Biersteker, Sue E. Eckert, Marcos Tourinho, & Zuzana Hudákova, *UN Targeted Sanctions Datasets (1991–2013)*, 55(3) J. OF PEACE RSCH. 404, 407 (2018).

own sanctions programs as well. Many sanctioned governments also impose countersanctions in response to other countries' use of the "economic weapon."

Second, the reasons for imposing sanctions (and consequently their volume) have dramatically proliferated, making them the preferred foreign policy instrument to tackle human rights violations and the subversion of democracy, counter terrorism by non-state actors, address internal conflict, and foster environmental protection.<sup>5</sup>

As a result of the shifting needs that economic sanctions address, governments currently have a full menu of measures they can choose from. These measures correspond to a variety of restrictions with different degrees of severity and encompass a large spectrum of restrictions. On one end of the spectrum, there are "watchlists" (for example, the Kremlin Report published by the United States in 2018) and export-import bans, which do not impose sanctions *per se* but only constitute either a source based on which future sanctions can be justified upon or export restrictions lists. On the other end of the spectrum, there are full-fledged sanctions, which can largely be classified as comprehensive or targeted.

Comprehensive sanctions include broad trade restrictions and prohibit commercial activity with an entire country and can also be referred to as international trade sanctions or trade embargoes. Notable examples of these measures are the North Korea, Syria, Cuba, and Iran sanctions programs implemented by the United States or the UN sanctions imposed on Iraq after the 1990 Gulf War. Over the past decades, comprehensive sanctions ceased to be the "weapon" of choice in the toolbox of policymakers, mostly out of concern for the unintended economic consequences of such measures on the civilian population of the countries affected. Additionally, some studies confirm that the public responds better to targeted measures against regime members when they are dictated by an "explicit goal of protecting fundamental human rights."<sup>6</sup> This confirmation prompted a shift towards the imposition of more targeted, or "smart" sanctions.<sup>7</sup>

Targeted sanctions impose restrictions on specific individuals or entities (the "targets") and generally prohibit persons and entities under

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5. Margaret Doxey, *Reflections on the Sanctions Decade and Beyond*, 64 INT'L J. 539, 541 (2009).

6. Mikkel Sejersen, *Winning Hearts and Minds with Economic Sanctions? Evidence from a Survey Experiment in Venezuela*, 17 (1) FOREIGN POL'Y ANALYSIS 1, 10 (2021).

7. Meredith Lilly & Arabi Delaram, *Symbolic Act, Real Consequences: Passing Canada's Magnitsky Law to Combat Human Rights Violations and Corruption*, 72 (2) TORONTO INT'L J. 163, 164 (2020).

the jurisdiction of the imposing country from conducting any transaction with the targets. In such instances, the targets are subject to an asset “freeze” and a travel ban. In the case of entities, the restrictions would generally extend to their controlled subsidiaries as well.<sup>8</sup>

Targeted sanctions can be sub-categorized around industry sectors or “themes.” In the former case, they are considered to be sectoral sanctions. It is noteworthy that these measures are not full “blocking” sanctions, as they only restrict certain (not all) transactions with companies operating in a specified sector.<sup>9</sup> Examples of sectoral sanctions are the measures that were imposed by the EU and the United States in response to the Russian annexation of Crimea in 2014, which targeted only certain categories of transactions in the financial services, energy, mining and defense sectors.<sup>10</sup>

Targeted sanctions can also be determined on a “thematic” basis. A relatively recent development in this space is the imposition of human-rights-related sanctions, mostly in an effort to counter kleptocracy by hurting corrupt individuals and human rights abusers where it is supposed to hurt the most: “in their wallets.”<sup>11</sup> The United States passed the Magnitsky Act in 2012, in honor of Sergei Magnitsky, a Russian lawyer and auditor who died in prison after he was hired to investigate a controversial tax fraud case.<sup>12</sup> The bipartisan

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8. The U.S. Treasury’s Office of Foreign Assets Control (OFAC) defines this as the “OFAC 50% rule,” according to which the property and interests in property of entities directly or indirectly owned 50 percent or more in the aggregate by one or more blocked persons are considered blocked. The United Kingdom and the European Union also have similar rules in place.

9. U.S. GOV’T ACCOUNTABILITY OFF., REPORT TO CONGRESSIONAL REQUESTERS: ECONOMIC SANCTIONS – AGENCIES ASSESS IMPACTS ON TARGETS AND STUDIES SUGGEST SEVERAL FACTORS CONTRIBUTE TO SANCTIONS’ EFFECTIVENESS 4 (2019).

10. See, for example, the U.S. Treasury’s Office of Foreign Assets Control (OFAC) sanctions program imposed starting 2014 with E.O. 13660, U.S. TREASURY OFF. OF FOREIGN ASSETS CONTROL (OFAC), UKRAINE/RUSSIA RELATED SANCTIONS, <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions> [<https://perma.cc/S83J-F5AR>]; see also the EU sanctions starting in 2014 in relation to the situation in Ukraine, COUNCIL OF THE EUR. UNION, EU RESTRICTIVE MEASURES AGAINST RUSSIA OVER UKRAINE (SINCE 2014), <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine> [<https://perma.cc/3RSN-7247>].

11. Tom Ruys, *Reflections on the Global Magnitsky Act and the Use of Targeted Sanctions in the Fight against Grand Corruption*, 50 REV. BDI 492, 494 (2017); see also Yuliya Zabyelina, *The Long Arm of Anti-corruption: Extraterritoriality and Anti-corruption Targeted Sanctions*, 11 GLOB. POL’Y, 535, 536 (2020).

12. Sergei Magnitsky was a lawyer and tax auditor in Moscow, who was hired to investigate a controversial corruption case. The case concerned a \$230 million rebate granted from the Russian state to some officials of the interior ministry. The officials subject to the investigation arrested Magnitsky, who was then killed while in custody in

bill's objective was twofold: (1) holding accountable the Russian officials who were deemed to be responsible for Magnitsky's death; and (2) degrading Russia's trade relations status from most favored nation to permanent normal trade partner. In 2016, the Global Magnitsky Act significantly expanded the scope of the program, authorizing the US President to sanction foreign individuals or entities worldwide if they are considered to be engaging in corruption and human rights violations, through assets freeze and travel bans.<sup>13</sup> Canada and Australia passed their own "Magnitsky-style" measures and the United Kingdom also followed suit with the Global Anti-Corruption Sanctions Regulations, allowing the imposition of sanctions on persons involved in "serious corruption."<sup>14</sup> The EU adopted the EU Global Human Rights Sanctions Regime in 2020, but did not include corruption as a sanctionable activity. While calls are growing for the EU to expand its anti-corruption efforts through its human rights sanctions program, no concrete steps have been taken in this direction.<sup>15</sup>

## II. PRELIMINARY ASSESSMENT OF THE EFFECTIVENESS OF SANCTIONS IN THE FIGHT AGAINST CORRUPTION

Corruption is a polysemic term encompassing several meanings.<sup>16</sup> Relevant to the field of international anti-corruption, the appropriate definition is generally considered to be "the abuse of entrusted power for private gain."

Corruption can broadly include behaviors such as public servants accepting payments in exchange of services, politicians misusing

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2009. Benjamin Bidder, *The Case of Sergei Magnitsky*, DER SPIEGEL INTERNATIONAL (NOV. 26, 2019), <https://www.spiegel.de/international/world/the-case-of-sergei-magnitsky-anti-corruption-champion-or-corrupt-anti-hero-a-1297796.html> [https://perma.cc/G8VA-4NL6].

13. Stephan E. Becker, Aaron R. Hutman & Toochi L. Ngwangwa, *Biden Administration Targets Global Corruption and Demonstrates expansive Use of Magnitsky Sanctions*, PILLSBURY GLOB. TRADE AND SANCTIONS L. (July 29, 2021), [https://www.globaltradeandsanctionslaw.com/biden-administration-targets-global-corruption-and-demonstrates-expansive-use-of-magnitsky-sanctions/Global\\_Magnitsky\\_Sanctions\\_Targeting\\_Corruption](https://www.globaltradeandsanctionslaw.com/biden-administration-targets-global-corruption-and-demonstrates-expansive-use-of-magnitsky-sanctions/Global_Magnitsky_Sanctions_Targeting_Corruption) [https://perma.cc/JK2R-N37U].

14. Joseph Carroll, Anneka Randhawa, Geneva Forwood & Mhairi Fraser, *The UK Adopts New Sanctions Regime Targeting Individuals Involved in Serious Corruption*, WHITE & CASE ALERT (May 12, 2021), <https://www.whitecase.com/publications/alert/uk-adopts-new-sanctions-regime-targeting-individuals-involved-serious-corruption> [https://perma.cc/9L4F-C2YN].

15. Tinatin Tsertsvadze, *Why the European Union Needs Anticorruption Sanctions Coordination and Supervision: A Powerful Tool in the Fight Against Corruption*, OPEN SOC'Y EUR. POL'Y INST. POL'Y BRIEF 1, 4 (2022).

16. Raffaele Cantone & Enrico Carloni, *Corruzione e Anticorruzione: Dieci Lezioni* 14 (Giangiacomo Feltrinelli, ed., 1st ed. 2018).

public money, or corporations bribing officials to get lucrative deals.<sup>17</sup> The economy and the socio-political sphere of a country are adversely impacted by corruption. Corruption also “undermines public trust, the rule of law, the protection of human rights, and the functioning of democratic institutions, while negatively affecting foreign investment, development and the functioning of free markets.”<sup>18</sup>

#### A. Comprehensive Sanctions

Sanctions have a mixed tracked record, related in part to the difficulty in measuring their effectiveness. While sanctions’ overall objective as alternatives to the use of force is to influence a certain behavior or trigger specific changes, there are several intervening variables that can affect the outcome of a specific sanction.<sup>19</sup> Nonetheless, some research sheds light on the success of sanctions, including their relationship with corruption. When it comes to comprehensive sanctions, it has been estimated that they succeed in achieving their stated objectives less than a third of the time they are imposed.<sup>20</sup> There are three main indicators around which such an analysis is usually built on.<sup>21</sup>

First, economic sanctions are extremely ambitious in their scope. Economic sanctions seem to be the silver bullet that can address anything from human rights issues to autocracy, non-proliferation, and drug trafficking. When looking back at comprehensive sanctions programs, it is unclear whether it was the threat of sanctions that influenced behavior, or the actual imposition or consequences of sanctions. And if sanctions were indeed successful in achieving one objective, their effectiveness may have been limited as shown by the example of sanctions imposed on the Russian government in response to the annexation of Crimea in 2014 by the United States and the EU. Those sanctions were territorial sanctions, a form of comprehensive sanctions, imposed on Crimea with the intention of punishing those responsible for the occupation and annexation of Crimea by sending a strong signal to condemn

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17. Transparency International, *What is Corruption?* TRANSPARENCY INT’L (2021), <https://www.transparency.org/en/what-is-corruption> [<https://perma.cc/GD5K-E4QN>].

18. Georgios Pavlidis, *Global Sanctions Against Corruption and Asset Recovery: A European Approach*, Vol. Ahead-of-print 1 J. MONEY LAUNDERING CONTROL 1 (2021).

19. Doxey, *supra* note 5, at 541.

20. Gabriel Flebermayr, Aleksandra Kirilakha, & Constantinos Syropoulos, Edal Yalcin, Yoto V. Yotov, *The Global Sanctions Data Base*, DREXEL UNIV. RSCH. HANDBOOK ON ECON. SANCTIONS (2021).

21. Bryan Early, *Economic Sanctions Aren’t Just Ineffective – They Lead to Corruption and Organized Crime*, QUARTZ (May 1, 2015), <https://qz.com/394607/economic-sanctions-arent-just-ineffective-they-lead-to-corruption-and-organized-crime> [<https://perma.cc/A24W-8ZA8>].

the invasion of a sovereign country—and it is blatantly (and sadly) clear today how they did not succeed.<sup>22</sup>

Second, sanctions are a double-edged sword, as they hurt both the country that levies them and the country upon which they are imposed. On the one hand, the country imposing the sanctions suffers from restrictions on free trade and dealings with the individuals and entities under sanctions. The individuals and entities face higher costs for compliance-related reasons, including the cost to obtain any substitute contracts or goods with non-sanctioned persons. On the other hand, the country upon which the sanctions are imposed suffers crippling effects on its economy at large by becoming “off limits” for several counterparties. While this was always a risk intrinsic to these types of measures, it became increasingly significant as globalization blossomed, and supply chains stretched all over the world. Current discussions between EU member states regarding the possibility of banning the import of oil and gas from Russia exemplify the conundrum that countries face in these situations.<sup>23</sup>

Third, the reactions of governments, individuals, and entities subject to sanctions are critical to the success or failure of sanctions. From a geopolitical standpoint, sanctions can shift alignments of countries under a “misery loves company” umbrella. For example, Cuba and Venezuela—both under the gun of US sanctions for a long time—grew closer;<sup>24</sup> China became Iran’s most important trading counterparty after UN sanctions were imposed.<sup>25</sup> These types of alignments carry the risk of hardening into opposing blocks over time, based on ideology and not just opportunity. A recent study demonstrates that sanctioned governments have a tendency towards autocracy, a higher number of human rights violations, and limited media freedom.<sup>26</sup>

Within the borders of sanctioned countries, one of the most problematic socio-political consequences is the “Battle of Britain” or “rally-around the flag” effect, where populations attacked by a common enemy stick together to avoid defeat.<sup>27</sup> As a result, breaching

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22. Emma Ashford, *Not-So-Smart Sanctions: The Failure of Western Restrictions against Russia*, 95 FOREIGN AFF. 114, 115 (2016).

23. Center for Research on Globalization, *Direct Line with Vladimir Putin: Q&A at Russia’s President’s Press Conference*, GLOB. RSCH., (Apr. 17, 2015).

24. Ted Piccone, *Opening to Havana*, BROOKINGS REP. (Jan. 17, 2013).

25. Jonathan Marcus, *Analysis: Do Economic Sanctions Work?* BBC NEWS (July 26, 2010), <https://www.bbc.com/news/world-middle-east-10742109> [<https://perma.cc/PD7W-TM4U>].

26. Dursun Peksen & A. Cooper Drury, *Coercive or Corrosive: The Negative Impact of Economic Sanctions on Democracy*, 36(3) INT’L INTERACTIONS 240, 247 (2010).

27. Daniel Verdier & Woo Byungwon, *Why Rewards are Better Than Sanctions*, 23

sanctions can become an act of patriotism or resistance against the enemy, or the government can impose countersanctions to criminalize behavior deemed to comply with foreign sanctions. Furthermore, the pervasiveness of this type of restriction shifts incentives and can “unintentionally contribute to the criminalization of the state, economy, and civil society . . . fostering a symbiosis between political leaders, organized crime and transnational smuggling networks.”<sup>28</sup> This is because sanctions can increase the profitability of illicit commerce in the shadow economy, creating strong regional sanctions-evading networks comprised of clandestine economic actors and sanctioned governments, in turn leading to a higher level of public tolerance for lawbreaking and lower respect for the rule of law.<sup>29</sup>

This “symbiosis” is the compound effect of various forces set in motion by a comprehensive sanctions program imposed on a country. For one, widespread sanctions strengthen the shadow economy. Once operating under the sunlight becomes problematic, full of restrictions and legal consequences, the incentives to resort to a “no-strings attached” informal environment for economic activity grow larger.<sup>30</sup> This is especially true in the case of arms embargo and trade restrictions on natural resources or essential items such as fuel. Sanctions are likely to be evaded through smuggling, because demand for those goods will remain constant or increase while supply will be limited.<sup>31</sup> Sanctions incentivize officials to take bribes in order to turn a blind eye to the growing informal activity, especially when it comes to public contracts.<sup>32</sup> In an economic sense, sanctions encourage rent-seeking opportunities by decreasing competitiveness, as certain economic actors will resort to smuggling and granting domestic contracts to provide rent for themselves.<sup>33</sup>

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(2) ECON. & POL. 220, 221 (2011).

28. Peter Andreas, *Criminalizing Consequences of Sanctions: Embargo Busting and Its Legacy*, 49 (2) INT'L STUD. Q., 335, 337 (2005).

29. *Id.*

30. Benedicte Bull & Antulio Rosales, *Into the Shadows: Sanctions, Renterism and Economic Informalization in Venezuela*, 109 EUR. REV. OF LATIN AM. AND CARIBBEAN STUD. 107, 112 (2020).

31. Bryan Early & Dursun Peksen, *Searching the Shadows: The Impact of Economic Sanctions on Informal Economies*, 72 (4) POL. RESEARCH Q. 821, 823 (2019).

32. Ioana M. Petrescu, *The Effects of Economic Sanctions on the Informal Economy*, 4 MGMT. DYNAMICS IN THE KNOWLEDGE ECON. 623, 624 (2016).

33. David Lektzian & Mark Souva, *An Institutional Theory of Sanctions Onset and Success*, 51 J. CONFLICT RESOL. 848, 851 (2007).

Sanctions that are financial in nature affect incentives in a similar way.<sup>34</sup> Cutting a country off from the international financial system is usually considered to be an effective use of sanctions, as it will prevent its government, senior officials, or companies loyal to the government from conducting business or receiving foreign investment. However, kleptocrats and corrupt officials already have a well-oiled system in place to launder money and shelter their illicit gains that can be adapted to circumvent any sanctions that might be imposed on them.<sup>35</sup> One of the easiest ways to circumvent sanctions is through the creation of shell companies and the utilization of third parties to hold the assets on their behalf. The recent wave of sanctions imposed on Russian oligarchs and Putin's allies illustrated that "sanctions are only as strong as the weakest link,"<sup>36</sup> because there will always be a financial center willing to attract ill-gotten gains. Yesterday it was Panama as exposed in the Panama Papers, today it is Dubai or South Dakota, as evidenced by the Pandora Papers, and tomorrow it will likely be another jurisdiction.

Whenever operating in the shadows becomes profitable, the opportunities for corruption to spread and fester increase. An illustrative example of this relationship is the 1996 UN oil-for-food program in Iraq, implemented after the 1990 Gulf War. The program was intended to provide sanctions-relief to Iraq, at the time subject to comprehensive UN sanctions, as a way to allow the country to sell enough oil to pay for food and other essential goods for its population. Unfortunately, this program became one of the worst scandals in the history of the UN, as Saddam Hussein's regime and those loyal to him unjustly enriched themselves at the expense of the rest of the population, by taking advantage of the limited supply of imported goods and their access to foreign currency.<sup>37</sup> The UN Security Council itself determined that the corruption was a consequence of the economic sanctions program imposed on

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34. Jill Jermano, *Sanctions and Corruption: Assessing Risk to Improve Design*, JUST SECURITY (Dec. 13, 2021), <https://www.justsecurity.org/79500/sanctions-and-corruption-assessing-risk-to-improve-design> [<https://perma.cc/F2PV-WW2P>].

35. Alexander Cooley, John Heathershaw, J.C. Sharman, *The Rise of Kleptocracy: Laundering Cash, Whitewashing Reputations*, 29 (1) J. OF DEMOCRACY 39, 41 (2018).

36. Adam Smith, quoted by David Kirkpatrick, Mona El-Naggar & Michael Forsythe, *How A Playground for the Rich Could Undermine Sanctions on the Oligarchs*, N.Y. TIMES (Mar. 9, 2022), <https://www.nytimes.com/2022/03/09/us/russian-oligarchs-sanctions-dubai.html> [<https://perma.cc/VB8C-SJ55>].

37. Yujin Jeong & Robert J. Weiner, *Conflict and Corruption in International Trade: Who Helped Iraq Circumvent United Nations Sanctions?*, 2 INT'L HANDBOOK ON THE ECON. OF CORRUPTION 376, 400 (2011).

the country, which triggered black market trading, cross border smuggling, bribery, and theft.<sup>38</sup>

One final important focal point of the corrupting effects of sanctions is at the micro-level, inside the doors of companies operating in sanctioned countries. During times when governments turn their attention to larger issues at the macro-economic level, the respect for the rule of law might take a hit—and anti-corruption programs might too.<sup>39</sup> Furthermore, sanctions can naturally jumpstart divestment campaigns from some foreign investors, which can both open the door to investors from countries aligned with the sanctioned governments as well as reduce internal corporate governance and compliance controls for those companies.<sup>40</sup>

## B. Targeted Sanctions

The available evidence on the link between comprehensive sanctions and corruption outlines a rather bleak picture. The humanitarian and political failures of the oil-for-food program, and the UN sanctions on Iraq as a whole, prompted a rethinking of the sanctions' architecture.<sup>41</sup> The result was a shift towards the imposition of targeted or "smart" sanctions, against specific individuals and entities with the objective of minimizing collateral damage to the rest of the population and the economy of a country. When dealing with non-democratic regimes, it has been noted that: "[t]o make nondemocratic leaders yield, states must be able to impose narrow sanctions affecting the core groups supporting the regime."<sup>42</sup> Issues with the use of targeted sanctions mainly center around two factors: the effectiveness of such programs and their enforcement implications.

As to a targeted sanction's effectiveness, a thorough study by the Targeted Sanctions Consortium (TSC) concluded that UN targeted sanctions regimes were effective in achieving at least one of the sanction's stated purposes only 22 percent of the time. The TSC study also concluded that targeted sanctions can often lead to an increase in

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38. Tahereh Kamali et al., *The Impact of Economic Sanctions on Corruption in Target Countries: A Cross Country Study*, 45 WORLD SCI. NEWS 276, 278 (2016); see also U.N. SEC. COUNCIL, SPECIAL RESEARCH REPORT: UN SANCTIONS 6, 13 (Nov. 25, 2013), [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/special_research_report_sanctions_2013.pdf)

CF6E4FF96FF9%7D/special\_research\_report\_sanctions\_2013.pdf [https://perma.cc/JV86-CN85].

39. Daniel W. Drezner, *Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice*, 13 INT'L STUD. REV. 96, 98 (2011).

40. Cassin, *supra* note 2.

41. Ahn, *supra* note 1, at 128.

42. Lektzian & Souva, *supra* note 33, at 849.

corruption.<sup>43</sup> The main issue with targeted sanctions appears to be that they are less successful at “generating policy concessions than comprehensive embargoes because they do not impose significant costs on the target economy.”<sup>44</sup> As the imposition of higher costs on sanctioned states is a condition for a program’s success, targeted sanctions seem to—quite literally—miss the target.<sup>45</sup>

Anti-corruption sanctions programs can indeed be a powerful instrument to affect “kleptocrats’ economic calculus, dismantle their networks of illicit money, stigmatize their activities and complement existing anti-money laundering legislation.”<sup>46</sup> Magnitsky-style sanctions, which attempt to curb corruption by sanctioning specific corrupt individuals, appear to be a more effective anti-corruption method in light of their narrow scope.

However, these types of sanctions present several socio-political challenges. In societies where individuals are subject to targeted sanctions, there can be unforeseen “tightening of the ranks” effects: to keep the support of the sanctioned persons, who are usually powerful figures in society, governments can try to remunerate them in various forms. A regime under sanctions may therefore reinforce its relationship with “clandestine [ . . . ] economic actors,” which can persist even after sanctions are lifted.<sup>47</sup> For example, following the 2014 round of targeted sanctions imposed on Russian individuals following Russia’s annexation of Crimea, Putin rewarded targeted persons through “privileged access to state contracts or other perks.”<sup>48</sup> Additionally, as mentioned above in the context of comprehensive sanctions, the targets of sanctions might already be out of reach, having previously sheltered their assets from any “hostile” foreign government’s actions through secret accounts, offshore shell entities, and other opaque instruments.<sup>49</sup>

Targeted sanctions create a risk of domestic confrontations within the population by fostering an “us versus them” dynamic between targeted individuals and the rest of society.<sup>50</sup> Additionally, by dividing

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43. THOMAS BIERSTEKER ET AL., THE EFFECTIVENESS OF UNITED NATIONS TARGETED SANCTIONS: FINDINGS FROM THE TARGETED SANCTIONS CONSORTIUM 17, 21 (Nov. 2013).

44. Daniel W. Drezner, *Targeted Sanctions in a World of Global Finance*, 41 INT’L INTERACTIONS 755, 757 (2015).

45. Lilly & Delaram, *supra* note 7, at 167.

46. Tsertsvadze, *supra* note 15, at 6.

47. Andreas, *supra* note 28, at 341.

48. Jermamo, *supra* note 34.

49. Fabian Teichmann et al., *Corruption and the Circumvention of Financial Sanctions via the Extractive Industries in Dubai*, 7 EXTRACTIVE INDUS. & SOC’Y 1022, 1022 (2020).

50. Cristiane Lucena Carneiro & Laerte Apolinário, *Targeted Versus Conventional*

domestic groups around support or criticism for the government (which is itself the target of sanctions or supports the targets), sanctions can have a destabilizing effect.<sup>51</sup> Lessons learned from the past include the example of sanctions imposed on North Korea, which led to a strong anti-West sentiment in the country; or the embargo established on Cuba, which had similar effects. Governments can deflect blame for poor socio-economic conditions by painting sanctioning states as the oppressors. While that is sometimes desirable to the extent that it aligns with the objectives of the sanctions (such as regime change), it can also lead to increased repression by the governments and foster autocratic responses.

Turning to enforcement, targeted sanctions (especially anti-corruption ones) can pose problems grounded in human rights standards of due process and the ability to recover stolen assets.<sup>52</sup> Measures aimed at freezing and seizing assets infringe upon individual property rights and travel bans can limit personal freedom of movement. Thus, targeted sanctions should be based on credible and convincing evidence.<sup>53</sup> Being designated on a sanctions list should therefore be accompanied by a clear statement of the allegations and the rationale for the listing, and individuals should be entitled to their “day in court,” where they may exercise their right to judicial review and have the opportunity to contest their designation.<sup>54</sup> This is because there are “normative and institutional implications” requiring the respect of fundamental rule of law and due process principles embedded in criminal laws and procedures, once sanctions switch from a purely political tool to criminal law instrument.<sup>55</sup>

Courts in many countries have emphasized the importance of applicants’ right of defense (in particular the right to be heard) and effective judicial protection. Especially after 9/11 and the global war

*Economic Sanctions: What is at Stake for Human Rights?*, 42 INT’L. INTERACTIONS 565, 582 (2016)

51. Lucena Carneiro & Apolinário, *supra* note 50 at 571.

52. Ruys, *supra* note 11, at 507.

53. Anton Moiseienko, *Targeted Sanctions and Corruption – Legal Obstacles to a Magnitsky Act for the EU*, GLOBAL ANTICORRUPTION BLOG (Mar. 3, 2015), <https://globalanticorruptionblog.com/2015/03/03/guest-post-targeted-sanctions-and-corruption-legal-obstacles-to-a-magnitsky-act-for-the-eu> [<https://perma.cc/SSM6-JYN7>].

54. Emmanuel Breen, *Combattre la Corruption par les Sanctions Économiques Internationales Est une Fausse Bonne Idée*, LE MONDE (July 18, 2021), [https://www.lemonde.fr/idees/article/2021/07/18/combattre-la-corruption-par-les-sanctions-economiques-internationales-est-une-fausse-bonne-idee\\_6088611\\_3232.html](https://www.lemonde.fr/idees/article/2021/07/18/combattre-la-corruption-par-les-sanctions-economiques-internationales-est-une-fausse-bonne-idee_6088611_3232.html) [<https://perma.cc/3NVP-8NV5>].

55. Marcos Tourinho, *Towards a World Police? The Implications of Individual UN Targeted Sanctions*, 6 INT’L AFFS. 1399, 1407 (2015).

against terrorism, in the wake of the *Kadi I* case decided by the European Court of Justice (ECJ), courts have reaffirmed that targets should be provided with the evidence relied upon to justify the listing, and permitted to make representations related to it.<sup>56</sup> The string of cases following *Kadi I* have developed a strong jurisprudence in European courts on the imposition of “smart” sanctions, centered around sanctioning authorities’ obligations and designated persons’ rights in connection with sanctions listings. The obligations for the authorities include a detailed statement delineating the reasons for the listing and the requirement to provide supporting evidence<sup>57</sup> right to be heard, the right to an adversarial proceeding, and the right to judicial review.<sup>58,59,60</sup>

Furthermore, even when targeted sanctions pass judicial muster, another hurdle to their effectiveness lies with the seizure of assets. In general, authorities in charge of the civil or criminal enforcement of sanctions obtain few convictions. When they do, it is sometimes unclear how to proceed from assets “freezing” and seizure to confiscation, forfeiture, or liquidation.<sup>61</sup> Technically speaking, the property title of frozen assets stays with their owner, as targeted sanctions do not automatically carry the right to expropriation or seizure by the government with them. A recent example highlights the challenges in this area: the American Civil Liberties Union (ACLU) halted the progression of a legislative bill that would have allowed the U.S. President to sell off the frozen assets of Russian oligarchs seized by U.S. authorities in April 2022. The ACLU claimed that such a bill would have violated due process protections afforded by the Constitution, as targets did not have the opportunity to challenge the U.S. government’s action in a court of law.<sup>62</sup>

56. Joined Cases C-402/05 P & C-415/05 P, *Kadi & Al Barakaat Int’l Found. v. Council & Comm’n*, ECLI:EU:C:2008:461, ¶¶ 332–53 (Sept. 3, 2008).

57. Joined Cases C-584/10 P, C-593/10 P & C-595/10 P, *Comm’n v. Yassin Abdullah Kadi*, ECLI:EU:C:2013:518, ¶ 119 (July 18, 2013).

58. Luca Pantaleo, *Sanctions Cases in European Courts*, in *ECONOMIC SANCTIONS AND INTERNATIONAL LAW* 171, 176 (Matthew Happold & Paul Eden, eds., 1st ed. 2016).

59. Eur. Parl., Directorate-Gen. for External Pol’y, *Targeted Sanctions Against Individuals on Grounds of Grave Human Rights Violations – Impact, Trends and Prospects at EU Level*, EP/EXPO/B/COMMITTEE/FWC/2013–08/Lot08/17 (Apr. 26, 2018).

60. Jacopo Barigazzi, *The EU’s Lurking Russia Sanctions Challenge: Court Battles and Enforcement*, POLITICO (Mar. 21, 2022), <https://www.politico.eu/article/eu-russia-sanctions-challenge-court-battles-enforcement/> [https://perma.cc/8DW8-RMKC].

61. Emma Haslett, “There is no Enforcement”: The Awkward Truth About UK’s Sanctions on Russia, NEW STATESMAN (Feb. 23, 2022), <https://www.newstatesman.com/business/2022/02/there-is-no-enforcement-the-awkward-truth-about-the-uks-sanctions-on-russia> [https://perma.cc/DN7Y-46JK].

62. Jeff Stein, *ACLU Helped Defeat Plan to Seize Russian Oligarchs’ Funds for*

Since the aforementioned U.S. bill had the ultimate objective of using the proceeds from the sale of frozen assets to help Ukraine, it raises additional questions related to the effectiveness of targeted sanctions, namely the duration of such designations, the ultimate destination of assets, and the recovery of stolen ones.<sup>63</sup> How long will the targeted individuals be on these blacklists –and is there any potential for redemption or “once corrupt always corrupt?” And if that is the case, where do the money, mansions, yachts, paintings, and cars of those individuals go?

### III. THE ROAD AHEAD

The recent round of economic sanctions imposed on Russia in connection with the invasion of Ukraine is undoubtedly unprecedented. For starters, the Russian economy is double the size of any other economy that has been sanctioned on this scale before. In addition, while stopping short of comprehensive sanctions, there are new designations of entities and individuals daily, as well as numerous import and export restrictions on a wide variety of goods.<sup>64</sup> The sanctions programs against Russia are not generally implemented under the umbrella of anti-corruption “Magnitsky-style” sanctions, even though most measures augment existing restrictions under previous programs (such as the sanctions imposed after the annexation of Crimea or earlier designations under the Global Magnitsky Act).<sup>65</sup>

The newest measures are largely targeted sanctions aimed at forcing Russia to ultimately reverse course and withdraw from Ukraine by imposing severe consequences on the Russian economy and effectively hurting Russia’s ability to continue the war. Further, the individual sanctions generally target people responsible for supporting Putin’s actions.<sup>66</sup> To achieve these objectives, sanctions must be able to reach the people and

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*Ukraine*, WASH. POST (Apr. 8, 2022), <https://www.washingtonpost.com/us-policy/2022/04/08/aclu-ukraine-russia-oligarchs> [<https://perma.cc/6GZV-ABXP>].

63. RADHA IVORY, CORRUPTION, ASSET RECOVERY, AND THE PROTECTION OF PROPERTY IN PUBLIC INTERNATIONAL LAW, 99 (1st ed. 2014).

64. Emily Kilcrease, Jason Barlett and Mason Wong, *Sanctions by the Numbers: Economic Measures Against Russia Following Its 2022 Invasion of Ukraine*, CTR. FOR A NEW AM. SEC. (June 16, 2022), <https://www.cnas.org/publications/reports/sanctions-by-the-numbers-economic-measures-against-russia-following-its-2021-invasion-of-ukraine> [<https://perma.cc/8J9W-CEFP>].

65. See, e.g., *Timeline – EU Restrictive Measures Against Russia Over Ukraine*, EUR. COUNCIL (Oct. 20, 2022), <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/history-restrictive-measures-against-russia-over-ukraine> [<https://perma.cc/5CR2-WK4Q>].

66. See *EU Sanctions Against Russia Explained*, EUR. COUNCIL (Apr. 29, 2022), <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/sanctions-against-russia-explained/> [<https://perma.cc/GDC2-LGZJ>].

activities they are intended to target; however, kleptocrats do not have a strong track record of sitting and waiting to be caught before taking action to protect their ill-gotten gains. As the web of restrictions imposed gets more complex, the sanctions present many of the risks summarized above in terms of their effectiveness, especially when it comes to anti-corruption.

First, there is a high risk of sanctions' circumvention. The U.S. and its allies have strived so far to impose sanctions in a coordinated fashion, which is crucial for the various programs to succeed. Without the harmonization of national sanctions programs, there is a heightened risk of sanctions evasion. While the synchronization of political objectives between countries is certainly more complex than administrative coordination between institutions, an uncoordinated response will leave exploitable loopholes. Therefore, the first recommendation for any newly enacted sanctions program is to strive for consistency, transparency, and harmonization of designations. A recent example underscores the importance of this issue: Dan Gertler, a corrupt international businessman operating in the Democratic Republic of Congo, was sanctioned by the U.S. in 2017 under the Magnitsky Act. Nonetheless, even if he was cut off from the U.S. financial system and subject to a travel ban to the U.S., he was not sanctioned by the E.U. at the time.<sup>67</sup> As a result, evidence suggests that he used correspondent banks in the E.U. and transacted in Euros through a complex network of shell companies and proxies, successfully circumventing U.S. sanctions.<sup>68</sup> A potential alternative solution to this problem is the imposition of secondary sanctions, which has been used by the U.S. in previous programs (e.g., the U.S. program against Iran) to impose penalties on parties under primary sanctions but outside of U.S. jurisdiction. However, because extraterritorial application of laws can trigger resentments from allies, it should be weighted appropriately.<sup>69</sup>

Secondly, regarding cross-designation, there is the larger issue of beneficial ownership laws. Corruption, fraud, money laundering and tax evasion are just some of the activities that are aided by opacity: operating in the shadows is easy when it can be done anonymously.<sup>70</sup> With

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67. Margot Mollat, *Why the EU's Sanctions Regime Must Tackle Corruption*, GLOB. WITNESS BLOG (July 21, 2020), <https://www.globalwitness.org/en/blog/why-the-eu-sanctions-regime-must-tackle-corruption> [<https://perma.cc/V6JA-DA4P>].

68. Global Witness and PPLAAF, *Undermining Sanctions*, GLOBAL WITNESS (July 2, 2020), <https://int.nyt.com/data/documenttools/undermining-sanctions-july-2020/1afef64f015ed1f1/full.pdf> [<https://perma.cc/NF5X-9ANE>].

69. *Can Sanctions Really Stop Putin?*, N.Y. TIMES (Apr. 22, 2022), <https://www.nytimes.com/2022/04/22/opinion/sanctions-russia-ukraine-war.html> [<https://perma.cc/93VS-W9T2>].

70. Alex Cobham, *UK's Vulnerability to Corruption Uncovered Amid Slow Sanctions*

respect to sanctions, “deficient beneficial ownership laws are a threat to the maintenance of all [ . . . ] sanctions regimes.”<sup>71</sup> Before the latest round of sanctions hit Russia in 2022 and in the wake of the sanctions imposed in 2014 after the annexation of Crimea, oligarchs and cronies started shifting their assets to more opaque jurisdictions with weak beneficial ownership controls.<sup>72</sup> Some countries in this “dark corridor” are Switzerland, the U.S. and the U.K., which still (fully or partially) allow anonymous ownership of companies.<sup>73</sup> While promising steps have been taken in this direction by several countries, including the U.K. and the U.S., the need to expedite the creation of beneficial ownership registers is more urgent than ever.<sup>74</sup>

Third, from an enforcement perspective, the path from freezing assets to returning them to victims and deprived citizens must become more predictable. Sanctions are reactive in nature, but if governments want sanctions to achieve their intended objectives beyond “sending a strong signal,” then they need to follow assets through to their ultimate destination.<sup>75</sup> As briefly mentioned in previous sections, freezing and seizing assets is the “easy part.” The next step, forfeiture with the objective of permanent confiscation, is more cumbersome.<sup>76</sup> The transfer of ownership of frozen assets only happens after forfeiture, when a judge determines that the assets were acquired as proceeds of a crime. Once their ownership is transferred, they can be liquidated or sold off, but, unfortunately,

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*Response*, GUARDIAN (Mar. 5, 2022), <https://www.theguardian.com/commentisfree/2022/mar/05/uks-vulnerability-to-corruption-uncovered-amid-slow-sanctions-response> [<https://perma.cc/AA5S-KG6S>].

71. Vineet Chandra, *Ending Corporate Anonymity: Beneficial Ownership, Sanctions Evasion, and What the United Nations Should Do About It*, 42 MICH. J. INT'L L. 177, 197 (2020).

72. Scilla Alecci, *Russian Bankers Shuffled Wealth Offshore Long Before Latest Sanctions*, PANDORA PAPERS SHOW, EL PAÍS (Apr. 11, 2022), <https://english.elpais.com/international/2022-04-11/russian-bankers-shuffled-wealth-offshore-long-before-latest-sanctions-pandora-papers-show.html> [<https://perma.cc/VY7W-M2XC>].

73. Ilya Shumanov, *The Day Russian Money Didn't Freeze – Despite International Sanctions*, CORRUPTION WATCH (Mar. 7, 2022), <https://www.corruptionwatch.org.za/the-day-russian-money-didnt-freeze-despite-international-sanctions> [<https://perma.cc/CP5F-UYPE>].

74. Jodi Vittori, *Biden Must Go Beyond Sanctions to Rid the US Financial System of Dirty Money*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Mar. 8, 2022), <https://carnegieendowment.org/2022/03/08/biden-must-go-beyond-sanctions-to-rid-u.s.-financial-system-of-dirty-money-pub-86589> [<https://perma.cc/27U5-QN6K>].

75. Tom Keatinge, *Form over Substance? UK Anti-Corruption Sanctions Are No Substitute for Action*, RUSI (May 12, 2021), <https://rusi.org/explore-our-research/publications/commentary/form-over-substance-uk-anti-corruption-sanctions-are-no-substitute-action> [<https://perma.cc/4UYL-J8DY>].

76. Matthew Goldstein, *Seizing an Oligarch's Assets Is One Thing. Giving Them to Ukraine is Another*, N.Y. TIMES (May 8, 2022), <https://www.nytimes.com/2022/05/08/business/russia-oligarch-yacht-assets.html> [<https://perma.cc/ZA8Q-S8CS>].

the process is lengthy and full of hurdles, including the possibility that the initial owner might want to contest the allegations in court.

A promising development in this space is the recent announcement by the White House that a new procedure will enable an expedited process for these actions while ensuring the respect of due process for the designated persons.<sup>77</sup> Thus, countries imposing sanctions should consider revising their existing procedures, as the predictability of sanctions (especially in terms of their enforcement) should be valued over their severity in order to enhance their deterrent effect. Since the times of Cesare Beccaria, it has been widely accepted that, for a system of criminal justice to work, “law, enforcement and punishment need to be certain, predictable, applied consistently, and proportional to the harm caused.”<sup>78</sup> Thus, strengthening the capacity of authorities to confiscate assets can dramatically enhance the success of sanctions. By reforming relevant laws, leveraging existing tools devised to combat money laundering and other crimes, and developing stronger mutual assistance mechanisms in criminal matters between countries, the recovery of stolen assets will become more easily achievable and serve its ultimate purpose to benefit the victims of corruption and related crimes.<sup>79</sup>

Finally, from a policy perspective, there is an argument to be made on the need to account for corruption when designing sanctions programs. The U.S. recently published the ‘U.S. Strategy on Countering Corruption’, which has been defined as the “long telegram of the 21<sup>st</sup> century.”<sup>80</sup> One notable absence from the document is the “benefit of accounting for corruption when planning for sanctions”<sup>81</sup>: such a focus would help better manage the unintended consequences of sanctions in terms of corruption risks, as well as enhance sanctions’ effectiveness.

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77. Press Call, White House, Background Press Call by Senior Administration Officials on the Ukraine Supplemental Budget Request (Apr. 28, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/28/background-press-call-by-senior-administration-officials-on-the-ukraine-supplemental-budget-request/> [<https://perma.cc/5DXK-7KMR>].

78. HONGMING CHENG, FINANCIAL CRIME IN CHINA: DEVELOPMENTS, SANCTIONS, AND THE SYSTEMIC SPREAD OF CORRUPTION 55 (2016).

79. See Kevin M. Stephenson et al., *Barriers to Asset Recovery: An Analysis to the Key Barriers and Recommendations for Action*, WORLD BANK 7 (2011).

80. The “Long Telegram” was sent to the U.S. State Department by George Kennan (a U.S. Diplomat in Moscow) in 1946. The 8,000-word document describing Kennan’s views on the Soviet Union and U.S. policy towards it, is widely regarded as a bedrock for the U.S. policy of containment during the Cold War. Referred to by Paul Massaro & Benjamin L. Schmitt, *Biden Doesn’t Know What He Thinks About Sanctions*, FOREIGN POL’Y (Dec. 29, 2021), <https://foreignpolicy.com/2021/12/29/biden-sanctions-putin-russia-corruption-strategy> [<https://perma.cc/42E8-KNRQ>].

81. Jermano, *supra* note 34.

## CONCLUSION

The 1990s were defined the “sanctions decade” because of the increased use of sanctions as a foreign policy tool. In light of recent events, it is safe to say that the sanctions decade has now stretched over more than thirty years.<sup>82</sup>

Only time will tell whether sanctions will achieve their stated objectives, and how much collateral damage they might inflict on the targeted countries' population at-large. In the context of the war in Ukraine, the outcome of international sanctions on Iran should serve as a cautionary tale that perhaps “stubborn autocracies cannot be disciplined with economic sanctions.”<sup>83</sup> Some scholars are even warning that the latest wave of sanctions imposed on Russia is counterproductive to the point that they are strengthening Putin's grip on power by “claiming Russia is heroically withstanding economic hardships caused by the West.”<sup>84</sup>

Even if it is unquestionably desirable that the measures against Russia succeed, the moral and economic price of sanctions can never be underestimated.<sup>85</sup> As mutually destructive measures, sanctions are inflicting high costs on both the countries levying sanctions and on the countries upon which such restrictions are imposed. The success of sanctions mostly depends on their effective enforcement, which can only be achieved with better defined processes and procedures. The real Achille's heel of economic sanctions, namely the loopholes inherent to their extra-territorial nature that triggers circumvention, should be addressed with a higher level of harmonization between countries. From an anti-corruption standpoint, the lessons learned from other comprehensive and targeted sanctions programs shed light on the heightened corruption risk that can manifest in similar circumstances. Therefore, to minimize this, restrictions must be accompanied by legislative reforms (focusing on beneficial ownership and enforcement procedures), political coordination and strategic anti-corruption goal setting.

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82. See Jane Boulden & Andrea Charron, *Evaluating UN Sanctions*, 65 INT'L J. 1 (2009).

83. Kourosh Ziabari, *Sanctioning Russia Won't Stop Putin. Just Look at Iran*, FOREIGN POL'Y (Apr. 21, 2022), <https://foreignpolicy.com/2022/04/21/russia-sanctions-ukraine-war-iran> [<https://perma.cc/PVU9-225LJ>].

84. Sergey Alexeev, *Western Sanctions are Only Strengthening Putin's Grip on Power*, LSE BLOGS (May 11, 2022), <https://blogs.lse.ac.uk/europpblog/2022/05/11/western-sanctions-are-only-strengthening-putins-grip-on-power> [<https://perma.cc/E7AX-78M4>].

85. Adam Smith, *A High Price to Pay: The Costs of the U.S. Economic Sanctions Policy and the Need for Process Oriented Reform*, 4 UCLA J. INT'L L. & FOREIGN AFF. 325, 327 (1999).