

## Introduction

This is the account of an extraordinary year of sanctions and international trade measures imposed against Russia after its invasion of Ukraine in 2022. That year saw the use of economic warfare on a global scale. The coordination of national action was a remarkable feature of the 2022 sanctions, demonstrating the commitment of a large portion of the international community to the principle of territorial integrity.

The 2022 sanctions were directed against specific parties and sectors and thus considered to be targeted in nature. More broad-based comprehensive sanctions had been deployed in other areas of the world with staggering effect and increasing frequency in recent years. So too had targeted sanctions been increasingly implemented in a variety of geographic areas and for a plethora of reasons. What was unique about 2022, however, was the extent to which the sanctions against Russia were coordinated among so many nations. Coordination of legal provisions between countries was not always so uniform with respect to other sanctions programs, especially those imposed by the United States. For example, sanctions on Cuba were US-imposed and broadly criticized internationally, while sanctions placed on Iran by the United States differed in significant ways from those imposed by other authorities. Also unusual was the fact that the 2022 sanctions were placed on so many targeted individuals and entities in Russia, a power more important to the world trading and financial system than other sanctioned nations like North Korea. Though they would technically be considered as targeted measures, the 2022 sanctions were enacted on such a scale as to bear similarities to the comprehensive sanctions regimes directed at other jurisdictions.

But the imposition of sanctions against Russia in 2022 was by no means universal. Large portions of the world refrained from taking part in the economic response against Russia, or even from condemning the Russian invasion of Ukraine. The 2022 Russian invasion began to divide the world into those nations who economically divorced themselves from Russia in response, and those who did not.

Of course, a portion of the sanctioning nations' response to Russia consisted in providing direct military assistance to Ukraine. Those countries also provided humanitarian aid around the world to Ukrainians displaced by the invasion, as well as to the inhabitants of other nations affected by the rise in food and energy prices that year. These issues of humanitarian and military aid are largely outside the scope of this book and are not described in detail herein. But they were as central to the response against Russia as were the economic sanctions and international trade restrictions that are the focus of this book.

This book attempts to relate the economic and legal history of a short time period characterized by a remarkable number of newly enacted sanctions. Not all of the sanctions provisions enacted by every sanctioning jurisdiction are described within this book. This volume instead tries to convey the content and scope of the most significant and most commonly imposed measures. It likewise attempts to give some sense of the breadth of the restrictions and the sheer number of nations that became part of the sanctioning effort. Some of the complexities of the sanctions measures and of other areas of international law have likewise been simplified or omitted.

The year 2022 brought the Russian invasion of Ukraine, an extraordinary challenge to the international community and the rule of law. This is the story of how the sanctioning nations responded to that challenge with economic sanctions, export controls, and import restrictions. It is also, quite possibly, the story of how that year would begin to change the global commercial landscape forever.

## 1

## Before the Invasion

OFAC . . . administers and enforces economic and trade sanctions . . . against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

—US Office of Foreign Assets Control, Department of the Treasury

The sanctions imposed against Russia beginning in late winter 2022 were sweeping, historic, and rolled out with stunning rapidity. Their effects would soon ripple across the world in ways both big and small. American consumers saw gas prices at the pump climb above \$4 or even \$5 per gallon.<sup>1</sup> Moscow commuters crowded behind subway turnstiles, searching for coins when their Apple and Google Pay access was cut off.<sup>2</sup> Some ships shifted their routes; others stopped loading and unloading in Russia entirely.<sup>3</sup> Monuments in Europe dimmed their lights to conserve energy as consumers worried about energy prices and the coming winter.<sup>4</sup> Meanwhile, Russian troops fought on, shelling Mariupol into near-entire destruction and committing atrocities in Bucha and elsewhere.<sup>5</sup>

The 2022 sanctions were notable for their extraordinarily coordinated nature and the extent to which they targeted Russia, a country deeply intertwined with the global economy.<sup>6</sup> Nations, though, have long used sanctions as economic tools to attempt to achieve foreign policy goals and other ends. The sanctions against Russia were largely enabled by existing legal frameworks that had earlier been developed and expanded, especially during the last century and even more markedly during the past few decades. In particular, the United States, the European Union, and other jurisdictions had already turned to sanctions before 2022 to respond to Russia's invasion and annexation of Crimea, its cyberattacks and human rights violations, and other harmful acts against other nations and its own citizens. While the 2022 sanctions against Russia were historic in the breadth of their restrictions against

a major world economy, they built upon a long history of sanctions use and a recent ratcheting up of sanctions against Russia itself.

#### HISTORY AND DEVELOPMENT OF LEGAL FRAMEWORK

Economic sanctions and international trade measures have long been used by the United States and other countries to target hostile foreign governments and individuals, and for other purposes such as advancing foreign policy interests. Sanctions restrict the ability of regulated parties, including both entities and individuals, to carry out transactions with sanctioned parties, countries, or regions. They most often govern the actions of persons with the nationality of, or located within, the enacting jurisdiction, but may also in certain instances require conformity in other areas and by additional persons; in these cases, sanctions are applied extraterritorially. The severity of sanctions ranges widely. Sanctions may, for instance, involve a total asset freeze; they might restrict a certain sector of the economy; or they might place restrictions on select financial activities such as dealing in debt.<sup>7</sup> These are only a few examples of the myriad ways in which sanctions may be crafted to reach their attempted ends.

Originally developed and deployed during times of war, the use of sanctions expanded greatly during the latter half of the twentieth century, especially as used by the United States and increasingly by the European Union.<sup>8</sup> Sanctioning entities are often termed “senders.” Nations against whom sanctions are imposed are “targets.”<sup>9</sup> Sanctions may be imposed multilaterally (by way of the United Nations, for example) or by individual jurisdictions.<sup>10</sup> Unilateral sanctions are often termed “restrictive measures,” particularly within the European Union, because of the concept that the legal term “sanctions” necessarily refers to sanctions imposed multilaterally.<sup>11</sup> Unilateral sanctions are also variously termed “autonomous sanctions,” or “non-UN” sanctions.<sup>12</sup> This book uses the general term “sanctions” to refer to both unilateral economic sanctions as well as multilateral ones.

Trade restrictions are often used alongside sanctions to achieve similar foreign policy ends. These may appear in the form of restrictions on either exports or imports. Export controls limit not only the shipment of physical items to certain destinations, but also affect the transfer of software and intangible controlled information, often even after it has left the jurisdiction imposing the relevant export controls.<sup>13</sup> A physical item exported from the United States to another country generally remains subject to US export controls even upon subsequent re-export to a third country.<sup>14</sup> Often used to control how high-tech items travel around the world, export controls may also be used to deny a party the ability to obtain US-origin items.<sup>15</sup> Bans on certain imported products, too, may be used in response to hostile nations, as can raising tariffs (taxes on imported items) short of an outright ban, subject to the rules of the World Trade Organization (WTO) pertaining to WTO Members.<sup>16</sup>

In the United States, sanctions are administered by the Office of Foreign Assets Control (OFAC) in the US Department of the Treasury.<sup>17</sup> Export controls for the most common types of items are administered by the Bureau of Industry and Security (BIS) within the US Department of Commerce.<sup>18</sup> The US Department of State controls strictly military items, while certain other agencies, such as the Department of Energy, have jurisdiction over some other types of exports, such as nuclear technology.<sup>19</sup> Legislative authorities for sanctions in the United States include various laws such as the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA).<sup>20</sup> Export control authority in the United States is currently provided by the Export Control Reform Act of 2018, among other authorities.<sup>21</sup>

The Office of Foreign Assets Control has existed since 1950, as the successor to the Office of Foreign Funds Control established in 1940.<sup>22</sup> Economic sanctions were used early on in American history. The Treasury Department imposed and administered sanctions during the War of 1812 and the Civil War.<sup>23</sup> The Allied powers, which would come to include the United States, carried out a blockade of Germany during World War I. Used during the interwar period<sup>24</sup> and expanded during World War II, economic sanctions were also deployed with increasing frequency during the latter half of the twentieth century and into the present day, particularly by the United States.<sup>25</sup> Likewise, the United States instituted export controls during World War I, which took on broader scope during World War II and the Cold War years.<sup>26</sup>

Other nations and jurisdictions administer their own sanctions and export controls, including the European Union, the United Kingdom, Canada, Japan, Australia, and others. The United Kingdom's Office of Financial Sanctions Implementation (OFSI) is currently the parallel entity to the United States' OFAC. It was established within HM Treasury in 2016.<sup>27</sup> In 2017, OFSI was granted the ability to assess monetary penalties for violations of financial sanctions.<sup>28</sup> Sanctions in the UK are issued under the authority of the Sanctions and Anti-Money Laundering Act of 2018, which was established in preparation for Brexit, the exit of the United Kingdom from the European Union.<sup>29</sup> Canada imposes its sanctions under the United Nations Act, the Special Economic Measures Act, and the Justice for Victims of Corrupt Foreign Officials Act.<sup>30</sup> Australia imposes both UN sanctions as well as its own autonomous sanctions, the latter under the Autonomous Sanctions Act 2011 and Autonomous Sanctions Regulations 2011.<sup>31</sup> Other nations impose sanctions under similar legislative authorities.

The European Union has imposed restrictive measures since 1994, after the Maastricht Treaty establishing the European Union came into effect in November 1993.<sup>32</sup> The Council of the European Union is responsible for making decisions as to the imposition of sanctions upon the basis of recommendations made by the High Representative of the Union for Foreign Affairs and Security Policy, to

promote the objectives of the EU Common Foreign and Security Policy (CFSP). Arms embargoes and travel bans require only a Council Decision to bind Member States. Restrictive measures that are economic in nature require implementation by way of Council Regulations made by the European Commission along with the High Representative.<sup>33</sup> Some Member States of the European Union, such as the Netherlands, do not impose their own sanctions beyond those mandated by the European Union and the United Nations.<sup>34</sup> Others, such as France, impose their own autonomous sanctions at the national level as well.<sup>35</sup> France, for instance, administers certain anti-terrorism sanctions domestically.<sup>36</sup>

The UN Security Council passes binding resolutions regarding sanctions, which must then be implemented by UN Member States at the national level.<sup>37</sup> The UN Security Council consists of five permanent members (China, France, Russia, the United Kingdom, and the United States), as well as ten nonpermanent members serving for two-year terms.<sup>38</sup> Since 1966, the United Nations has imposed sanctions for a variety of reasons, such as apartheid in South Africa, the white supremacist government in Southern Rhodesia, and the testing of nuclear weapons by North Korea.<sup>39</sup>

Export controls, like sanctions, may also be imposed unilaterally or by way of multilateral agreement. The Wassenaar Arrangement is one such multilateral regime. It coordinates a large number of export controls relevant to many “dual-use” items.<sup>40</sup> These are items that can be used for both military and civilian use.<sup>41</sup> In practice, dual-use items include many common products, such as consumer laptops or commercial GPS units.<sup>42</sup> Other multilateral export control arrangements include the Australia Group (for chemical and biological weapons), and the Missile Technology Control Regime, among others.<sup>43</sup> These multilateral agreements are then put into effect through domestic legislation in their member countries.<sup>44</sup>

The United States implements economic sanctions, including unilateral measures, particularly frequently.<sup>45</sup> It maintains a variety of sanctions programs designed to address a broad range of threats around the world, from transnational criminal organizations to the rough diamond trade.<sup>46</sup> However, neither the pre-2022 sanctions against Russia nor many of its other programs are as all-encompassing as its comprehensive sanctions in place against Syria, Iran, Cuba, and North Korea, with the exception of the comprehensive sanctions put in place after Russia’s invasion of Crimea.<sup>47</sup> In some of these cases, the US sanctions are paralleled by the sanctions measures of other jurisdictions; but in others, the US sanctions are more far-reaching and aggressive than those imposed against the same target by other jurisdictions.

#### COMPREHENSIVE SANCTIONS

The United States, along with other jurisdictions in certain instances, administers several sanctions programs that are sweeping in the scope of their restrictions. These sanctions programs are often among the most controversial sanctions measures

implemented by the United States, due to both the breadth of their restrictions and the extent to which US law often operates extraterritorially to penalize conduct by non-US actors outside the United States. These programs are termed “comprehensive” sanctions, as distinguished from the “targeted” or “smart” sanctions aimed at specific individuals, entities, or sectors rather than entire countries or regions.<sup>48</sup>

Iran has been subject to a variety of US sanctions measures since 1979, when American diplomats were taken hostage in Tehran.<sup>49</sup> The current US sanctions broadly prohibit financial transactions by US persons or from the United States with Iran. The Iran and Libya Sanctions Act of 1996 introduced secondary sanctions, which were designed to retaliate against Iran’s nuclear program by punishing non-US parties who engaged in prohibited transactions with Iran.<sup>50</sup> As described further within Chapter 4 on extraterritoriality, these secondary sanctions have been a particular point of tension between the United States and the Member States of the European Union, which historically has not implemented sanctions secondarily.<sup>51</sup>

The European Union implemented its own broad restrictive measures against Iran only later, after the existence of Iran’s nuclear program became known early in the new century.<sup>52</sup> The European Union, along with the United States, subsequently enacted a series of nuclear-related sanctions and restrictive measures. These included prohibitions on the import of certain types of energy supplies including crude oil and natural gas, along with an asset freeze on the Central Bank of Iran and myriad other provisions.<sup>53</sup> The UN Security Council also passed its own sanctions against Iran, having passed three rounds of resolutions in 2006, 2007, and 2008 to implement sanctions.<sup>54</sup>

The Joint Comprehensive Plan of Action (JCPOA) was agreed in 2013 and finalized in 2015 between Iran and the five permanent members of the UN Security Council (the United States, China, France, Russia, and the United Kingdom), as well as Germany (the P5 + 1).<sup>55</sup> On Implementation Day of the JCPOA (January 16, 2016), the International Atomic Energy Agency verified that Iran had met its obligations as of that time, and the European Union, United States, and the United Nations lifted many of their nuclear-related sanctions against Iran. In practice, this meant that most of the prohibitions imposed by the European Union and the United Nations were lifted.<sup>56</sup> But the United States maintained a host of sanctions against Iran for a variety of nuclear- and nonnuclear-related reasons, and so implementation of the JCPOA meant that, of the US sanctions against Iran, for the most part only the secondary sanctions that often forced non-US parties into a choice of doing business with either the United States or with Iran were lifted.<sup>57</sup> The sweeping primary sanctions against Iran relevant to parties subject to US sanctions jurisdiction remained largely intact.<sup>58</sup>

The United States withdrew from the JCPOA in 2018, during the administration of President Trump.<sup>59</sup> Iran adhered to the terms of the deal for over a year afterward.<sup>60</sup> Thereafter, in 2020, the United Kingdom, France, and Germany issued

a statement voicing their concerns about Iran's reduced compliance with the full terms of the agreement, including with respect to enrichment of uranium.<sup>61</sup> As of April 2023, the Biden administration has not caused the United States to rejoin the JCPOA.<sup>62</sup>

The sanctions maintained against Cuba by the United States are also extensive. These sanctions, however, are US-imposed and do not have the same international support as do certain other sanctions programs.<sup>63</sup> They originated when President Kennedy declared an embargo in February 1962, less than a year after the failed Bay of Pigs invasion.<sup>64</sup> The United States also froze Cuban assets in the United States. Travel restrictions were subsequently imposed after the Cuban Missile Crisis. The sanctions imposed against Cuba do contain certain exceptions, as for humanitarian activities. Travel restrictions were loosened during the Obama administration, allowing for twelve categories of exceptions, including educational activities; athletic competitions; activities by private foundations, or educational or research institutes; and others.<sup>65</sup> Even so, most types of financial transactions by US persons with or in Cuba remained barred, and the Trump administration reimposed some sanctions on Cuba by redesignating the country as a state sponsor of terrorism.<sup>66</sup> This move barred some types of previously permitted travel to Cuba as well as remittances from the United States; some of these Trump-era restrictions were unwound during the Biden administration.<sup>67</sup> Internationally, the sanctions imposed by the United States against Cuba have been highly controversial.<sup>68</sup> In 2021, the UN General Assembly voted for the twenty-ninth straight year to condemn the US embargo of Cuba, with only the United States and Israel voting against the resolution, three other countries abstaining from the vote, and 184 voting in favor of the condemnation.<sup>69</sup>

Syria has become subject to comprehensive sanctions more recently. When the Syrian civil war erupted in 2011, the Assad Regime used chemical weapons against the Syrian people and murdered civilians.<sup>70</sup> The US sanctions authorities responded first by sanctioning certain Syrian officials, and eventually sanctioning the Government of Syria itself and prohibiting the provision of services to Syria or investments in that country.<sup>71</sup> The European Union, Canada, Australia, the Arab League, and others also imposed unilateral sanctions against Syria.<sup>72</sup> Multilateral sanctions, however, were not imposed by the United Nations against Syria, as Russia and China exercised their veto in the UN Security Council against such measures.<sup>73</sup>

The sanctions in place with respect to North Korea are extremely restrictive, having been imposed by many nations in response to the regime's nuclear and missile testing. Nine rounds of UN sanctions against North Korea have been imposed since 2006, due to the country's nuclear test that year.<sup>74</sup> The UN sanctions were supplemented by a variety of additional unilateral measures from countries including the United States, Japan, and South Korea.<sup>75</sup> China, however, continues to maintain economic relations with North Korea.<sup>76</sup> In 2022, China and Russia



vetoed additional UN sanctions against North Korea, despite their nine prior decisions since 2006 not to exercise that power.<sup>77</sup>

In each of the comprehensive sanctions programs, exceptions from the broad sanctions restrictions do exist as part of the legal framework. Generally, humanitarian activities, and certain transactions in support of that work, can be carried out in each of these locations.<sup>78</sup> For instance, US law permits the export of agricultural commodities, food, medicine, and medical devices to Iran.<sup>79</sup> As described within this book, however, regulated parties tend to overcomply with sanctions and so legal exemptions may be less effective than their language might suggest.

#### EFFECTS OF SANCTIONS

When sanctions are deployed with full force, the effects can be staggering. During the effective period of secondary sanctions, Iranian crude oil exports plunged over 50 percent.<sup>80</sup> The impacts are even more severe when sanctions are widely coordinated across nations, as the example of North Korea demonstrated. Yet these economic weapons bring a human cost. Despite the exceptions for the provision of humanitarian services and the supply of food and medicine, sanctions and export controls have often prevented countries from obtaining essential resources for their populations. As a group of nonprofits stated in an open letter to President Biden, sanctions slowed access in Iran to supplies to fight COVID-19.<sup>81</sup> In Yemen, sanctions triggered “a years-long famine and the largest cholera outbreak anywhere in history.”<sup>82</sup> The Syrian economy suffered greatly from sanctions, including through a collapse of its currency, hyperinflation, and food shortages.<sup>83</sup> UN sanctions were criticized as worsening standards of living and contributing to humanitarian crises in Haiti, Iraq, and Afghanistan.<sup>84</sup> As described further in Chapter 7, economic sanctions and trade restrictions can create or exacerbate humanitarian crises by directly restricting the import of certain goods, such as medical equipment, into a country. Despite the presence of exemptions for many types of humanitarian activities and imports, sanctions can cause regulated parties to reduce risk by over-complying with sanctions. Sanctions can also interfere with the regular economic and trade functions of a particular area, and worsening economic conditions can foster human suffering.

And despite the economic fallout sanctions can wreak, they have not always been fully effective in accomplishing their goals, especially where sanctions have large-scale objectives such as regime change. The Communist Party has ruled Cuba throughout decades of sanctions.<sup>85</sup> Sanctions did not effect a change in regime after the 1979 Iranian Revolution.<sup>86</sup> It was Operation Desert Storm, and not the sanctions that preceded it, that forced Saddam Hussein to withdraw Iraqi forces from Kuwait.<sup>87</sup> And as events would prove, the sanctions enacted in response to Russia’s 2014 annexation of Crimea ultimately failed to prevent further Russian aggression.

But a goal of sanctions, generally, is to provide some deterrent<sup>88</sup> or punitive effect short of military action or physical war.<sup>89</sup> With a limited range of nonmilitary responses available, an imperfect economic weapon may be preferable to military escalation. While sanctions themselves can be an inadequate tool for regime change, they can nevertheless be used to promote certain worthwhile goals, such as human rights protection. Indeed, apartheid in South Africa ended after the coordinated imposition of economic sanctions, along with a broader commercial boycott.<sup>90</sup> Yet evidence suggests that the imposition of economic sanctions can worsen human rights abuses, despite the good intentions with which they were enacted.<sup>91</sup> Sanctions are therefore a controversial tool whose odds of success, at the time of their imposition, are often uncertain.

#### THE RECENT PRE-INVASION SANCTIONS AGAINST RUSSIA

The United States, the European Union, and other powers repeatedly ratcheted up incremental sanctions against Russia in the years immediately preceding 2022. As described in further detail in the next section of this chapter, Russia, under the leadership of President Vladimir Putin, invaded and annexed the Crimean Peninsula of Ukraine in February and March of 2014.<sup>92</sup> The United States responded by enacting sanctions specifically targeting economic activity in that region, restricting the flow of exports of goods, services, and technology to Crimea and prohibiting new investment there by US persons as well.<sup>93</sup> Imports of goods, services, and technology from Crimea into the United States were also prohibited. The Office of Foreign Assets Control also introduced sanctions targeted at certain sectors of the Russian economy, including oil and gas exploration in deepwater Russian locations or offshore in the Arctic.<sup>94</sup> Other nations and jurisdictions imposed similar, coordinated measures in response to the Russian invasion of Crimea, including the European Union, the United Kingdom, and Canada.<sup>95</sup>

The impetus for sanctions grew when in July 2014, Russian-backed separatists in Ukraine shot down Malaysian Airlines Flight 17, killing 283 passengers and 15 crew members.<sup>96</sup> The event led to calls for increased sanctions against Russia to respond to its support of the separatist groups that threatened Ukraine's territorial sovereignty.<sup>97</sup> That same month, the European Union announced sanctions against Russian individuals and entities linked to the Russian government.<sup>98</sup>

Other sanctions measures addressed different bad acts by Russian actors and the Russian state. For example, the death of Sergei Magnitsky in Russian custody led to a wave of human rights-related sanctions against Russia. Magnitsky was a Russian lawyer who uncovered tax fraud and corruption linked to the Kremlin.<sup>99</sup> He was arrested in late 2008 by the Russian Ministry of the Interior. While in custody, he was refused treatment for pancreatitis.<sup>100</sup> A Russian human rights council concluded that on the night of his death in November 2009, Magnitsky was beaten by eight guards with rubber batons. An ambulance crew called to help him was left waiting