Article

SANCTIONS, REAL AND IMAGINARY: EXPERIENCES WITH RUSSIA IN THE UKRAINE CRISIS

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ABSTRACT

This article identifies untapped potential for creative combinations within the sanctions arsenal, but also substantial long-term risks threatening to undermine the very global financial and trading infrastructure that renders Western sanctioning power effective in the first place. It introduces multi-party sanctions against Russia and the Russian response thereto, analysing how sanctions were aided by three unusual prongs: the damage potential of a SWIFT blockade, the devastating effect of the post-2014 oil price drop, and the consideration of using debt sanctions. It then examines defensive measures taken by Russia and others that aim at undermining the effectiveness of future Western sanctions.

Keywords: International Law; Sanctions; Russia; Ukraine.

Introduction

Sanctions come in many shades and hues, but also in different sizes and with different risks. Some work exceptionally well, some fail, and others serve at least some purpose. In every instance, sanctions, blockades and embargoes are painful not only for the target but also for the target's trading partners that include at least parts of the economy of the sanctioning state or alliance. Sanctions and embargoes have much in common with arms races: actions lead to reactions and every round of measures provokes not only countermeasures but also evasive action.[1] Sovereign attempts at punitive economic coercion raise an array of questions, not least as to the timeframe by which they may be rationally expected to yield results, and the

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[1] See, e.g., A. Lucchetti et al., 'While Marc Rich Was Fugitive, Firm Dealt with Pariah Nations', *The Wall Street Journal*, 23 February 2001, at: http://www.wsj.com/articles/SB982885815892990443; C. Rosett, 'How Iran Steams Past International Sanctions', *The Wall Street Journal*, 12 July 2012, at: http://www.wsj.com/articles/SB10001424052702303919504577522431458614636 (accessed on 16 April 2017).

cost-benefit relation of their results. The total number of sanctions in force has mushroomed in recent decades as they emerged as governments' high-profile tool of choice between war and inaction. Since 1987, the US sanctioned 60 states with UN Security Council approval and 44 unilaterally, while the EU sanctioned 32 states with UN Security Council resolutions and 23 states without.[2] In many cases, including the measures taken against Iran and Russia but also in instances related to African states, sanctions encounter far too little public and legal scrutiny[3] despite the fact that these measures, aggressively and over substantial periods of time, leverage private property and transactions for public purposes,[4] almost in every case without 'prompt, adequate and effective compensation'.[5] They also do not always result in the discharge of disrupted contractual obligations under *force majeure* or similar concepts.[6]

It has been observed that US sanctions practice, aside from a relatively negligible minority of sanctions imposed pursuant to UN Security Council resolutions,[7] habitually invokes threats to national security[8] with a frequency not observed elsewhere[9] whenever policies of the target state substantially depart from US interests.[10] This phenomenon is noticeable also in the context of the sanctions regime imposed against (primarily Russian) individuals 'contributing

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[2] A. Ivanov & K. Molodyko, 'Sanctions and the World Order: Unilateral Restrictive Measures as a New Regulator of the World Order', *Russia in Global Affairs* 2015-4, at: http://eng.globalaffairs.ru/number/Sanctions-and-the-World-Order-17889 (accessed on 16 April 2017), referring to statistics in G.C. Hufbauer, J.J. Schott, K.A. Elliott & B. Oegg, *Economic Sanctions Reconsidered*, New York: Peterson Institute for International Economics 2009, p. 129.

[3] With some notable exceptions regarding cases before the ECJ, such as Case C-402/05 and C-415/05 *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Union* [2008] ECR I 06351; C-584/10, C-593/10 and C-595/10 *European Commission and others v. Yassin Abdullah Kadi*, judgment of the CJEU (Grand Chamber) of 18 July 2013. See also N. Türküler Isiksel, 'Fundamental Rights in the EU after Kadi and Al Barakaat', *European Law Journal* 2010-16, p. 551; T. Tridimas & J.A. Gutierrez-Fons, 'EU Law, International Law, and Economic Sanctions Against Terrorism: The Judiciary in Distress?' *Fordham International Law Journal* 2008-32, p. 660.

[4] See generally R.J. Ellings, G. Hrach, M. Leigh & J.A. Swindler, *Private Property and National Security: Foreign Economic Sanctions and The Constitution,* Washington, D.C.: National Legal Center for the Public Interest 1991.

[5] F.G. Dawson & B.H. Weston, '"Prompt, Adequate and Effective": A Universal Standard of Compensation?', *Fordham Law Review* 1962-30, pp. 727, 731, 749.

[6] See generally P.R. Wood, 'Ukraine: A Brief Primer on Sanctions, Expropriations and State Break-ups', *Allen & Overy Global Law Intelligence Unit*, 19 March 2014, at: http://www.allenovery.com/SiteCollectionDocuments/Ukraine%20a%20brief%20primer%20on%20sanctions,%20expropriations%20and%20state%20break-ups.pdf (accessed on 16 April 2017).

[7] Ivanov & Molodyko 2015, supra note 2.

[8] See, e.g., Executive Order No. 13662 of 20 March 2014, and OFAC Directive under Executive Order 13662 of 12 September 2014. See also C.L. Reyes, 'Comment, International Governance of Domestic National Security Measures: The Forgotten Role of the World Trade Organization', *UCLA Journal of International Law and Foreign Affairs* 2009-14, p. 531; B.E. Carter, 'International Economic Sanctions: Improving the Haphazard US Legal Regime', *California Law Review* 1987-75, pp. 1159, 1191, 1200.

[9] 'Transparency and Accountability Initiative', National Security Transparency and Accountability 2011, p. 1, at: http://transparencyinitiative.theideabureau.netdna-cdn.com/wp-content/uploads/2011/09/14-National-security1.pdf (accessed on 16 April 2017).

[10] See generally L. Panitch & M. Konings, *American Empire and the Political Economy of Global Finance*, London: Palgrave Macmillan 2009.

to the situation in Ukraine'[11] following the ouster of President Yanukovych and the annexation of Crimea by the Russian Federation in March 2014. Part of the sanctions regime relating to the Ukraine crisis was almost unprecedented in a context not linked to terrorism or nuclear proliferation in that it primarily targeted individuals (and corporate entities substantially controlled by them) rather than sovereign parties, territorial units or larger socio-political groups, and was expanded and tightened incrementally since March 2014.[12] The primary selection criterion for most of these targets appeared to be their perceived membership in President Putin's 'inner circle.'[13]

This article examines the potential systemic fallout from a policy that relied on public toying with sanctions. It identifies untapped potential for creative combinations within the sanctions arsenal but also substantial long-term risks threatening to undermine the very global financial and trading infrastructure that renders Western sanctioning power effective in the first place. After introducing the background of Western sanctions against Russia over the Ukraine crisis, this paper proceeds by discussing specific sanctions implemented by the US, EU, and other states respectively, including Japan, Canada and Australia. This concerted action increased the effectiveness of those sanctions, even though Western sanctions in most instances would not be joined by the BRIC (Brazil, Russia, India, China) countries, as geopolitical rivalries created overriding conflicts of interest. The paper furthermore describes Russian responses to the Western sanctions. It then analyses how sanctions were aided by three unusual prongs: the damage potential of a never explicitly threatened SWIFT blockade, the devastating effect of the post-2014 oil price drop, and the never used but considered option of debt sanctions designed to deny Russian creditors of Ukrainian government debt access to the English courts and the protection of governing English law. It finally examines defensive measures taken by Russia and others, most predominantly by the BRIC countries, that undermine the effectiveness of future Western sanctions. The paper concludes that while the sanctions regime against Iran largely achieved what could reasonably be expected (and may have served as an effective deterrent to Russia), sanctions against Russia in the wake of the Ukraine crisis are still unconvincing as to their efficacy.

I. The Ukraine-related Sanctions Regime

11 'Ukraine Crisis: Russia and Sanctions', *BBC News*, 19 December 2014, at: http://www.bbc.com/news/world-europe-26672800 (accessed on 16 April 2017); F. Giumelli, 'Sanctioning Russia: The Right Questions', European Union Institute for Securities Studies Issue Alert, February 2015, pp. 1-2, at: http://www.iss.europa.eu/uploads/media/Alert_10_sanctions.pdf (accessed on 16 April 2017). See also I. Bond, C. Odendahl & J. Rankin, 'Frozen: The Politics and Economics of Sanctions against Russia', Centre for European Reform, March 2015, p. 1, at: https://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2015/frozen_sanctions-10787.pdf (accessed on 16 April 2017).

12 See S/RES/1267 (1999) and Consolidated List of Individuals and Entities Associated with Al-Qaida and the Taliban, Established and Maintained by the UN Security Council's Al-Qaida Sanctions Committee, Council on Foreign Relations, 23 January 2014, at: http://www.cfr.org/terrorist-organizations-and-networks/consolidated-list-individuals-entities-associated-al-qaida-taliban-established-maintained-un-security-councils-al-qaida-sanctions-committee/p20835 (accessed on 16 April 2017). See also S.H. Hanke, 'On the Failure of the Iranian Sanctions', Cato Institute, February 2013, http://www.cato.org/publications/commentary/failure-iranian-sanctions (accessed on 16 April 2017).

13 A. van Aaken, 'International Investment Law and Targeted Sanctions: An Uneasy Relationship', *Bucerius Law Journal* 2015, p. 1; 'Ukraine Crisis: Russia and Sanctions 2014', supra note 12.

Like all successor states of the USSR, Ukraine has a significant Russian-speaking minority that, for the most part, regrets the demise of the Union, feels marginalised in its new sovereign entity, and looks to the Russian Federation as its natural protective power. Russia, in turn, uses the ethnic patriotism of Russian minorities to interfere in the domestic affairs of its former 'wayward sister republics' and treats their sovereignty as a mere nominal formality. The decision of Yanukovych's government to refuse to sign a long-prepared Treaty of Association with the EU[14] and instead to seek closer ties with Russia on 21 November 2013 ignited the Euromaidan protests, eventually leading to Yanukovych's removal as president on 22 February 2014. [15] Following this, the Russian-majority breakaway region of Crimea held on 16 March 2014 an internationally highly controversial referendum on its independence.[16] The next day, Putin recognised Crimea as an independent state.[17] Crimea joined the Russian Federation two days later, on 18 March 2014, followed by Putin's decree of 21 March 2014, which ratified both an amendment to the Russian constitution and a Treaty of Accession with Crimea and Sevastopol, effectively annexing Crimea.[18] Western sanctions in response to these events fall broadly into three distinct categories:

1) Individual sanctions against a continuously adjusted list of natural persons and legal entities substantially controlled by them, both Russian and Ukrainian (with a pro-Russian agenda in either case), including imposing bans on travel to the sanctioning state or bloc, and freezing the sanctioned individuals' financial assets.

2) Sectoral sanctions targeting the financial, energy and military-industrial sectors in Russia through traditional export and import controls as well as through prohibitions to continue joint ventures and to provide certain services.

3) Regional sanctions barring imports from or exports of goods, technology or services to Crimea or the Donbas region.

I.1 US Sanctions

Despite extensive literature, the extraterritorial application of US policies, values, laws and standards has remained among the most contentious jurisprudential legacies of the 20th century.[19] Not even the most fundamental yet enduringly controversial doctrinal issues associated with the US sanctions practice and assertion of jurisdiction to extraterritorial

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[14] V. Chervonenko, 'Ukraine's EU Options "Still Open"', *BBC News*, 25 November 2013, at: http://www.bbc.com/news/world-europe-25087160 (accessed on 16 April 2017).

[15] A. Higgins & A.E. Kramer, 'Archrival is Freed as Ukraine Leader Flees', *The New York Times*, 22 February 2014, at: http://www.nytimes.com/2014/02/23/world/europe/ukraine.html?_r=0 (accessed on 16 April 2017).

[16] 'Crimea Referendum: Voters Back "Russia Union"', *BBC News*, 16 March 2014, at: http://www.bbc.com/news/world-europe-26606097 (accessed on 16 April 2017).

[17] S.L. Myers & P. Baker, 'Putin Recognizes Crimea Secession, Defying the West', *The New York Times*, 17 March 2014, http://www.nytimes.com/2014/03/18/world/europe/us-imposes-new-sanctions-on-russian-officials.html (accessed on 16 April 2017).

[18] 'Crimea, Sevastopol Officially Join Russia as Putin Signs Final Decree', *RT*, 21 March 2014, at: https://www.rt.com/news/russia-parliament-crimea-ratification-293/ (accessed on 16 April 2017).

[19] See A.J. Colangelo, 'What is Extraterritorial Jurisdiction?' *Cornell Law Review* 2014-99, pp. 1303, 1347; L. Brilmayer, 'The Extraterritorial Application of American Law: A Methodological and Constitutional Appraisal', *Law and Contemporary Problems* 1987-50, pp. 11, 15, 19.

situations have been settled, much less have they been resolved, with a meaningful degree of international consensus.[20]

The US sanctions regime addressing the situation in Ukraine unfolded incrementally, with its list of targeted individuals, entities and sectors expanding gradually.[21] On 6 March 2014, President Obama issued Executive Order (EO) 13660 based on the International Emergency Economic Powers Act and the National Emergency Act, imposing sanctions that included travel restrictions and asset freezes against certain Russian individuals[22] and entities controlled by them that are to be specified by the Secretary of the Treasury through the Office of Foreign Assets Control (OFAC).[23] On 17 March 2014, supplemental EO 13661 blocked property of additional persons 'contributing to the situation in Ukraine'.[24] On 20 March 2014, EO 13662 was issued, blocking property of additional persons contributing to the situation in Ukraine.[25] OFAC general licenses subsequently tailored narrow substantive and temporal exceptions for certain transactions related to sanctioned parties.[26] On 19 December 2014, EO 13685 supplemented existing sanctions with respect to Crimea.[27] Pursuant to these executive orders, the US Commerce Department's Bureau of Industry and Security (BIS) administered a variety of export restrictions.[28] In November 2016, President Obama agreed with EU leaders to keep Ukraine-related sanctions against Russia in place.[29]

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[20] See, e.g., M.E. O'Connell, 'Debating the Law of Sanctions', *European Journal of International Law* 2002-13 p. 63; S.J. Marcuss & E.L. Richard, 'Extraterritorial Jurisdiction in United States Trade Law: The Need for a Consistent Theory', *Columbia Journal of Transnational Law* 1981-20, p. 439.

[21] See Executive Orders, US Department of the Treasury, Resource Center, at: https://www.treasury.gov/resource-center/sanctions/Pages/eolinks.aspx (accessed on 16 April 2017); and Notice by OFAC, 79 Fed. Reg. 63021 (21 October 2014) (Sanctions Actions Pursuant to Executive Orders 13660, 13661 and 13662).

[22] Exec. Order No. 13660, 79 Fed. Reg. 46 (10 March 2014) (Blocking Property of Certain Persons Contributing to the Situation in Ukraine).

[23] Implemented by subsequent OFAC directives: Directives 1 and 2 Pursuant to Exec. Order no. 13662 (addressing Russian financial services and energy sectors); Directive 2 (as amended) Pursuant to Exec. Order no. 13662 (energy sector); Directive 3 under Exec. Order no. 13662 (military-industrial complex); and Directive 4 under Exec. Order no. 13662 (energy sector). See Exec. Order no. 13662, 79 Fed. Reg. 56 (24 March 2014). For the list of sanctioned persons pursuant to Exec. Order no. 13662, see OFAC's Sectoral Sanctions Identification List (SSI) (22 December 2015), at: https://www.treasury.gov/ofac/downloads/ssi/ssi.pdf (accessed on 16 April 2017).

[24] Exec. Order no. 13661, 79 Fed. Reg. 53 (19 March 2014) (Blocking Property of Additional Persons Contributing to the Situation in Ukraine).

[25] Exec. Order no. 13662, 79 Fed. Reg. 56 (24 March 2014) (Blocking Property of Additional Persons Contributing to the Situation in Ukraine).

[26] See OFAC General License No. 1A Authorizing Certain Transactions Related to Derivatives Prohibited by Directives 1, 2, and 3 under Executive Order 13662 (12 September 2014), and OFAC General License No. 2 Authorizing Certain Activities Prohibited by Directive 4 under Executive Order 13662 Necessary to Wind Down Operations (12 September 2014).

[27] Exec. Order no. 13685, 79 Fed. Reg. 247 (24 December 2014) (Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to the Crimea Region of Ukraine).

[28] See Press Release, BIS, 'Commerce Department Announces Expansions of Export Restrictions on Russia', 28 April 2014, at: http://www.bis.doc.gov/index.php/about-bis/newsroom/press-releases/107-about-bis/newsroom/press-releases/press-release-2014/665-commerce-dept-announces-expansion-of-export-restrictions-on-russia (accessed on 16 April 2017); Press Release, BIS, 'Commerce Department Announces Expansions of Export Restrictions Aimed at Russia's Defense Sector', 12 September 2014, at: http://www.bis.doc.gov/index.php/about-bis/newsroom/press-releases/107-about-bis/newsroom/press-releases/press-release-2014/742-u-s-commerce-department-expands-export-restrictions-aimed-at-russia-s-defense-sector (accessed on 16 April 2017). See also BIS Final

I.2 EU Sanctions

European Union states had to be 'embarrassed' by the US through Vice President Biden 'to stand up and take economic hits to impose costs'[30] in defence of the territorial integrity and sovereignty of Ukraine, a candidate for associate EU membership.[31] This can be somewhat understood considering what followed: Russia's counter-embargo of food imports from the US, Canada, Australia, the EU and Norway affected $9 billion worth of agricultural exports and produced an apple and dairy surplus in Europe disproportionate to the cost inflicted on Russia. In the words of Victoria Nuland, Assistant Secretary of State for European and Eurasian Affairs, '[i]mplementing sanctions isn't easy and many countries are paying a steep price. We know that. But history shows that the cost of inaction and disunity in the face of a determined aggressor will be higher'.[32] The total cost of sanctions for the EU certainly amounted to a steep price: EU trade with Russia amounted to $390 billion in 2013 and dropped 14% during the first five months of 2014 alone.[33] Notwithstanding Vice President Biden's remark, the EU did accomplish its challenging task of coordination between 28 governments in a highly controversial matter, and it did so remarkably expeditiously by 17 March 2014.

Only after the annexation of Crimea by Russia, but since that time consistently, has the EU substantially coordinated with US measures[34] based on travel bans, asset freezes and prohibition of provision of financial services to Russian banks and other sanctioned entities by EU companies. The principal criterion for a target's inclusion in these restrictive measures was whether or not the individuals' actions threaten the territorial integrity of Ukraine.[35] A

Rule, Russian Oil Industry Sanctions and Addition of Person to the Entity List, 1 August 2014, at: https://www.bis.doc.gov/index.php/forms-documents/doc_view/1027-russian-oil-industry-sanctions-and-addition-of-person-to-the-entity-list (accessed on 16 April 2017).

[29] M. Eddy & G. Harris, 'Obama and E.U. Leaders Agree to Keep Sanctions on Russia', *The New York Times*, 18 November 2016, at: https://www.nytimes.com/2016/11/19/world/europe/obama-eu-sanctions-russia-ukraine.html (accessed on 16 April 2017).

[30] 'Biden Says US 'Embarrassed' EU Into Sanctioning Russia Over Ukraine', *RT*, 3 October 2014, at: https://www.rt.com/usa/193044-us-embarrass-eu-sanctions/ (accessed on 16 April 2017).

[31] V. Veebel & R. Markus, 'Lessons From the EU-Russia Sanctions 2014–2015', *Baltic Journal of Law and Politics* 2015-8-1, p. 165. See also generally M. Gestri, 'Sanctions Imposed by the European Union: Legal and Institutional Aspects,' in N. Ronzitti, ed., *Coercive Diplomacy, Sanctions and International Law*, Nijhoff: Brill 2016, p. 70.

[32] 'Biden Says US "Embarrassed" EU into Sanctioning Russia Over Ukraine' 2014, supra note 32.

[33] C. Matlack, 'Swift Justice: One Way to Make Putin Howl', *Bloomberg Business*, 4 September 2014, at: http://www.bloomberg.com/bw/articles/2014-09-04/ultimate-sanction-barring-russian-banks-from-swift-money-system (accessed on 16 April 2017). See also R.W. Parker, 'The Problem with Scorecards: How (and How Not) to Measure the Cost-effectiveness of Economic Sanctions', *Michigan Journal of International Law* 2000-21, p. 235.

[34] See Council Decision 2014/145/CFSP of 17 March 2014, Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, 2014 O.J. (L 78) 16 (containing notice to targeted individuals or entities, travel restriction and asset freezes) and Council Implementing Decision 2014/151/CFSP of 21 March 2014 Implementing Decision 2014/145/CFSP Concerning Restrictive Measures in Respect of Actions Undermining or Threatening the Territorial Integrity, Sovereignty and Independence of Ukraine, 2014 O.J. (L 86) 30 (amending the list of persons and entities subject to restrictive measures), through Council Decision (CFSP) 2015/2431 of 21 December 2015, Amending Council Decision 2014/512/CFSP Concerning Restrictive Measures in View of Russia's Actions Destabilizing the Situation in Ukraine, 2015 O.J. (L 334) 22 (amending the date of expiration to 31 July 2016).

[35] See supra note 34.

series of subsequent decisions and regulations amended sanction details so as to fine-tune and attenuate repercussions for domestic industry, as the US did with its system of general licenses.[36]

As a declaratory matter, the French government, like most EU members, expressed hope that it would be able to lift sanctions during the summer of 2016.[37] This resonates with the fact that several EU member governments, including the Greek,[38] Czech[39] and Hungarian[40] governments, stand firmly opposed to the imposition of new sanctions against Russia or even to the extension of the existing regime. On 28 April 2016, the French *Assemblée Nationale* cast a non-binding majority vote of 55-44, affirmed in June 2016 by the French Senate[41], to lift sanctions against Russia, largely because of alleged utter ineffectiveness in changing Russian behaviour and resolving the Ukraine crisis as well as very substantial cost to European countries. A vote which was notably supported by the right and the extreme left.[42] Still, EU sanctions were extended again, most recently on 13 March 2017.[43]

I.3 Third-Party Sanctions

Mirroring sanctions were also imposed on Russia by a number of other countries including Canada,[44] Australia,[45] New Zealand, Japan,[46] Norway, Iceland, Switzerland,[47] EFTA

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[36] For an overview, see European Union: External Action Service, 'News—Ukraine', at: http://eeas.europa.eu/ukraine/news/index_en.htm (accessed on 6 March 2016); Baker & McKenzie 'Sanctions Update', at: http://www.bakermckenzie.com/sanctionsnews/blog.aspx?topic=343 (accessed on 6 March 2016).

[37] 'France Hopes to See Russia Sanctions Lifted 'This Summer': French Economy Minister', *NDTV*, 25 January 2016, at: http://www.ndtv.com/world-news/france-hopes-to-see-russia-sanctions-lifted-this-summer-french-economy-minister-1269643 (accessed on 16 April 2017).

[38] 'Greece's Tsipras Meets Putin in Moscow—As It Happened' *The Guardian*, 8 April 2015, at: http://www.theguardian.com/business/live/2015/apr/08/shell-makes-47bn-move-for-bg-group-live-updates (accessed on 16 April 2017).

[39] 'Zeman Appears on Russian TV to Blast Sanctions', *Prague Post*, 17 November 2014, at: http://www.praguepost.com/eu-news/42701-zeman-appears-on-russian-tv-to-blast-sanctions (accessed on 16 April 2017).

[40] See G. Szakacs, 'Europe 'Shot Itself in Foot' With Russia Sanctions: Hungary PM', *Reuters*, 15 August 2014, at: http://www.reuters.com/article/us-ukraine-crisis-sanctions-hungary-idUSKBN0GF0ES20140815 (accessed on 16 April 2017); 'Hungary's Orban Says No Automatic Extension of Sanctions Against Russia', *Reuters*, 29 February 2016, at: http://www.reuters.com/article/us-ukraine-crisis-russia-hungary-idUSKCN0W20WF (accessed on 16 April 2017).

[41] 'French Senate supports resolution to lift EU sanctions against Russia', *RT*, 8 June 2016, at: https://www.rt.com/news/345898-french-senate-lifting-sanctions/ (accessed on 16 April 2017).

[42] D. Sharkov, 'French National Assembly Votes to Lift Russian Sanctions', *Newsweek*, 29 April 2016, at: http://europe.newsweek.com/french-national-assembly-votes-lift-russian-sanctions-453791?rm=eu (accessed on 16 April 2017).

[43] 'EU Extends Russia Sanctions over Ukraine for 6 More Months', *Washington Post*, 13 March 2017, at: https://www.washingtonpost.com/world/europe/eu-extends-russia-sanctions-over-ukraine-for-6-more-months/2017/03/13/41a219c8-07f4-11e7-bd19-fd3afa0f7e2a_story.html (accessed on 16 April 2017)

[44] Canada's Special Economic Measures (Russia) Regulations entered into force 17 March 2014. Government of Canada: Global Affairs Canada, 'Canadian Sanctions Related to Russia', at: http://www.international.gc.ca/sanctions/countries-pays/russia-russie.aspx?lang=eng (accessed on

countries Norway, Iceland and Liechtenstein,[48] EU candidates Montenegro,[49] Albania,[50] Ukraine,[51] and Ukraine's neighbour Moldova.[52]

Since the inception of the sanctions regime, and proximately caused by it, the Russian Ruble has been in free fall. It dropped some 40 percent against the US dollar within just nine months in 2014, fuelling inflation and substantially diminishing Russian GDP.[53] Whether Western sanctions or oil price developments deserve primary credit for this is a matter of ongoing debate. But the cognitive distortion of their 'halo effect' has placed significant constraints on, and added substantial costs to, Russian corporate debt refinancing.[54] Already by mid-December 2014, Prime Minister Medvedev conceded that the Russian economy was moving toward recession and needed to reduce its reliance on energy exports, reduce its

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16 April 2017). The sanctions list was later amended several times—on 18 March, 21 March, 21 June 2014, and 17 February, 29 June 2015.

[45] 'Australia Imposes Sanctions on Russians after Annexation of Crimea from Ukraine', *Australian Broadcasting Corporation*, 19 March 2014, at: http://www.abc.net.au/news/2014-03-19/australia-sanctions-russia-ukraine/5331826 (accessed on 16 April 2017); Julie Bishop MP, Minister for Foreign Affairs of Australia, 'Further Sanctions to Support Ukraine', 21 May 2014, at: http://foreignminister.gov.au/releases/Pages/2014/jb_mr_140521.aspx?ministerid=4 (accessed on 16 April 2017).

[46] 'Japan to Impose Sanctions on Russia for Crimea Move', *Reuters*, 17 March 2014, at: http://www.reuters.com/article/us-ukraine-crisis-japan-idUSBREA2H02T20140318 (accessed on 16 April 2017).

[47] 'Switzerland Expands Sanctions against Russia over Ukraine Crisis', *Radio Free Europe / Radio Liberty*, 5 August 2014, at: http://www.rferl.org/content/switzerland-sanctions-banks-russia-eu-us-ukraine-crisis/26514900.html (accessed on 16 April 2017). See also 'Situation in Ukraine: Federal Council Decides on Further Measures to Prevent the Circumvention of International Sanctions', News.Admin.CH, 27 August 2014, at: https://www.news.admin.ch/message/index.html?lang=en&msg-id=54221 (accessed on 16 April 2017).

[48] European Council, 'Russia: EU Prolongs Economic Sanctions by Six Months', 21 December 2015, at: http://www.consilium.europa.eu/en/press/press-releases/2015/12/21-russia-sanctions/?Russia%3a+EU+prolongs+economic+sanctions+by+six+months (accessed on 16 April 2017).

[49] A. Rettmann, 'Montenegro-EU Talks Advance in Russia's Shadow', *EU-Observer*, 17 December 2014, at: https://euobserver.com/foreign/126960 (accessed on 16 April 2017).

[50] 'Albania Sanctions Against Russia', *Independent Balkan News Agency*, 21 March 2014, at: http://www.balkaneu.com/albania-sanctions-russia/ (accessed on 16 April 2017).

[51] 'Ukraine Passes Law on Russia Sanctions, Gas Pipelines', *Radio Free Europe / Radio Liberty*, 14 August 2014, at: http://www.rferl.org/content/ukraine-legislation-sanctions-russia/26530692.html (accessed on 16 April 2017); 'Ukraine, EU Candidate Countries Align With 3rd Set of Anti-Russian Sanctions: EU Council', *Sputnik International*, 15 October 2014, at: http://sputniknews.com/world/20141015/194130082/Ukraine-EU-Candidate-Countries-Align-With-3rd-Set-of-Anti-Russian-Sanctions.html (accessed on 16 April 2017).

[52] 'Moldova Joined EU Sanctions against Former Ukrainian Officials', *TeleRadio Moldova*, 20 March 2014, at: http://trm.md/en/politic/moldova-s-a-aliniat-sanctiunilor-ue-impotriva-fostilor-oficiali-ucraineni (accessed on 16 April 2017).

[53] K. Golubkova & G. Baczynska, 'Rouble Fall, Sanctions Hurt Russia's Economy: Medvedev', *Reuters*, 10 December 2014, at: http://www.reuters.com/article/us-russia-medvedev-sanctions-idUSKBN0JO0SR20141210 (accessed on 16 April 2017).

[54] See, e.g., 'Ruble Crisis Could Shake Putin's Grip on Power', *Voice of America News*, 17 December 2014, at: http://www.voanews.com/content/reu-rouble-crisis-could-shake-putins-grip-on-power/2562218.html (accessed on 16 April 2017).

dependence on imports to compensate for acute shortfalls in domestic production, and reduce its resulting need for outside deficit financing.[55]

I.4 Russian Reprisals

President Putin retorted against Western sanctions by issuing Decree of the President of the Russian Federation No. 560 of 6 August 2014 on Application of Certain Special Economic Measures in Order to Ensure Security of the Russian Federation. It banned the import of goods originating from a sanctioning country and delegated authority to the Russian government to determine the parties to be sanctioned.[56] Thereunder, Prime Minister Medvedev proclaimed implementing Resolution of the Government of the Russian Federation No. 778 of 7 August 2014, banning for a period of one year the importation of listed agricultural and food items originating from the US, EU, Canada, Australia and Norway.[57] On 24 June 2015, Presidential Decree No. 320 extended Russia's ban on said agricultural products until 6 August 2016.[58] This measure was further implemented by Resolution of the Government of the Russian Federation No. 625 of 25 June 2015 that amended the list of banned import goods and extended the duration of the Russian embargo until 5 August 2016.[59] In May 2014, Russia also barred travel to Russia for a number of senior US, EU, and Canadian individuals but at first declined to reveal the list. Eventually, certain names became known.[60] Travel bans were issued against 89 European politicians and military leaders from 17 countries.[61]

Although European agricultural suppliers and certain other interests affected by countersanctions would disagree with this assessment,[62] Russian countersanctions turned out to be largely symbolic nuisance measures calculated to show reciprocity, not least given the fact that they did not include asset freezes and that visits to Russia by most of the sanctioned Western individuals appeared to be rare at best.

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[55] Golubkova & Baczynska 2014, supra note 53.

[56] Norton Rose Fulbright, 'Russian Sanctions', August 2014, at: http://www.nortonrosefulbright.com/knowledge/publications/119478/russian-sanctions (accessed on 16 April 2017).

[57] *Ibid*.

[58] USDA Foreign Agricultural Service, 'Russian Food Ban Extended', GAIN Report, 25 June 2015, at:http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Russian%20Food%20Ban%20Extended%20Until%20August%202016_Moscow_Russian%20Federation_6-25-2015.pdf (accessed on 16 April 2017).

[59] Government of the Russian Federation, Resolution No. 625 of 25 June 2015, Concerning the Introduction of Changes in the Resolution of the Government of the Russian Federation No. 778 of 7 August 2014 (Unofficial Translation), at: http://ec.europa.eu/food/safety/docs/ia_eu-russia_ru-eu-import-ban_20150625_unoff-trans-en.pdf (accessed on 16 April 2017).

[60] W. Lowery & E. O'Keefe, 'Reacting to Sanctions, Russians Ban Reid, Boehner and Four Other Lawmakers', *Washington Post*, 20 March 2015, at: https://www.washingtonpost.com/news/post-politics/wp/2014/03/20/reacting-to-sanctions-russians-ban-reid-boehner-and-7-other-lawmakers/ (accessed on 16 April 2017).

[61] M. Sarkar, 'Russia's Travel Ban Against EU Officials Sparks Fury', *CNN*, 1 June 2015, at: http://edition.cnn.com/2015/05/31/europe/russia-travel-ban/ (accessed on 16 April 2017).

[62] See, e.g., T. Pouch, 'The Russian Embargo: Direct and Indirect Impact for French Agriculture', Mouvement pour une organization mondiale de l'agriculture, 10 November 2014, at: http://www.momagri.org/UK/focus-on-issues/The-Russian-Embargo-direct-and-indirect-impact-for-French-agriculture_1498.html (accessed on 16 April 2017).

II. The Sword of Damocles Reinvented: Non-Sanctions with Latent Anticipatory Effect

By far the most effective pressure tool against Russia was an option that was never activated. It was effective primarily because a demonstration of its consequences had taken place only two years prior, when on 17 March 2012 the EU sanctioned 30 Iranian banks by cutting access to service of the global interbank payment system: SWIFT.[63] SWIFT, the Society for Worldwide Interbank Financial Telecommunication, is a non-profit cooperative registered in Belgium and it is subject to Belgian and European law.[64] Its board is composed of representatives of the central banks of the US, UK, Canada, Germany, France, Italy, Japan, Belgium, The Netherlands, and Sweden.[65] SWIFT transmits in excess of $6 trillion of payment instructions a day through 1.8 billion communications a year[66] between over 10.500 member financial institutions and corporations in 215 countries.[67] During the 39 years of its existence, SWIFT had never expelled or blocked a financial institution. In 2010, the last year for which data was available prior to EU sanctions taking effect, 19 Iranian member banks and 25 financial institutions had sent and received two million SWIFT messages.[68] With the imposition of SWIFT sanctions, the entire Iranian banking system was severed from access to international payments, which had a paralysing effect on the totality of its foreign financial transactions.

II.1 SWIFT: Russia's Bright Red Line

In late August 2014, with British public opinion about Putin's regime already tense following the alleged extrajudicial killing of former FSB agent Alexander Litwinenko by Russian operatives in 2006 and the downing of civilian Malaysia Airlines flight 17 on 17 July 2014 by a Russian-made Buk missile, the UK government urged the EU to expand existing sanctions by blocking access to SWIFT for Russian banks.[69] Poland concurred and continued to support the UK initiative.[70] On 18 September 2014, the European Parliament passed a non-

[63] J. Matonis, 'The Payments Network as Economic Weapon', *Forbes*, 27 March 2012, at: http://www.forbes.com/sites/jonmatonis/2012/03/27/the-payments-network-as-economic-weapon/#3e8243f92182 (accessed on 16 April 2017).

[64] A. Ross, 'Iran stellt Ölverkäufe an Frankreich und Grossbritannien ein', *Frankfurter Allgemeine Zeitung*, 19 February 2012, at: http://www.faz.net/aktuell/politik/ausland/atomstreit-iran-stellt-oelverkaeufe-an-frankreich-und-grossbritannien-ein-11655180.html (accessed on 16 April 2017).

[65] *Ibid*.

[66] 'Russia's SWIFT Equivalent Already in Use', *Russia Insider*, 21 September 2015, at: http://russia-insider.com/en/politics/russias-swift-equivalent-already-use/ri9845 (accessed on 16 April 2017); I.A.R. Lakshmanan, 'Sanctioned Iran Banks Being Cut Off from Global Network', *Bloomberg Business*, 16 March 2012, at: http://www.bloomberg.com/news/articles/2012-03-15/swift-will-halt-financial-messaging-for-sanctioned-iranian-banks (accessed on 16 April 2017).

[67] R. Hutton & I. Wishart, 'U.K. Wants EU to Block Russia from SWIFT Banking Network', *Bloomberg Business*, 30 August 2014, at: http://www.bloomberg.com/news/articles/2014-08-29/u-k-wants-eu-to-block-russia-from-swift-banking-network (accessed on 16 April 2017).

[68] Lakshmanan 2012, supra note 67.

[69] Hutton & Wishart 2014, supra note 68.

[70] 'The Pros and Cons of a SWIFT Response', *The Economist*, 22 November 2014, at: http://www.economist.com/news/international/21633830-blocking-rogue-states-access-worlds-financial-messaging-network-potent-measure (accessed on 16 April 2017).

binding resolution to the same effect.[71] It was immediately rejected by SWIFT as in violation of EU law, as discriminatory, and as potentially confiscatory with regard to SWIFT because of its predictable repercussions that would be certain to affect future user confidence.[72] On 26 January 2015, US Treasury Secretary Jack Lew remarked in Brussels that sanctions had 'work[ed] to create real stress in the [Russian] economy', and that the US had 'more tools'.[73] By the time of Secretary Lew's statement, it was more than apparent what else the Western arsenal of financial hegemony entailed.[74]

Discussions about leveraging Western control of SWIFT as a tool of foreign policy long predate the Ukrainian crisis. They intensified following the impressive results of the substantial pressure on Iran by 'de-SWIFTing' its banks in 2012, which eventually brought the country to the negotiating tables in Geneva and Vienna, resulting in the Joint Comprehensive Plan of Action (JCPOA) agreement by October 2015.[75] The same options were certainly being considered with regard to Russia throughout 2014, albeit with far less than unequivocal support.[76] While the UK[77] and Poland[78] pursued the renewed use of SWIFT as an instrument of multilateral sanctions policy, Germany, Italy and others remained very reluctant to engage in such discussions in view of the partial dependency of their economies on access to Russian market and because of the unpredictable scale of Russian retaliation.[79] Chancellor Merkel, clearly aware of the possibility that Russia might retort by blocking deliveries of oil and gas while winter was approaching, declined to even discuss blocking Russia from SWIFT on 31 August 2014. [80] Nevertheless, a SWIFT ban was not ruled out either.

If access of Russian banks to SWIFT had indeed been restricted, SWIFT would have complied as it did in the case of Iran and major banks outside Russia would have been very

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[71] European Parliament, Joint Motion for a Resolution on the Situation in Ukraine and the State of Play of EU-Russia Relations 2014/2841 (RSP), 17 September 2014, at: http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P8-RC-2014-0118&language=EN (accessed on 16 April 2017).

[72] Press Release, SWIFT, 'Statement on European Parliament Resolution of 18 September 2015', at: https://www.swift.com/insights/press-releases/european-parliament-resolution (accessed on 16 April 2017).

[73] 'US Has "More Tools" to Put Pressure on Russia—Lew', *Reuters*, 26 January 2015, at: http://www.reuters.com/article/ukraine-crisis-lew-idUSB5N0TE00Y20150126 (accessed on 16 April 2017).

[74] A. Fixler, M. Dubowitz & J. Zarate, '"SWIFT" Warfare: Power, Blowback, and Hardening American Defenses', Foundation for Defense of Democracies, 7 July 2015, at: http://www.defenddemocracy.org/content/uploads/publications/Cyber_Enabled_Swift.pdf (accessed on 16 April 2017).

[75] Joint Comprehensive Plan of Action (JCPOA), signed in Vienna, 14 July 2015, activated 16 January 2016 (ratification not required). 'Joint Comprehensive Plan of Action', US Department of State: Diplomacy in Action, at: http://www.state.gov/e/eb/tfs/spi/iran/jcpoa/ (accessed on 16 April 2017).

[76] 'The Pros and Cons of a SWIFT Response' 2014, supra note 70.

[77] Hutton & Wishart 2014, supra note 68.

[78] G. Woloshyn, 'Time to Act SWIFTly', *Kyiv Post*, 27 January 2015, at: http://www.kyivpost.com/opinion/op-ed/george-woloshyn-time-to-act-swiftly-378545.html (accessed on 16 April 2017).

[79] 'The Pros and Cons of a SWIFT Response' 2014, supra note 70.

[80] C. Matlack, 'Choking Russia's Banks Would Be the Ultimate Sanction', *Bloomberg Business*, 1 September 2014, at: http://www.bloomberg.com/bw/articles/2014-09-01/banning-russia-from-the-swift-payment-system-would-really-hurt (accessed on 16 April 2017).

reluctant to cooperate with attempts to bypass SWIFT, fearing secondary sanctions[81] and facing potential expulsion under SWIFT's bylaws which prohibit members from engaging in activities harmful to the cooperative.[82]

The unequivocal threat by Prime Minister Medvedev, likely in response to Secretary Lew's comment, of a 'reaction without limits'[83] was probably calculated to feed Western reluctance more than anything else. However, it also raised interesting parallels to a similarly asymmetric threat of military response made by the US against unspecified and difficult to attribute hackers (generally assumed to be North Korean), only some days before.[84]

Russian banks, through their national cooperative ROSSWIFT, not only form the second-largest SWIFT cooperative after the US, but are also heavy users of other major payment systems connected by SWIFT, such as Fedwire and Target2.[85] It is one thing for a SWIFT blockade to bring to heel a medium-sized regional economy like Iran's that is less integrated in the international financial system, but quite another to exclude a major global player such as Russia[86] or China.[87] The credible public threat of this possibility alone created a substantial risk of preventative evasive action, for which collective means are anything but lacking among potential sanction targets in emerging markets, as China's Asian Infrastructure Investment Bank (AIIB) initiative has shown.[88] Threat of sanctions induces pre-emptive caution in avoiding US/EU exposure: even in decidedly pro-Western countries such as Switzerland, the third-largest source of foreign direct investment after the UK and Canada, transactions with a 'US dollar risk' are accepted with considerably greater caution and reluctance than in the past, following the experience with flexing of US economic muscle.[89] China's AIIB initiative as well as its success at having IMF recognise the Yuan as a reserve currency both increase its potential to weaken dollar-driven secondary sanctions on institutions that assist sanctioned actors to avoid restrictions.[90]

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[81] But see J.A. Meyer, 'Second Thoughts on Secondary Sanctions', *University of Pennsylvania Journal of International Law* 2009-30 p. 905.

[82] Mark Dubowitz cited in Matlack 2014, supra note 80.

[83] H. Farrell, 'Russia is Hinting at a New Cold War over SWIFT. So What's SWIFT?' *Washington Post*, 28 January 2015, at: https://www.washingtonpost.com/blogs/monkey-cage/wp/2015/01/28/russia-is-hinting-at-a-new-cold-war-over-swift-so-whats-swift/ (accessed on 16 April 2017) (referencing Itar-TASS agency report).

[84] E. Nakashima, 'Why the Sony Hack Drew an Unprecedented US Response Against North Korea', *Washington Post*, 15 January 2015, at: https://www.washingtonpost.com/world/national-security/why-the-sony-hack-drew-an-unprecedented-us-response-against-north-korea/2015/01/14/679185d4-9a63-11e4-96cc-e858eba91ced_story.html (accessed on 16 April 2017).

[85] 'The Pros and Cons of a SWIFT Response' 2014, supra note 70.

[86] Farrell 2015, supra note 83.

[87] Fixler, Dubowitz & Zarate 2015, supra note 74.

[88] 'Egypt, Norway, Russia Approved as AIIB Founders', *China Daily*, 15 April 2015, at: http://www.chinadaily.com.cn/business/2015-04/15/content_20437814.htm (accessed on 16 April 2017).

[89] S. Kilhof, 'FATCA Law Makes Firms Reluctant to Trade With Americans', World Finance, 7 August 2014, at: http://www.worldfinance.com/strategy/fatca-law-makes-firms-reluctant-to-trade-with-americans (accessed on 16 April 2017).

[90] T. Williamson, 'Too Big to Sanction—How the Internationalization of China's Currency Hurts Washington's Ability to Punish Human Rights Violators', *Foreign Policy*, 18 March 2016, at: https://foreignpolicy.com/2016/03/18/too-big-to-sanction-rmb-china-imf/ (accessed on 16 April 2017). See also 'Fancy Footwork: How Businesses Linked to Blacklisted Oligarchs Avoid Western

II.2 The Multiplier Effect of World Market Prices: The Case of Crude Oil

A second prong that aided Western sanctions against Russia was the devastating effect of the post-2014 oil price drop. A multitude of factors influences highly liquid world markets for a notoriously volatile international commodity, such as crude oil that has at all times been heavily affected by great elasticity of demand. Reasons include weak demand from China and other emerging markets, the US becoming the world's largest oil producer due to hydraulic fracturing technology, and Saudi unwillingness to concede market share regardless of the effect on prices. Still, three aspects cannot be overlooked: 1) the fact that two countries most egregiously dependent on oil exports, Russia and Iran, are also among the most important targets of Western economic sanctions; 2) the contemporaneousness of sanctions against Russia and the speed and intensity of a rarely observed long-term oil price drop;[91] and 3) the answer to the classic forensic question *cui bono?* (to whose benefit?).

As of 2012, the Russian oil and gas sector contributed 16 percent to its GDP, 52 percent to Russian federal budget revenues, and over 70 percent to total Russian exports.[92] Iran is a founding member of OPEC,[93] but a political and religious rival of Saudi Arabia throughout the Middle East. In terms of the differential between value of crude oil production at world market prices and total production cost, Iran is even more oil-dependent than Russia.[94] Crude oil price dropped from approximately $115/bbl. in June 2014 to approximately $30 in January 2016 (26% of the high water mark), a level not seen since August 1999, with further downside potential.[95] Still, the oil price drop since 2014 gives no rise to conspiracy theories involving OPEC as a whole because Iran is a member. Nigeria was forced to raise interest rates significantly and devalue the naira, while Venezuela looks daily closer to defaulting on its foreign debt. Additionally, a similar price drop occurred from June 2008 ($144.78/bbl.) to April 2009 ($55.22/bbl.).[96] While low oil prices benefit major importers such as the Eurozone, India, China, and Japan,[97] the US, although now statistically the world's largest oil producer,[98] is also still the world's second-largest oil importer[99]—albeit with anticipated

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Sanctions', *The Economist*, 14 February 2015, at: http://www.economist.com/news/business/21643122-how-businesses-linked-blacklisted-oligarchs-avoid-western-sanctions-fancy-footwork (accessed on 16 April 2017).

[91] 'Central Bank Governor of the Year 2015: Nabiullina Displays Crisis-Fighting Skills', *Euromoney*, 2015, at: http://www.euromoney.com/Article/3488368/Central-bank-governor-of-the-year-2015-Nabiullina-displays-crisis-fighting-skills.html (accessed on 16 April 2017).

[92] 'World Development Indicators: Contribution of Natural Resources to Gross Domestic Product 2013', World Bank, 2015, at: http://wdi.worldbank.org/table/3.15 (accessed on 16 April 2017); 'Russia—Analysis', US Energy Information Administration, 13 November 2013, at: https://web.archive.org/web/20140324135804/http://www.eia.gov/countries/cab.cfm?fips=rs (accessed on 16 April 2017).

[93] OPEC, 'Member Countries', at: http://www.opec.org/opec_web/en/about_us/25.htm (accessed on 16 April 2017).

[94] World Bank, 'Oil Rents (% of GDP)', at: http://data.worldbank.org/indicator/NY.GDP.PETR.RT.ZS (accessed on 6 March 2016).

[95] Macrotrends, 'Crude Oil Price History Chart', at: http://www.macrotrends.net/1369/crude-oil-price-history-chart (accessed on 6 March 2016).

[96] *Ibid.*

[97] OPEC, 'Annual Statistical Bulletin 2014', at: http://www.opec.org/library/Annual%20Statistical%20Bulletin/interactive/current/FileZ/Main.htm (accessed on 16 April 2017).

[98] US Energy Information Administration, 'International Energy Statistics—Total Petroleum and Other Liquids Production 2014', at:

steeply diminishing tendency: 'most projections show North America will be totally energy independent by 2020 and the United States shortly thereafter'.[100] That fact aside, even indirectly supporting the economically unsustainable Saudi output levels was sure to yield outsize benefits to US geopolitical interests that could not arguably be achieved at similar cost by outright sanctions or much riskier military expenditures. Thus, from an 'economic statecraft'[101] perspective, leveraging a strategic interplay between Western sanctions and oil price change[102] proved highly effective for the US in the cases of both Iran and Russia.[103] It is unlikely that any formal sanction, not even if it had included a suspension of access to SWIFT, could have deprived the Russian federal budget of almost 38.5 percent of its revenues within a period of 19 months.[104] Accordingly, it is easy to see how a latent threat of further complicating Russian access to international debt markets by blocking vital payment infrastructure would conjure up existential concern about the solvency of the Russian state—and how a response 'without limits' like the one threatened by Prime Minister Medvedev could materialise.

II.3 Debt Sanctions? A Double-Edged Proposal

At the height of Euromaidan protests in Kyiv, Putin attempted to prop up the faltering pro-Russian Yanukovych government with a $15 billion aid package.[105] The first instalment of $3 billion was released on Christmas Eve 2013 against Ukrainian Eurobonds with a maturity of two years. The bonds were governed by English law and contained unique terms allowing Russia to accelerate repayment and put it ahead of Ukraine's private creditors.[106] Yanukovych fled to Russia on 21 February 2014, but left Ukraine liable for the first instalment of this debt. This was despite the fact that the remainder of the aid package, including deeply discounted Russian gas deliveries, had already been suspended on 29 January 2014, while Yanukovych still held office.[107] Prime Minister Yatsenyuk's new post-Yanukovych government promptly suspended repayment of the $3 billion bond and

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http://www.eia.gov/beta/international/rankings/#?prodact=53-1&cy=2014 (accessed on 16 April 2017).

[99] OPEC 2014, supra note101.

[100] Joe Biden, Remarks by the Vice President at the John F. Kennedy Forum, 3 October 2014, at: https://www.whitehouse.gov/the-press-office/2014/10/03/remarks-vice-president-john-f-kennedy-forum (accessed on 16 April 2017).

[101] See K.A. Elliott, 'Analyzing the Effects of Targeted Sanctions', in D. Cortright & G. A Lopez eds., *Smart Sanctions: Targeting Economic Statecraft*, Lanham, Md.: Rowman & Littlefield Publishers 2002, p. 171. See also M. Mastanduno, 'Economic Statecraft, Interdependence, and National Security: Agendas for Research', *Security Studies* 1999-9-1-2, p. 288.

[102] P.R. Gregory, 'A Russian Crisis with No End in Sight, Thanks To Low Oil Prices and Sanctions', *Forbes*, 14 May 2015, at: http://www.forbes.com/sites/paulroderickgregory/2015/05/14/a-russian-crisis-with-no-end-in-sight-thanks-to-low-oil-prices-and-sanctions/#f38f967be6c5 (accessed on 16 April 2017).

[103] 'The Pros and Cons of a SWIFT Response' 2014, supra note73.

[104] See figures supra notes 92 and 95.

[105] 'Russia Promises Ukraine Cheaper Gas, $15 Billion Loan', *Voice of America News*, 17 December 2013, at: http://www.voanews.com/content/russia-promises-ukraine-cheaper-gas-15-billion-loan/1811836.html (accessed on 16 April 2017).

[106] A. Gelpern, 'Russia's Contract Arbitrage', *Capital Markets Law Journal* 2014-9-3, pp. 308-10.

[107] A.E. Kramer, 'Russia Defers Aid to Ukraine, and Unrest Persists', *The New York Times*, 29 January 2014, at: http://www.nytimes.com/2014/01/30/world/europe/ukraine-protests.html?_r=0 (accessed on 16 April 2017).

threatened litigation.[108] Since the loan had been made to gain leverage over Ukraine's political independence, Russia, also somewhat predictably, in turn proceeded to refuse restructuring of these bonds in the Paris Club of sovereign creditors.[109]

Once Western sanctions unfolded, proposals emerged to add 'debt sanctions' by having the British Parliament deny enforceability of this 'odious debt' in English courts.[110] However, the doctrine of odious debt is quite restrictive and its tests were unlikely to be met by Ukraine in the current circumstances.[111] On their face, the advantages of applying to sovereign debt a concept akin to lender liability[112] and the benefits of 'debt sanctions' to Ukraine in the current situation are obvious. A large part of legal analysis in support of debt sanctions is accurate: debt contracts are indeed routinely invalidated by courts, rewritten in bankruptcy, and blocked by traditional sanctions that by definition interfere with the sanctity of contract when they prohibit money transfers.[113] Thus, targeted and narrowly tailored special legislation would not create a genuine sensation in the market: sanctions commit to breaking contracts for political ends, unless they provide specific grandfather exemptions for existing contracts, which to some extent both US and EU sanctions did.[114] It is also accurate that the risk of bypassing debt sanctions that are limited to blocking enforceability in English courts through having a dispute controlled by English law adjudicated elsewhere is remote, and the prospects for enforcement of such an award would likely render this debt rather unattractive to mainstream investors and affect its market value.[115] But the repercussions for the global financial system in general and for confidence in the predictability of English law, and in the London financial centre in particular, point to a different assessment and lead to a conclusion that the mere proposal of 'debt sanctions' is ill-considered in the extreme.[116]

III. (Unintended) Effects of Sanctions: Sanctions—A Catalyst for Autarky

Globalisation and sanctions make odd bedfellows. As soon as serious calls for blocking Russia's access to SWIFT were voiced in August 2014, trade groups for Russian banks

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108 L. Mills, 'Ukraine Suspends Payment on $3 Billion Loan from Russia', *The Wall Street Journal*, 18 December 2015, at: http://www.wsj.com/articles/ukraine-suspends-payment-on-3-billion-loan-from-russia-1450441229 (accessed on 16 April 2017).
109 Gelpern 2014a, supra note 107.
110 See S. Ludington & M. Gulati, 'A Convenient Untruth: Fact and Fantasy in the Doctrine of Odious Debts', *Virginia Journal of International Law* 2008-48, pp. 595, 597, and A. Gelpern, 'Odious, Not Debt', *Law and Contemporary Problems* 2007-70-3, p. 81.
111 Gelpern 2014a, supra note 107. See also A. Gelpern, 'Debt Sanctions Can Help Ukraine and Fill a Gap in the International Financial System', Peterson Institute for International Economics, Policy Brief 14-20, August 2014, pp. 4, 7, at: http://www.iie.com/publications/interstitial.cfm?ResearchID=2654 (accessed on 16 April 2017).
112 See A. Gelpern, 'Hard, Soft and Embedded: Implementing Principles on Promoting Responsible Sovereign Lending and Borrowing', in C. Esposito, Y. Li & J.P. Bohoslavsky eds., *Sovereign Financing and International Law: The UNCTAD Principles on Responsible Sovereign Lending and Borrowing*, Oxford: Oxford University Press 2013, p. 347. See also L.C. Buchheit & M. Gulati, 'Responsible Sovereign Lending and Borrowing', *Law and Contemporary Problems* 2010-73, p. 63.
113 Gelpern 2014b, supra note 112, p. 8.
114 C.E. Golumbic & R.S. Ruff III, 'Who do I Call for an E.U. Sanctions Exemption? Why the E.U. Economic Sanctions Regime Should Centralize Licensing', *Georgetown Journal of International Law* 2013-44, pp. 1007, 1037.
115 Gelpern 2014b, supra note 112, p. 8.
116 See supra notes 111 and 112.

projected defiance: if their members could not use SWIFT, they could still transfer funds by other means including secure internet and facsimile connections—although at great inconvenience and considerably higher cost and for domestic use at best.[117] Accordingly, by September, Russia's National Payments Council proposed the establishment of a national payments system wholly-owned by the Bank of Russia[118] to reduce the country's dependency on SWIFT; in a first stage at least for domestic transactions. By December, all messaging options were operational.[119] Initially, the domestic platform was scheduled to go live by May 2015.[120] Bank of Russia Deputy Chairman Skorobogatova confirmed in late September 2015 that a number of major Russian banks were already using the central bank's financial messaging system, a platform supplemented by bilateral agreements providing facilities between Sberbank, VTB, Gazprombank, Bank of Moscow, Rosselkhozbank, Rosbank, Alfa Bank, Ural Bank for Reconstruction and Development, and others.[121] But in September 2015, Bank of Russia Governor Nabiullina announced that the domestic SWIFT equivalent was still 'nearing completion'.[122] Another impulse for prioritising expeditious creation of a national payment scheme in Russia came from the compliance of Visa and MasterCard with US sanctions by cutting off services to Russian clients associated with seven sanctioned banks, including Bank Rossiya, Sobinbank, SMP Bank, and Investcapitalbank.[123] As a reprisal, Russia required Visa and MasterCard to keep security deposits with the Bank of Russia and joined the China UnionPay credit card platform.[124]

Periodically, virtually any target of US financial sanctions, including Saddam Hussein, has declared 'de-dollarization' as a strategic goal, however inconsequential these initiatives have proved in terms of settlement of oil and gas trades. That trend may, however, be reversed if the predicted US energy independence should materialise, since there is no readily apparent reason why buyers and sellers of a commodity should expose themselves to sanctions risks by using the currency of a non-party to their transaction who is not even a major market participant on the buy or sell side. Energy independence could therefore conceivably hurt the dollar's status as a reserve currency.[125] This familiar aspiration of de-dollarization gained some renewed traction on the occasion of Ukraine-related sanctions in statements by VTB CEO Andrey Kostin, advocating settlements of Russian exports in rubles in a matter of two to three years.[126] The China Foreign Exchange Trade System (CFETS), established with the hope to weaken the dollar's dominance in global finance and to make the yuan (CNY) an

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[117] Matlack 2014, supra note 30.
[118] 'Russia to Launch Alternative to SWIFT Bank Transaction System in Spring 2015', *RT*, 11 November 2014, at: https://www.rt.com/business/204459-russia-swift-payment-alternative/ (accessed on 16 April 2017).
[119] 'Russia Banks Begin Testing National Payment System Next Week', *TPP-Inform*, 9 December 2014, at: http://eng.tpp-inform.ru/princple_theme/1315.html (accessed on 16 April 2017).
[120] *Ibid.*
[121] *Ibid.*
[122] 'Russia's SWIFT Equivalent Already in Use' 2015, supra note 69.
[123] 'Visa, MasterCard Block US-Sanctioned Russian Banks', *RT*, 21 March 2014, at: https://www.rt.com/business/visa-mastercard-russia-sanctions-285/ (accessed on 16 April 2017).
[124] 'SWIFT: 'No Authority to Suspend Russia, Israel from Intl Payments over Sanctions'', *RT*, 6 October 2014, at: https://www.rt.com/business/193464-no-authority-swift-russia-israel/ (accessed on 16 April 2017).
[125] M. Piotrowski, 'China's Currency on Track to Challenge the US Dollar in Oil Markets', *Fuse*, 15 October 2015, at: http://www.energyfuse.org/chinas-currency-on-track-to-challenge-the-u-s-dollar-in-oil-markets/ (accessed on 16 April 2017).
[126] 'Russia Could Ditch US Dollar in 2-3 Years—Head of Russia's #2 Bank', *RT*, 30 September 2014, at: https://www.rt.com/business/191804-russia-ditch-dollar-2-years/ (accessed on 16 April 2017).

alternative to the USD in global trade, started swaps and forwards between the yuan and the Russian ruble (RUB), the Malaysian ringgit (MYR) and the New Zealand dollar (NZD).[127]

Aside from Russia's participation as a founding member in the Chinese-led Asian Infrastructure Investment Bank,[128] there has also been recurrent talk about creating alternative rating agencies to S&P, Moody's and Fitch, possibly with Chinese participation.[129] Part of this effort is an enduring Russian strategy of rebuilding foreign exchange reserves to more than twice the levels thought to be necessary by economists' consensus.[130] Contemporaneously with Russia, China started to develop an alternative domestic payments system under the auspices of the People's Bank of China[131] that also includes international capabilities—the China International Payment System (CIPS).[132] It uses SWIFT industry syntax for messaging to facilitate acceptance in the marketplace and allows 'shortlisted' banks to access directly the People's Bank of China's China National Advanced Payment System (CNAPS).[133] However, within months of its announcement, this project had to be scaled back already to be used only for cross-border yuan trade deals rather than to include also capital market transactions including securities transactions and foreign direct investment.[134] While it may not be possible to show cogent evidence for the thesis that avoidance of the political risk of sanctions is the primary motivating factor of such initiatives, it is also clear that abandonment of established Western-controlled financial infrastructure would otherwise face considerable disincentives in the form of costs and organisational change that no economy incurs lightly.

III.1 Sanctions—A Catalyst for Asymmetric Response

VTB CEO Andrey Kostin, one of the Kremlin's most-watched 'signal officers' in the Russian financial sector, has continually fielded succinct threats aimed at deterring Western resolve to further escalate sanctions that his government continues to deem illegitimate. 'I don't know how [Western] banks could block SWIFT and then expect cooperation in the fight against terrorism and nuclear disarmament.'[135] And, following some further tightening of the screws toward the end of 2014, '[i]f there is no Swift, there is no banking… relationship, it means that the countries are on the verge of war, or they are definitely in a cold war… The next day,

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[127] 'China to Start Payments with Russia in National Currencies on December 29', *Sputnik News*, 26 December 2014, at: http://sputniknews.com/business/20141226/1016284341.html (accessed on 16 April 2017).

[128] 'Egypt, Norway, Russia Approved as AIIB Founders' 2015, supra note 92.

[129] 'SWIFT: 'No Authority to Suspend Russia, Israel from Intl Payments over Sanctions'' 2014, supra note131.

[130] E. Pismennaya, 'Russia's Economy Is Tanking, So Why Is Putin Smiling?' *Bloomberg Business*, 1 March 2016, at: http://www.bloomberg.com/news/articles/2016-03-01/as-russia-s-economy-contracts-putin-s-preferred-indicator-is-up?cmpid=yhoo.headline (accessed on 16 April 2017).

[131] 'Russia's SWIFT Equivalent Already in Use' 2015, supra note 69.

[132] M. Chen & K.G. Qing, 'Exclusive: China's International Payment System Ready, Could Launch by End-2015—Sources', *Reuters*, 9 March 2015, at: http://www.reuters.com/article/us-china-yuan-payments-exclusive-idUSKBN0M50BV20150309?irpc=932 (accessed on 16 April 2017).

[133] See 'Payment, Clearing and Settlement Systems in China', Bank for International Settlements, 2012, pp. 9, 12, 20-22, at: https://www.bis.org/cpmi/publ/d105_cn.pdf (accessed on 16 April 2017).

[134] S. Chatterjee, 'Exclusive—China's Payments System Scaled Back; Trade Deals Only: Sources', *Reuters*, 13 July 2015, at: http://uk.reuters.com/article/uk-china-yuan-payments-idUKKCN0PN0P020150713 (accessed on 16 April 2017).

[135] 'Russia Could Ditch US Dollar in 2-3 Years—Head of Russia's #2 Bank' 2014, supra note 126.

the Russian and American ambassadors would have to leave the capitals'.[136] In close temporal proximity, a Russian Foreign Ministry spokesman said that sanctions 'are putting in doubt prospects for bilateral cooperation on solving the situation around the Iranian nuclear program, the Syrian crisis, and other acute international problems'.[137]

Kostin, one of the leading proponents of de-dollarization, also claimed that, because some 90 percent of VTB's payments are domestic, a SWIFT embargo would hardly affect his institution.[138] That, of course, would be a direct contradiction to the purported rationale of his above cited martially-sounding drama.[139] Kostin's assertion is also flatly contradicted by Russian national daily liberal business broadsheet Kommersant that reported more than 90 percent of transactions involving Russian banks as crossing borders.[140] The credibility of statements alleging Russian imperviousness to a SWIFT blockade is extremely low. At the same time, vulnerability of Western interests to blowback also remains a matter of careful monitoring in formulating sanctions policy as well as expectations of its sustainable success and net benefit.

An open, complex, and intensely interconnected society and economy is substantially more vulnerable to disruptions of any kind, even relatively minor in nature and not successful pursuant to the ambition that originated it. It is a process vaguely comparable to criminal investigations and prosecutions that do not lead to convictions yet tie up substantial resources and thus exact what is equivalent to a significant punishment in its own right. Western vulnerability on non-proliferation, terrorism, and Financial Action Task Force on Money Laundering (FATF) issues follows the same logic.

III.2 Have Sanctions Failed?

From an American perspective, Europe is notorious for inability to resist pressure, inability to speak *una voce*—at least as long as necessary—and inability to put long-term common interest ahead of short-term benefits. Fair or not, it is a narrative that aptly describes entities that are not superpowers engaged in a 'big game'. Europe conceives of itself as a common market first and as a community of values, but without clear hierarchy among them, and without shared interests in the projection and maintenance of power.[141]

Not least, Europe's exposure to trade and financial relations with Russia is substantial. It is estimated that sanctions against Russia reduced EU GDP growth by 0.3 percent in 2016.[142]

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[136] G. Tett & J. Farchy, 'Russian Banker Warns West over Swift', *Financial Times*, 23 January 2015, at: http://www.ft.com/intl/cms/s/0/7020c50c-a30a-11e4-9c06-00144feab7de.html#axzz41YYx5iiZ (accessed on 16 April 2017).

[137] P. Richter, 'Russia Threatens to Halt Cooperation with US on Iran, Syria', *Los Angeles Times*, 30 December 2014, at: http://www.latimes.com/nation/la-fg-russia-us-iran-syria-20141230-story.html (accessed on 16 April 2017).

[138] 'The Pros and Cons of a SWIFT Response' 2014, supra note 73.

[139] 'Russia Could Ditch US Dollar in 2-3 Years—Head of Russia's #2 Bank', supra note133.

[140] 'The Pros and Cons of a SWIFT Response' 2014, supra note 73.

[141] 'The Common Market—And Its Relation to a Free Trade Area', *The Round Table: The Commonwealth Journal of International Affairs* 1958-48-191, pp. 238-247.

[142] D. Francis & L. Jakes, 'Sanctions Are a Failure … Let's Admit That', *Foreign Policy*, 28 April 2016, at: http://foreignpolicy.com/2016/04/28/sanctions-are-a-failurelets-admit-that/?wp_login_redirect=0 (accessed on 16 April 2017).

Although Russia's GDP is assumed to have shrunk 3–3.5 percent in 2015[143] and is predicted to contract by 1.5 percent in 2016,[144] the cost in absolute figures to Europe is greater. While US and Canadian sanctions are open-ended, EU sanctions require periodic unanimous renewal.[145] More importantly, sanctions are proving unable to change Russian behaviour in and around the Ukraine crisis.[146] Therefore, it comes as no surprise that the utility of sanctions is challenged more determinedly in Europe than it is in the US, where meaningful metrics of their cost are not easy to evaluate. Concern that the West's most effective non-military weapon is dulled exists in the US as well, although it was articulated by Secretary Lew with greater circumspection:

> 'It is important to make sure these tools remain available and effective. And there is a risk that overuse could ultimately reduce our capability to use sanctions effectively. While sanctions are a valuable alternative to more severe measures, including the lawful use of force, it is a mistake to think that they are low-cost. And if they make the business environment too complicated—or unpredictable, or if they excessively interfere with the flow of funds worldwide, financial transactions may begin to move outside of the United States entirely—which could threaten the central role of the U.S. financial system globally, not to mention the effectiveness of our sanctions in the future.'[147]

It may be true that sanctions were largely responsible for the Minsk accord. What is less clear is whether the Minsk accord itself was useful beyond showing some tangible result of Western pressure.[148] The accord certainly does not appear to have changed Russia's posture or interference in Ukraine, and it would probably have been naïve to expect otherwise, considering how it was brought about.

Conclusions

Notwithstanding more detailed analysis of formal sanctions, factors with a *de facto* similar or reinforcing effect need to be included in any meaningful review of legal and political risk. This is especially true of 'latent sanctions' that are not actually used but are credibly threatened, to the extent they would leave the target without adequate alternative. However, policy evaluation must weigh systemic long-term risk to vital infrastructure platforms and institutions that have come to be considered part of global financial utilities. Their political neutrality is undermined at the peril of world-wide interests including the long-term interests of the sanctioning state or bloc itself. Ukraine-related sanctions did have a very significant effect on

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143 E.H. Christie, 'Sanctions After Crimea: Have They Worked?' NATO Review 2015, at: http://www.nato.int/docu/Review/2015/Russia/sanctions-after-crimea-have-they-worked/EN/index.htm (accessed on 16 April 2017).

144 'Reuters Poll: Russian Economy Seen Contracting 1.5 Percent This Year Despite Oil Boost', *Reuters*, 29 April 2016, at: http://uk.reuters.com/article/us-russia-economy-poll-idUKKCN0XP1X4 (accessed on 16 April 2017).

145 Christie 2015, supra note150.

146 Francis & Jakes 2016, supra note149.

147 Remarks of Secretary Lew on the Evolution of Sanctions and Lessons for the Future at the Carnegie Endowment for International Peace, US Department of the Treasury Press Center, 30 March 2016, at: https://www.treasury.gov/press-center/press-releases/Pages/jl0398.aspx (accessed on 16 April 2017).

148 Minsk I Protocol of 5 September 2014 and Minsk II package of measures agreed 11 February 2015, both under the auspices of OSCE.

Russia[149], but even without accounting for Russian reprisals (which did not amount to much in reality), they also substantially affected key industries in the sanctioning states.[150] Still, like virtually every Western sanction before, they were nonetheless deemed cost-effective by the US administration and by the EU Commission.[151]

Russia's attempts to develop its 'Eastern vector'[152] by increasing ties with China and achieve greater cohesion among the BRIC countries had some symbolic value for Putin's domestic audience but largely failed to meet expectations. Still, the BRIC countries, with China at its centre, remain an increasingly formidable 'resistance bloc' to a unipolar economic world order shaped and managed pursuant to US standards and demands.[153] Ukraine-related, implemented as well as latent sanctions may in time lead to the re-monetisation of bullion and increased importance of barter and currency substitutes to the dollar[154] as well as to a general setback for attempts at curbing terrorist financing[155]—considered a largely pre-textual crusade by many as it is.

One of the most sobering studies on the effectiveness of economic sanctions was presented in late 2013 just as the Euromaidan protests began. Shojai & Root concluded that

> 'choosing a target and imposing economic sanctions is a random process when a sender is faced with a real or perceived threat. Sanctions are imposed as an alternative to inaction or going to war. The theory and research on effectiveness of economic sanctions has been a mere exercise in running regressions on a series of random numbers and it doesn't shed any light to guide policymaking. For example, the research doesn't guide policymakers as to when and how an economic sanction may be effective. It also doesn't provide any practical and useful information about what economic, political or legal variables are significant in affecting sanction outcomes. Also, sanctions are imposed regardless of existence of favorable or unfavorable conditions and structures'.[156]

This finding characterises sanctions as rituals playing to a political, often primarily domestic but sometimes also geopolitical, audience. Regardless of indisputable effectiveness in certain circumstances, they often seem driven by motives and objectives other than those stated for justification.[157]

It makes little sense to analyse specific facts and circumstances of the US and EU sanctions regime or its credibility and the risks it creates for Multinational Enterprises (MNEs) and financial institutions subject to it, without examining the Russian view of its interests in

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149 J. Farchy & N. Hume, 'Russian Share Prices Drop as Sanctions Bite', *Financial Times*, 21 March 2014, at: http://www.ft.com/intl/cms/s/0/9ffba124-b0d6-11e3-9f6f-00144feab7de.html#axzz41mINeADG (accessed on 16 April 2017).

150 E. Christie 2015, supra note 50.

151 Joe Biden, Remarks by the Vice President at the John F. Kennedy Forum 2014, supra note 100.

152 Tett & Farchy 2015, supra note 137.

153 M. Dubowitz & J. Schanzer, 'The Fragility of the Global Financial Order', *The Wall Street Journal*, 3 March 2015, at: http://www.wsj.com/articles/mark-dubowitz-and-jonathan-schanzer-the-fragility-of-the-global-financial-order-1425423520 (accessed on 16 April 2017).

154 Matonis 2012, supra note 64.

155 'The Pros and Cons of a SWIFT Response' 2014, supra note 73.

156 S. Shojai & P.S. Root, 'Effectiveness of Economic Sanctions: Empirical Research Revisited', *International Business and Economics Research Journal* 2013-12, pp. 1479, 1488.

157 A.B. Culvahouse, Jr., 'A Practice Guide to International Sanctions Law and Lore: Mamas, Don't Let Your Children Grow Up to be Sanctions Lawyers', *Houston Journal of International Law* 2010-32, p. 587.

Ukraine and of perceived interference therewith.[158] From President Putin to Foreign Minister Lavrov to oligarchs like Deripaska, one mantra has echoed a consistent sentiment since Western sanctions were first initiated: that Ukraine was merely a pretext for long-prepared sanctions aimed at regime change and at curbing Russian ascendancy.[159] In historical experience,[160] sanctions can almost never be crafted watertight, and it suffices for policy purposes—albeit not necessarily for compliance and enforcement purposes—to see them broadly working.[161] Sanctions also have informational value and they convey signals, intended and unintended ones.[162] Returning to the analogy of the arm's race, it is unwise to use one's potentially most effective tools in less than vitally urgent circumstances, as such tools may experience diminishing effect already the second time around.

This paper examined the potential systemic fallout from a policy that relied on publicly toying with sanctions. Such a policy may, in the case of Russia, indeed have brought about a considerable part of the desired effect in the near term, but an assessment of its long-term consequences must also include the reactions that every action entails. And after this analysis, the assessment likely changes: the damage done not only to Western economic interests, but also to the tool box of actually imposed and potential economic and financial sanctions, needs to be balanced against the wisdom of defending fairly abstract principles of sovereignty. This is especially true in a geographic area of limited strategic and economic importance to NATO that historically,[163] demographically,[164] and militarily[165] so clearly forms part of the Russian sphere of interest that justification of sanctions based on legal principles remains rather unpersuasive. It makes sense only if one considers the strategic value of prying Ukraine loose from Russian influence and integrating it into the EU and, ultimately, NATO. Or, at a

158 For a socio-economic synopsis, see A. Sushentsov, 'Ukraine—A Battlefield or a Bridge Between Russia and the West?', *Russia Global Affairs*, 13 February 2016, at: http://eng.globalaffairs.ru/number/UkraineA-Battlefield-or-a-Bridge-between-Russia-and-the-West-17991 (accessed on 16 April 2017).

159 See, e.g., F. Weir, 'Ukraine Crisis: West's Sanctions Target Putin, Not Policy, Russia Insists', *Christian Science Monitor*, 28 November 2014, at: http://www.csmonitor.com/World/Europe/2014/1128/Ukraine-crisis-West-s-sanctions-target-Putin-not-policy-Russia-insists (accessed on 16 April 2017); ''Sanctions War' Has Nothing to Do with Ukraine; It's Just a Pretext—Rusal CEO', *RT*, 19 September 2014, at: https://www.rt.com/business/189052-deripaska-sanctions-ukraine-russia (accessed on 16 April 2017).

160 See, inter alia, supra note 1.

161 See generally R. Eyler, *Economic Sanctions: International Policy and Political Economy at Work*, New York: Palgrave Macmillan 2007.

162 M.P. Malloy, 'Human Rights and Unintended Consequences: Empirical Analysis of International Economic Sanctions in Contemporary Practice' *Boston University International Law Journal* 2013-31, p. 79. See also J. Gordon, 'A Peaceful, Silent, Deadly Remedy: The Ethics of Economic Sanctions', *Ethics and International Affairs* 1999-13, p. 123.

163 M. Lewycka, 'Ukraine and the West: Hot Air and Hypocrisy', *The Guardian*, 10 March 2014, at: http://www.theguardian.com/world/2014/mar/10/ukraine-and-west-hot-air-hypocrisy-crimea-russia (accessed on 16 April 2017).

164 State Statistics Committee of Ukraine, All-Ukrainian Population Census 2001, About Number and Composition Population of Autonomous Republic of Crimea, at: http://2001.ukrcensus.gov.ua/eng/results/general/nationality/Crimea/ (accessed on 16 April 2017).

165 See P.N. Schwartz, 'Crimea's Strategic Value to Russia', Center for Strategic International Studies, 18 March 2014, http://csis.org/blog/crimeas-strategic-value-russia (accessed on 16 April 2017).

minimum, of dissuading Putin from similar encouragement of ethnic Russian nationalism in the Baltics.[166]

[166] R. Coalson, 'Putin Pledges to Protect All Ethnic Russians Anywhere. So, Where Are They?' *Radio Free Europe / Radio Liberty*, 10 April 2014, at: http://www.rferl.org/content/russia-ethnic-russification-baltics-kazakhstan-soviet/25328281.html (accessed on 16 April 2017).