

U.S. SANCTIONS REGIMES & HUMAN RIGHTS ACCOUNTABILITY STRATEGIES

TOOLS OF TRADE

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INTERNATIONAL CORPORATE
ACCOUNTABILITY ROUNDTABLE



enough

The project to end genocide and crimes against humanity

ABOUT THE AUTHORS

INTERNATIONAL CORPORATE ACCOUNTABILITY ROUNDTABLE

The International Corporate Accountability Roundtable (ICAR) is a civil society organization that believes in the need for an economy that respects the rights of all people, not just powerful corporations. We harness the collective power of progressive organizations to push governments to create and enforce rules over corporations that promote human rights and reduce inequality.



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The Enough Project supports peace and an end to mass atrocities in Africa's deadliest conflict zones. Together with its investigative initiative The Sentry, Enough counters armed groups, violent kleptocratic regimes, and their commercial partners that are sustained and enriched by corruption, criminal activity, and the trafficking of natural resources. By helping to create consequences for the major perpetrators and facilitators of atrocities and corruption, Enough seeks to build leverage in support of peace and good governance. Enough conducts research in conflict zones, engages governments and the private sector on potential policy solutions, and mobilizes public campaigns focused on peace, human rights, and breaking the links between war and illicit profit.



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SUMMARY

Economic sanctions provide financial and diplomatic pressure to further U.S. foreign policy goals and national security interests. By targeting individual actors, economic sectors, or an entire foreign government, sanctions are an attractive alternative to softer diplomatic options and drastic military action for the U.S. government to act upon its positions before the international community. Because sanctions are a malleable tool that can be tailored to specific situations, their use has risen to address a wide range of issues, such as the proliferation of weapons of mass destruction, regional destabilization, terrorism, the narcotics trade, corruption, and human rights violations.

Sanctions against human rights abusers have historically been more challenging to implement due to the difficulty in obtaining sufficient information to legally support such cases, and a perception by some in the U.S. government that sanction designations of those involved in atrocities are ineffective. As a result, the number of persons sanctioned for human rights abuses is markedly lower compared to those designated for their role in terrorism, nuclear proliferation, or the narcotics trade. In addition, resources are prioritized for sanctions programs responding to what are seen as presenting more of a clear and present danger to the United States, such as Iran and North Korea, than for those considered ideological in nature and less threatening to U.S. national security.

At the same time, human rights advocates are often reluctant to call for sanctions in part due to their potential unintended consequences,

particularly those created by comprehensive embargoes, which prohibit U.S. persons from almost all transactions with a targeted country's persons and entities. The complex nature of many sanctions regimes also creates a barrier for non-practitioners of sanctions law to engage. Coupled with the U.S. government's lethargy in implementing and enforcing human rights-related sanctions, this reality has resulted in an underutilization of sanctions as a tool in human rights strategies.

This paper seeks to bridge these gaps by providing a resource for human rights advocates and practitioners, both within and outside the U.S. government, to understand the fundamental principles of U.S. sanctions and evaluate opportunities to engage in sanction-specific advocacy strategies. The paper explains the legal framework of U.S. sanctions and the roles different agencies play in administering sanctions programs. It then discusses specific sanctions programs or mechanisms that can be leveraged to promote human rights abroad. These include: (1) imposing targeted designations through existing country programs, (2) targeting international human rights violators using Executive Order 13818, "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption," (3) leveraging sectoral and secondary sanctions for human rights objectives, and (4) using sanctions authorities to increase transparency requirements for businesses engaged in areas with specific human rights risks. Ultimately, this paper aims to assist practitioners and advocates to utilize sanctions more effectively to promote human rights objectives.

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I. INTRODUCTION

Economic sanctions are a set of measures that center on prohibiting the financial and trade relations with the sanctioned targets for foreign policy or national security purposes. U.S. policy-makers often view economic sanctions as a high-impact and low-cost foreign policy tool that can be used to confront pressing national security and foreign policy concerns.¹ As such, the U.S. government has increasingly relied on the country's dominance in the international financial system as leverage to disrupt illicit activity and incentivize foreign governments, companies, and other non-state actors to change their behavior. Sanctions exert economic and diplomatic pressure that illustrates policy positions before the international community by targeting specific individual actors, sectors of a country's economy, or an entire foreign government.²

Economic sanctions have proven an attractive alternative to softer diplomatic options and covert action that could escalate into conflict. Former Treasury secretary Jacob Lew described sanctions as a "powerful force" allowing the U.S. government to exert "smart power for situations where diplomacy alone is insufficient, but military force is not the right response."³ The United States now uses sanctions to address a wide range of national security issues, such as the proliferation of weapons of mass destruction, regional destabilization, terrorism, the narcotics trade, corruption, and human rights violations.

Human rights advocates are often reluctant to call for sanctions in part due to their potential unintended negative consequences. Of particular concern to human rights advocates are the potential negative consequences created by comprehensive embargoes, which prohibit U.S. persons from almost all transactions with the target country's persons and entities. In the most infamous case of

the human costs of economic sanctions, multilateral sanctions against Iraq contributed to a humanitarian crisis with malnutrition, lack of medical supplies, and infrastructure failure.⁴ While Congress and the executive branch have since taken additional steps to exempt exports of food, medicine, and medical devices from comprehensive sanctions regimes,⁵ international aid organizations often report disruptions to their operations and challenges to their humanitarian efforts. Risk-based business decisions by financial institutions can also impact organizations that provide humanitarian services and can hamper access to banking services in countries where sanctions are in place.⁶

Concerns about these unintended negative consequences have been explored through academic research and case studies. Some studies have shown that sanctions can harm human welfare and bolster the sanctioned government's repressive capacity.⁷ For example, critics argue that rather than creating pressure on those in power in a targeted regime, sanctions can actually benefit regime elites, who are more likely to have privileged access to illicit smuggling routes or the means to otherwise evade sanctions. They may also enjoy economic monopolies resulting from less competition from foreign businesses.⁸ Furthermore, sanctions' potential impact on economic and political stability in the targeted country may also become propaganda fodder for the targets, as they are used to bolster the legitimacy of anti-American regime ideologies and provide further justification to repress political dissidents. Additionally, sanctions can provide governments with an excuse to conceal economic mismanagement and corruption, while the public bears the impact of heightened resource scarcity and declining livelihoods.⁹

Nevertheless, when crafted and implemented strategically, sanctions can be an effective tool to respond to a wide range of human rights issues. For example, congressional restrictions on trade, investment, and lending by U.S. companies in South Africa in the mid-1980s are largely credited with creating economic and political pressure that contributed to the end of apartheid.¹⁰ Targeted sanctions, in particular, have been used more frequently in recent years to impose costs for specific actors while avoiding the potential unintended consequences of comprehensive sanctions for the general population.¹¹ Targeted sanctions can be powerful in incentivizing a change in behavior or disrupting illicit activity through the designations of specific regime elites, or their economic and political base of support. These designations can also bolster human rights advocacy by highlighting the involvement of certain people or organizations in abuses to the international community.

A number of civil society organizations have advocated the use of targeted sanctions in a wide range of situations involving human rights issues. For example, after an escalation in the repression of Syrian protesters in April 2011, Human Rights Watch called on the international community to “impose sanctions on those ordering the shooting of protesters.”¹² As president Barack Obama’s administration eased sanctions on Burma, Human Rights Watch and the International Corporate Accountability Roundtable (ICAR) also advocated for retaining sanctions on gem trade and military assistance, both of which bolster the Burmese military and strengthen its coercive capacity.¹³ Similarly, while the comprehensive sanctions program against Iran is hotly debated, human rights organizations commonly advocate for targeted sanctions against Iranian regime officials implicated in gross human rights violations.¹⁴ Finally, the Enough Project has argued for the use of

diverse and “modernized” forms of sanctions to address conflicts and corruption across East and Central Africa.¹⁵

The imposition of financial prohibitions through sanctions has become an important and growing part of the foreign policy landscape. Documenting crimes and identifying perpetrators can provide the political pressure and factual basis to support sanctions designations. Calls for the international community to “do something” in response to violations often inspire policymakers to impose sanctions, especially given the public’s common perception of sanctions as a tough response.¹⁶

This paper is intended to help the human rights community understand the fundamental principles of U.S. sanctions and evaluate opportunities to engage in sanction-specific advocacy strategies. The paper will: 1) explain the legal framework of U.S. sanctions and the roles different agencies play in administering sanctions programs; and 2) provide case studies on current and recent programs to demonstrate opportunities, successes, and complexities in the use of this tool. By doing so, this paper aims to assist practitioners and advocates, both inside and outside the U.S. government, to utilize sanctions more effectively to promote human rights objectives.

II. SANCTIONS AND INSTITUTIONS

Sanctions are one of the many economic and trade-related measures governments can apply to support foreign policy and national security objectives. The use of sanctions is not unique to the United States. The European Union and individual EU member states maintain their own regulations for arms embargoes, prohibitions on travel, asset freezes, and trade restrictions.¹⁷ In practice, European countries have used these authorities on a similar set of issues and areas as the United States. However, they have been less inclined than the United States to adopt comprehensive embargoes, instead focusing on specific individuals or types of items (such as surveillance technologies). For example, when the European Union imposed sanctions against Belarus in response to the repression of civil society and the democratic opposition there, it targeted individuals connected to President Alexander Lukashenko and businesses that support his regime.¹⁸ The EU Belarus sanctions program includes an arms embargo, a ban on equipment transfers for internal repression, travel restrictions, and asset freezes. Australia, Canada, Japan, and Singapore also maintain sanctions regimes, and Iran and Russia use sanctions as retaliatory measures. Because of the interconnectivity of the international financial system, like-minded governments often seek to use multilateral sanctions to maximize their impact and demonstrate solidarity in response to world events.

U.S. sanction programs came into fruition in response to a multitude of foreign policy and national security concerns. Each program may have different sets of objectives, durations, scopes, stakeholders, and legal authorities depending on the situation it seeks to alleviate. Core to these programs is a prohibition on U.S. persons dealing in “all property and interests in property,”¹⁹ or providing services and facilitating transactions with the sanctioned persons.

These sanctions may be comprehensive or targeted. Comprehensive sanctions programs prohibit U.S. persons – including individuals, corporations, partnerships, and other entities²⁰ – from conducting almost all transactions with the targeted country’s persons and entities, even when those persons are in a third country. The U.S. embargo on Cuba is an example of a comprehensive sanctions program.

Less commonly understood are targeted sanctions, which are administered through the Specially Designated Nationals and Blocked Persons (SDN) list. Targeted sanctions impose asset freezes, travel restrictions, and restrictions on the receipt of U.S. financial services for specific persons.²¹ Given the expansive reach and dominance of the U.S. economy and financial system, both comprehensive and targeted sanctions can effectively shut out the intended targets from the international banking system and disrupt basic business operations.²²

In addition to sanctions, within the realm of financial regulations and restrictions on trade, the United States maintains other authorities that are often used in conjunction with sanctions to prosecute or deter crime. These include anti-money laundering statutes, export controls, restrictions on foreign aid, and the Foreign Corrupt Practices Act (FCPA). Such measures have often been used to address human rights abuses. For example, the United States maintains export controls on instruments of torture and surveillance technologies regardless of the destination country.²³ The FCPA, on the other hand, has a limited and complicated history with respect to human rights, but advocates have attempted to use it in cases of extrajudicial killings.²⁴ This paper does not cover these adjacent and often overlapping mechanisms, instead focusing solely on the use of economic sanctions as “sticks” in foreign affairs.

A. SANCTIONS AUTHORIZATION

Sanctions programs can be authorized either by the president or Congress. More commonly, sanctions are effectuated by the White House through executive orders. Congress has delegated certain general authorities to the president, allowing the executive branch to authorize sanctions through emergency powers.²⁵ More specifically, the International Emergency Economic Powers Act (IEEPA) allows the president to institute sanctions upon declaring a national emergency with respect to an “unusual and extraordinary threat . . . to the national security, foreign policy, or economy of the United States.”²⁶ The president has fairly wide discretion in declaring that a situation is an “unusual and extraordinary threat” under the National Emergencies Act, and courts give the president great deference in making such decisions.²⁷ Violations of international humanitarian and human rights law have been regarded by numerous presidents to constitute an “unusual and extraordinary threat” that justifies imposing sanctions under IEEPA.²⁸ Independent of congressionally delegated powers, the president can impose economic sanctions to implement decisions of the United Nations Security Council, which is generally required by the United Nations Participation Act of 1945.²⁹ In some countries, UN Security Council decisions are automatically considered part of domestic law. In the United States, this is not the case, and domestic legal instruments must be used to implement these measures.³⁰

Congress also has the power to encourage, institute, and shape the implementation of sanctions through legislation. For example, the legislative branch often uses a “Sense of Congress,” a form of concurrent resolution that does not have the force of the law, to press the administration to pursue certain sanctions without binding the president. On the other hand, as recent legislation related

to Iran and Russia has shown, Congress can also explicitly develop sanctions targeting criteria and/or name specific entities to be sanctioned to more formally force presidential action.³¹ Further, Congress can impose reporting rules that require the administration to periodically provide information on the implementation of sanctions programs, such as which entities were designated. These reporting requirements serve to put pressure on the administration to continue to enforce sanctions and provide strategic oversight into the implementation of sanctions programs.

Sanctions programs evolve as circumstances or socio-political situations change over time. Many of the most well-known sanctions programs are authorized by a combination of congressional statutes and executive orders, creating highly-complex legal structures that involve multiple agencies or branches of government. The underlying legal authority for a particular sanctions program may have implications for how the sanctions are administered, altered, or terminated. For example, easing or terminating sanctions programs that were constructed through both legislative and executive powers may require both Congress and the president to act. However, most congressional sanctions include a provision that allows the president to waive the sanctions under certain conditions, usually if the president determines that such a waiver is “in the national interests of the United States.”³² An executive order can similarly amend, ease, or terminate sanctions originating from an executive order.³³

B. LEADING AGENCIES

The principal agency involved in administering and enforcing economic sanctions programs is the Department of Treasury's (DOT) Office of Foreign Assets Control (OFAC). Legislation or executive orders that authorize sanctions typically state overarching policy objectives and lay out criteria for who or what are the intended targets of the sanctions program. Congressional sanctions generally place the responsibility on the executive branch to identify and designate persons. In consultation with other federal agencies, OFAC implements these sanctions by administering the listing and delisting persons, maintaining licensing programs, investigating possible sanctions violations, levying civil penalties, and engaging with financial institutions and other private sector entities. In principle, OFAC is granted a fair amount of agency discretion, with its designation and delisting process often not well understood and influenced by a diverse set of considerations.

The Department of State (DOS) also plays a critical role in the development and implementation of sanctions, and multiple offices within the DOS have related responsibilities. The Office of Economic Sanctions Policy and Implementation (SPI) in the Bureau of Economic and Business Affairs coordinates DOS's policy and guidance to OFAC on foreign policy considerations for sanctions implementation, including obtaining DOS concurrence for designations and recommendations for OFAC licensing decisions.³⁴ This office also has some specific sanctions designation responsibilities, specifically with one element of the Iran sanctions program. The Bureau of Economic and Business Affairs and U.S. embassies play a critical role, such as explaining U.S. sanctions policy to foreign governments, engaging with U.S. companies overseas on business implications for sanctions, and coordinating diplomatic engagement in bilateral relationships to amplify the impact

of sanctions. Additionally, the Bureau of Democracy, Human Rights, and Labor (DRL), which is tasked with monitoring human rights for DOS, also coordinates with SPI and OFAC on relevant matters. Until recently, the Coordinator for Sanctions Policy office served as the central office within DOS to coordinate and oversee DOS's efforts on sanctions-related matters.³⁵ This office had been instrumental in ensuring policy coherence and effective implementation of sanctions policy among various DOS offices and the multilateralization of sanctions with allies like the European Union, but was eliminated by President Donald Trump's administration in 2017.³⁶ The extent of influence that other agencies and U.S. government stakeholders hold within the administration of programs can vary depending on the content of the underlying legislative authorities, executive orders, and statutory mandates. For example, given its expertise in human rights, DRL plays an important role within the DOS in engaging with non-government organizations (NGOs) in the Global Magnitsky program, which targets corrupt officials and human rights abusers around the world.³⁷

C. IMPLEMENTATION AND ENFORCEMENT

The dominance of the United States in the international financial system and global economy means that U.S. sanctions have a wider reach than just touching on assets and entities located within its jurisdiction. Under most sanctions programs, it is not only illegal for U.S. persons to directly transact with a sanctioned person, but also to facilitate a transaction. For example, banks acting as intermediaries between U.S. persons and sanctioned persons can also be held liable for their role in providing financial services or facilitating a transaction to or from a sanctioned person.

Even foreign companies can be held accountable for providing services or facilitating transactions on behalf of blocked persons if they have operations in a sanctioned country and operations in the United States, and if their employees in the United States provide any support to the operations in the sanctioned country.³⁸ The U.S. government's

increasing willingness to pursue cases of facilitation and circumvention against such foreign entities has created conditions where companies outside of the United States often choose to “voluntarily comply” with U.S. sanctions by refusing to provide services to designated persons because of concerns about potential sanctions exposure.

CASE STUDY

SCHLUMBERGER OILFIELD HOLDINGS, LTD.

The case against Schlumberger Oilfield Holdings Ltd. (SOHL) illustrates how the U.S. government can exert jurisdiction and hold a foreign company liable for U.S. sanctions violations through the actions of the company's U.S. employees.

Schlumberger Oilfield Holdings Ltd. (SOHL), a subsidiary of Schlumberger Ltd., is a foreign company incorporated in the British Virgin Islands that provides oilfield services to numerous countries. From 2004 to 2010, Drilling and Measurements (D&M), Schlumberger's U.S.-based business segment, provided systematic operational support to SOHL's business operations in Sudan and Iran, including: (1) approving capital expenditure requests for SOHL's purchases, (2) directing the transfer of equipment from non-sanctioned countries to Iran and Sudan, (3) making and implementing decisions regarding the company's operations in these two countries, and (4) providing technical support for oilfield drilling equipment.³⁹

The U.S. Department of Justice (DOJ) commenced a joint investigation with the Department of Commerce in 2009, and subsequently charged SOHL with “knowingly and willfully” violating the Iranian and Sudanese Transactions and Sanctions Regulations. In prosecuting SOHL, the DOJ acknowledged that as a non-U.S. entity, SOHL is legally allowed to operate in Iran and Sudan so long as its U.S. employees are not involved in these operations. SOHL, in this case, failed to “train its employees adequately to ensure that all company U.S. persons, including non-U.S. citizens who resided in the U.S. while employed by D&M, fully complied with (the company's) policies and procedures assuring compliance with U.S. economic sanctions.”⁴⁰ In March 2015, SOHL pleaded guilty and agreed to pay \$232.7 million in criminal penalties. Additionally, the company was placed under a three-year period of corporate probation where SOHL agreed to cooperate with U.S. authorities and not engage in any felony violations of U.S. federal law, while its parent company must hire an independent consultant to review the company's internal sanctions policies, procedures, and audit reports.⁴¹

The process of engaging with OFAC to add or remove persons from the SDN list can be challenging for sanctions practitioners and non-practitioners alike. There is little readily available information on the criteria and supporting evidence used in the designations, other than a press release generally issued on the day of a designation. In order to support sanctions designations, OFAC must provide information such as evidence that details why the targeted person meets the criteria for sanctions, such as his or her government official status or engagement in a sanctionable activity. Personal identifiers such as a full name, date and place of birth, passport data, and nationality are also required. The more identifying information, the better. A primary concern for those reviewing designation packages at OFAC and the DOJ is to be able to defend these designations against legal challenges in U.S. courts. In reviewing agency decisions, courts apply the “arbitrary and capricious” standard under the Administrative Procedures Act, analyzing whether the agency had reasonable basis for its action.⁴² This standard is “exceedingly deferential” to the agencies.⁴³ In addition, courts have granted wide deference to OFAC beyond standard practice due to the agency’s role “in an area at the intersection of national security, foreign policy, and administrative law.”⁴⁴ OFAC designations may be supported by classified or law enforcement sensitive information, which can lend some opacity to the more detailed examples of sanctionable activity that formed the basis of an SDN’s listing.⁴⁵

OFAC relies primarily on private sector self-monitoring and reporting to ensure compliance with the programs it administers. Unlike other agencies such as the Department of Commerce, which administers export controls, OFAC generally does not have enforcement officers based overseas other than two offices at U.S. embassies in Colombia and Mexico. U.S. persons must block or “freeze” any property linked to an SDN and

report on that action within 10 days to OFAC.⁴⁶ If the transaction involves a person or entity who is not specifically designated but is in a country subject to comprehensive sanctions, such as Cuba or Iran, it must be rejected and the property returned to the originator.⁴⁷ To monitor compliance with these rules, OFAC has a substantial amount of power to request information about sanctions-related transactions through administrative subpoenas.⁴⁸

OFAC may issue licenses to allow certain activities and transactions that would otherwise be prohibited by sanctions regulations. Licenses can be specific or general in terms of the scope of activity permitted and otherwise tailored to the circumstances of the case. While a specific license authorizes a particular person or entity to engage in a particular transaction or set of transactions, a general license broadly allows certain types of transactions, such as those related to travel or the provision of legal services to an SDN. Congress has imposed some limitations on presidential authority and mandated legal exemptions, including those that allow for humanitarian trade and the import of informational materials.⁴⁹ General licenses are often issued in the process of easing sanctions to allow the U.S. government an opportunity to provide temporary sanctions relief before a final determination is made to terminate sanctions permanently.⁵⁰

Sanctions programs are, in general, rigorously enforced and carry substantial civil and criminal penalties.⁵¹ Violations are a strict liability offense, which means that the enforcement authorities only need to prove that a violation occurred.⁵² Most human rights-related sanctions are authorized under IEEPA, which can carry civil penalties up to twice the amount of the transaction or \$289,238, whichever is greater.⁵³ Any sanctions violations may also be a criminal offense, subject to a criminal penalty up to a million dollars and 20 years in prison.⁵⁴

Faced with a complex and specialized set of regulations with substantial repercussions for violations, banks, companies, and others often engage in “de-risking” to limit their potential liability.⁵⁵ This practice cuts services to entities that are perceived as high-risk based on their proximity to sanctions or other legal issues. This may create unintended and counterproductive harms. For example, while Somali sanctions are limited to the terrorist group al-Shabaab and entities responsible for the destabilization of the country, money laundering and counterterrorism restrictions

have led banks to curtail transactions involving Somalia.⁵⁶ Ordinary Somalis were impacted as they rely heavily on overseas remittances, which constituted 23% of the country’s GDP in 2015.⁵⁷ Additionally, individuals of nationalities that are comprehensively sanctioned or have similar names as those on the SDN list frequently encounter unnecessary restrictions due to financial institutions’ over-compliance. As such, this potential impact should be taken into consideration when advocating for the imposition of sanctions.

III. HUMAN RIGHTS AND TARGETED SANCTIONS: OVERVIEW AND CASE STUDIES

Sanctions regimes provide the attractive prospect of pressuring regimes that perpetrate human rights abuses, especially in scenarios where there is minimal leverage to change behavior and where in-country accountability is limited or non-existent. The commonly-held theory is that sanctions create economic and political costs for undesirable behaviors. This, in turn, pushes the targeted individual, entity, or government to shift its calculus, leading to a reduction in problematic activities. Sanctions-induced economic shortfalls may also diminish the regime’s repressive capacity and lead to elite defections, which can create space for in-country opposition movements to challenge the existing regime and potentially force concessions. Human rights sanctions also signal expectations from the international community and ensure that human rights concerns are addressed in the course of regime change or political shift.

Additionally, sanctions provide a mechanism to “name and shame” repressive actors. Designations tend to be covered in the

international press, increasing attention to the abuses and the roles of specific individuals. In sanctioning Venezuelan President Nicolas Maduro for a crackdown on political institutions, Treasury Secretary Steven Mnuchin stressed this argument, stating that the punitive measures “highlight the high costs and personal repercussions that enablers of this regime could face if they continue their reckless and undemocratic activities.”⁵⁸ In practice, however, sanctions rarely change behavior directly or permanently. Instead, when most effective, sanctions provide leverage toward diplomatic and political processes that can, in turn, bring about more sustainable solutions bound by firmer commitments.

Human rights sanctions have suffered from weak implementation and enforcement compared to those related to other priorities, such as counterterrorism, nuclear proliferation, and narcotics trafficking.⁵⁹ OFAC has often been criticized for its failure to include certain key individuals who civil society groups believe

deserve to be sanctioned, while rushing to remove others without sufficient public explanation.⁶⁰ Particularly, when it comes to human rights related sanctions, the SDN list has not targeted business and political networks comprehensively enough to create sufficient financial and political pressure to change their behavior.

For example, the Enough Project has reported that U.S. sanctions against the Democratic Republic of the Congo have achieved some results but have thus far been largely ineffective in tackling the kleptocracy and related human rights abuses led by President Joseph Kabila's government. In 2016, sanctions were used consistently over the course of the year, by both the United States and European Union, and contributed to President Kabila's agreement to commit to an election process. Unfortunately, without consistent pressure or a political and diplomatic process to ensure adherence, President Kabila backtracked.⁶¹

Another reason, at least historically, for the relatively few number of human rights designations may be OFAC's lack of resources. OFAC maintained 26 sanctions programs with a budget of \$117 million in 2016.⁶² Those funds are insufficient to cover the growing use of sanctions measures, including for the process of designating targets for the SDN list, which often requires intensive research and review.⁶³ As national security issues are often regarded as more urgent and posing a greater threat to U.S. interests, more resources are generally allocated to implement and enforce sanctions unrelated to human rights.⁶⁴ This lack of resources is further exacerbated with the sidelining of diplomats at the DOS under the Trump administration, causing many sanctions experts to resign.⁶⁵

As such, those advocating for designations or new sanctions programs need to be strategic. As discussed below, the implementation of Global Magnitsky, among other programs, shows that strong sanctions action related

to human rights is still achievable.⁶⁶ Advocates should base their strategies on an understanding of the context, the strength of evidence, and nature of any sanctions program relevant to the country or issue of concern. Policymakers are more likely to act when there are demands that could be communicated, precedent exists, and outcomes could be achieved through the designation.

The following sections describe specific sanctions programs or mechanisms that can be leveraged to promote human rights abroad, with a focus on key lessons for improving the effectiveness of strategies.

A. IMPOSING TARGETED DESIGNATIONS THROUGH SPECIFIC COUNTRY PROGRAMS

The promotion of democracy and human rights has traditionally been an integral component of U.S. foreign policy and national security, and the U.S. government has long used sanctions to respond to human rights abuses. Although there are some variations across programs, human rights sanctions are usually mandated in the form of targeted sanctions, rather than comprehensive embargoes. The most commonly used language states that "any person" determined to be "responsible for or complicit in, or to have engaged in, directly or indirectly . . . human rights abuses" may be added to the SDN list.⁶⁷ The declaration of a national emergency under the IEEPA, the statement of facts in an executive order or relevant legislation provide background on the objectives. These actions and statements also provide context for how the program is implemented by authorities.

Many sanctions programs relate to situations where human rights abuses are implicated, responding to abuses such as the repression of religious minorities, crackdowns on protesters, the dismantling of democratic institutions, and censorship. Human rights, specifically

civil and political rights, are referenced in both comprehensive and targeted sanctions regimes covering Belarus, Burundi, Central African Republic, Cuba, Democratic Republic of the Congo, Iran, North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Ukraine (Crimea), Venezuela, and Zimbabwe.⁶⁸



BANNING FORCED LABOR PRODUCTS THROUGH SANCTIONS

Congress recently passed the Countering America's Adversaries Through Sanctions Act (CAATSA),⁶⁹ amending the North Korea sanctions program to include a ban on importing goods made by North Korean workers around the world who toil under forced labor conditions. In doing so, CAATSA creates a rebuttable presumption that goods produced by North Korean workers are made using forced or convict labor and are thus barred from entering the U.S. market under Section 307 of the Tariff Act of 1930.⁷⁰ This is a creative use of sanctions for human rights purposes that deviates from SDN designations. It was also enacted to further pressure the North Korean government, which has been sending its citizens overseas to earn hard currency for the regime as a way to circumvent international sanctions.⁷¹

In advocating for SDN designations under existing sanctions programs or the creation of a new authority, it is particularly useful to consider the desired results and opportunities for changing behavior, aside from purely punitive outcomes. Designations should clearly communicate the expected changes of behavior that could lead to the waiver or removal of sanctions. Advocates should also consider the context that human rights violators operate within to find influence over targets. There are often financial or political entities that bolster the human rights perpetrators, which can also be targeted.

CASE STUDY

SANCTIONS ON ISLAMIC REPUBLIC OF IRAN BROADCASTING

The case of Iran's Islamic Republic of Iran Broadcasting (IRIB), which controls domestic radio and television services, demonstrates that restrictions can help change behavior when there are clear conditions associated with the imposition of sanctions.

The United States has maintained a comprehensive sanctions regime against Iran since the Islamic Revolution that brought the current government to power, targeting the country for its pursuit of weapons of mass destruction and its support for terrorism.⁷² As the perceived threats posed by Iran increased, the sanctions regimes grew to cover other challenges, such as its destabilizing activities in Iraq. While the persecution of religious minorities and other human rights violations had long been included in the reasons for sanctioning Iran, after the government's brutal crackdown against protests following the disputed election in June 2009, these new sanctions more frequently addressed human rights violations and were actively used to designate large numbers of key figures involved in the Iranian government's repression.

In response to its role in the post-election crackdown, human rights organizations began to call for sanctions against the IRIB. The IRIB has been pivotal to the Iranian government's repression, including through broadcasting propaganda against dissidents, airing forced confessions from political prisoners, and inciting violence against minority groups. The IRIB has also been linked to Iran's practice of jamming the uplink of television satellites. Referred to as "uplink jamming," this tactic disrupts transmissions by effectively blinding the satellite to censor other Persian-language stations.

The European Union was the first to take measures against the IRIB, designating its director, Ezzatollah Zarghami, in March 2012. The EU sanctions provided an official acknowledgement from Western governments of the IRIB's critical role in human rights violations. Later that year, the U.S. Congress called for the imposition of sanctions against those entities responsible for Iran's uplink jamming.⁷³ When the White House did not designate the IRIB, Congress again intervened months later in the National Defense Authorization Act (NDAA) for Fiscal Year 2013.⁷⁴ A Sense of Congress resolution found that "Islamic Republic of Iran Broadcasting has contributed to the infringement of individuals' human rights by broadcasting forced televised confession and show trials."⁷⁵ The NDAA then specifically directed the president to designate Zarghami and the IRIB.⁷⁶ In February 2013, both were placed on the SDN list.⁷⁷

The round of targeted sanctions led to the IRIB's channels being removed from its main satellite carriers, Intelsat and Eutelsat, because the owners were headquartered in the United States and Europe, respectively. Since the sanctions imposed restrictions on providing services to the designated entity, the companies could not enter into new contracts to distribute IRIB content. This interfered with the Iranian government's ability to use broadcast media as a tool to bolster its domestic and foreign support.⁷⁸

In an attempt to seek relief from the blockade, Iran lodged a complaint with the International Telecommunications Satellite Organization (ITSO), the intergovernmental organization that manages Intelsat's operations. Iran alleged that the removal of IRIB violated longstanding agreements that governed access to Intelsat.⁷⁹ Eventually, the United States and Iran came to an agreement regarding the Iranian government's practice of uplink jamming. In return for Iran stopping this form of jamming, the United States would waive sanctions, allowing Intelsat to provide the IRIB service.⁸⁰

The IRIB designation illustrates the power of sanctions when governments have leverage over the target. The Iranian government relied on foreign satellites to reach its own citizens and run foreign-language broadcasts to create soft power in strategic regions. The loss of this propaganda capacity outweighed the value of completely censoring independent media. The arrangement made through the ITSO has been criticized for being limited as Iran pursued other tactics to jam satellites. The IRIB has also continued to broadcast hate content or the forced confessions of political prisoners, which were provided by Congress as the reason for the designation.⁸¹ However, Iran appears to have held to its side of the limited agreement and has not been accused of uplink jamming since then.

These sanctions measures were able to achieve considerable success for several reasons. Congress communicated a set of expectations within its designations that would shape negotiations at the ITSO. Previous designations and designations by other countries that maintain similar sanctions programs also provide useful examples, linking potential targets to specific recognized harms and abusers. In a coordinated approach, the reasons provided by the European Union for imposing sanctions directly mirrored those later listed in U.S. congressional legislation targeting the IRIB. Advocates cited examples of designations of state media elsewhere by the United States as precedent. Such multilateral approaches to sanctions increased pressure. Finally, the removal from both Eutelsat and Intelsat due to EU and U.S. sanctions cut the IRIB off from critical satellites without effective alternatives, which in turn forced the IRIB into negotiations.

B. TARGETING INTERNATIONAL HUMAN RIGHTS VIOLATORS UNDER EXECUTIVE ORDER 13818, THE “GLOBAL MAGNITSKY” PROGRAM

Differing from country-specific human rights sanctions, the Global Magnitsky sanctions program has a transnational mandate, covering foreign persons anywhere outside of the United States involved in serious human rights abuse. The Global Magnitsky sanctions provides a unique opportunity for the U.S. government to pursue designations globally where specific sanctions authorities for a particular country do not exist, including prospectively in countries where other foreign policy interests limit the U.S.’s broader engagement on human rights concerns.

The original legislation that served as the framework for the eventual Executive Order originated from a limited sanctions program targeting human rights abusers in Russia. In December 2012, Congress passed a set of sanctions targeting those involved in the detention, abuse, and death of Sergei Magnitsky, a Russian lawyer and auditor who claimed to have uncovered wide-scale corruption within the Russian government.⁸² The sanctions also targeted others who have violated the rights of human rights defenders and anti-corruption advocates in Russia. Magnitsky was perceived as successful in interfering with the international lifestyle and businesses of Russian officials and their allies, which prompted stern reaction from the Russian government.⁸³

Four years later, using the sanctions as a model to confront other human rights abusers, Congress expanded the program to the global context with the Global Magnitsky Human Rights Accountability Act.⁸⁴ As passed by Congress, the Global Magnitsky Act covers any individual or entity determined to be responsible for, or an agent of one responsible for, “gross violations of internationally recognized human rights”⁸⁵

committed against human rights defenders and whistleblowers in any foreign country.⁸⁶ The violation covered under the Act must be performed “under the color of law” by entities acting in a government capacity. Similar to the Russia program, the Global Magnitsky Act also targets government actors responsible for or complicit in corruption.⁸⁷

Global Magnitsky is the first sanctions regime to cover human rights issues globally. Notably, in December 2017, the Trump administration expanded the Global Magnitsky authorities by issuing Executive Order 13818.⁸⁸ The E.O. allows OFAC to designate foreign persons “responsible for, or complicit in, or (having) directly or indirectly engaged in serious human rights abuses... or corruption.”⁸⁹ In contrast, the Global Magnitsky Act, when passed by Congress in December 2016, only covered gross violations of internationally recognized human rights.⁹⁰ Moreover, while the 2016 Global Magnitsky Act required the human rights violation to be directed at either whistleblowers or human rights defenders to yield sanctions against the perpetrator, the E.O. lifted this requirement.⁹¹ Finally, the new language introduced by Section 1 (ii)(C) of the E.O. means that OFAC no longer needs to prove the targeted person has committed serious human rights abuses, but merely that they are *part of an entity* that has committed such abuses. Any official or leader of an entity proven to have committed serious human rights abuses can therefore be subject to sanctions.⁹²

This expanded authority was accompanied by a significant group of sanctions that included 13 individuals listed in the annex to the E.O. and 39 simultaneous OFAC designations of two individuals and 37 entities – most of whom were derivatives of the annex names. It remains to be seen whether this authority will be used to its full extent, but it is a potentially major development in the architecture of human rights-related financial pressures.

One of the other unique aspects of the Global Magnitsky program is its relatively open consultation process. The statute directs the president to consider credible information from other countries and NGOs that monitor violations of human rights when deciding designations.⁹³ Additionally, the sources for recommendations include joint submissions by the chairperson and ranking member of the foreign affairs and financial committees of both houses of Congress. While under the legislation, congressional recommendations were intended to be mandatory. In a signing statement, then president Obama asserted the “discretion to decline to act on such requests when appropriate.”⁹⁴

The Act provides clear instructions for the U.S. government to consider outside recommendations. The DOS and DOT convened a roundtable with civil society groups in May 2017. The organizations then proposed designation targets and supporting materials, summaries of which were made public in September. Nevertheless, few of these proposed targets were actually sanctioned.

As with other sanctions programs, the administration maintains discretion to selectively implement sanctions, and critics may argue that the United States will avoid sanctions where it is politically convenient. In the context of the Russian Magnitsky Act, many individuals suggested by civil society groups have not been included with no reasoning or justification provided. The political implications of designations further reinforce the importance of strong documentation about human rights violations and the role of potential designation targets, in order to provide OFAC and the DOS with clear evidence they can use.

The structural inclusion of Congress in the designation process could provide some independence in the implementation of the Act, which is increasingly important due to the current administration’s lower priority for

human rights issues. As importantly, the Global Magnitsky Act has catalyzed civil society to be more involved in sanctions programs and fostered discussion around engaging OFAC on other programs. This coordination and discussions with the U.S. government have provided both specific opportunities to pursue sanctions and a template for further advocacy for other authorities.

Other countries, including Canada⁹⁵ and the United Kingdom,⁹⁶ have passed or are considering similar regulations, which will increase the effectiveness of the U.S. Global Magnitsky program by providing a multi-jurisdictional approach to address these issues.

C. USING EMERGING FORMS OF SANCTIONS FOR HUMAN RIGHTS OBJECTIVES

There are a number of emerging forms of sanctions that, while initially deployed for other purposes, can be adapted over time for human rights purposes. These include sectoral sanctions, which target entire economic sectors determined to be a concern in a particular country. This determination can form the basis to identify entities within the sector and add them to the SDN list. Unlike traditional targeted sanctions, administered through SDN designations, sectoral sanctions allow the U.S. government to impose certain defined measures, such as restricting financing terms for projects in the sector, including imposing limits on credit that banks can extend to companies. For example, the U.S. government has imposed sectoral sanctions on Russia’s financial services, energy, mining, and defense sectors through four executive orders.⁹⁷ Under these programs, U.S. persons are prohibited from providing financing for and dealing with new debt issued by entities that have been identified to be operating in the sanctioned sectors.⁹⁸

The mechanism can be further extended to specific sectors in countries that incur high human rights risks. For example, the Enough Project has called for sectoral sanctions against South Sudan's oil and construction sectors, which are rife with corruption.⁹⁹ The Enough Project recommended that OFAC develop sanctions measures that target the worst actors for their corruption. At the same time, these measures should include transparency mechanisms, such as the responsible investment reporting requirements described below in this paper, to encourage more responsible business behavior and ensure that these sectors can continue to develop and drive economic development that the country urgently needs.¹⁰⁰

Secondary sanctions are another type of sanctions that have seen increased use in recent years. Ordinarily, U.S. unilateral sanctions apply only to U.S. companies and citizens and those who are in the United States. Secondary sanctions allow the U.S. government to impose punitive measures against foreign persons, usually financial institutions, for engaging in business activities abroad with a primary sanctions target. Such sanctions preclude foreign firms from simply taking the place of U.S. companies prohibited from doing business under the primary sanctions. Rather than face designation or civil or criminal penalties, these foreign firms can instead be restricted from commercial activities such as maintaining U.S. correspondent accounts or participating in U.S. government contracts, which may ultimately cause them to lose access to the U.S. market.¹⁰¹

Secondary sanctions have been a critical component of the sanctions regime targeting Iran, and have been increasingly used against foreign actors engaging with Russia and North Korea. For example, in August 2017, Congress passed the CAATSA, which mandates the imposition of secondary sanctions on foreign firms for a number of activities concerning Russia, such as investing in certain crude

oil projects, being associated with Russia's defense or intelligence sectors, and knowingly facilitating transactions on behalf of any Russian person on the OFAC SDN list.¹⁰²

The Trump administration has similarly imposed secondary sanctions on foreign financial institutions doing business with North Korea.¹⁰³ In doing so, Treasury Secretary Steven Mnuchin made clear the purpose of the secondary sanctions, which is to put "foreign financial institutions . . . on notice that, going forward, they can choose to do business with the United States or with North Korea, but not both."¹⁰⁴

Secondary sanctions have in fact already been applied for human rights objectives in the form of divestment actions.¹⁰⁵ For example, in an attempt to pressure Sudan to end the violence in Darfur, Congress passed the Sudan Accountability and Divestment Act of 2007,¹⁰⁶ which authorized state and local governments to divest their assets in U.S. or foreign companies that operate in the oil, mineral extraction, power production, and military sectors in Sudan.¹⁰⁷ U.S. sanctions against Burma also prohibited U.S. persons from purchasing shares in any companies involved in the "economic development of resources located in Burma."¹⁰⁸

In recent years, groups have been calling for more directed secondary sanctions and punitive measures to pressure foreign firms providing a lifeline for repressive regimes targeted by U.S. sanctions. For instance, the Enough Project observed that Sudanese banks were able to sustain U.S. comprehensive sanctions mainly because they could obtain services from other financial firms in G7 and G20 countries. Continued access to the international financial market allowed Omar al-Bashir's regime to "procure weapons for use against the Sudanese people, provide safe haven to terrorists or engage in grand corruption."¹⁰⁹ In order to impose direct pressure for the third-party banks to

disengage with the Bashir regime, the Enough Project called on the U.S. government to develop targeted punitive measures that cut off their access to the U.S. financial market and limit their ability to deal in foreign exchanges.¹¹⁰

D. INCREASING TRANSPARENCY ON HUMAN RIGHTS RISKS

While human rights are frequently the impetus for sanctions, other foreign policy prerogatives can reduce or remove economic restrictions when the human rights issues have not been fully addressed. Faced with differing priorities, sanctions have often appeared as a binary solution – an entity is either designated or not. However, the removal of a sanctions regime in fact provides opportunities to continue to impose accountability or encourage better human rights outcomes, even when other priorities motivate a policy change.

The Reporting Requirements on Responsible Investment in Burma (Reporting Requirements) demonstrate how the United States can lift sanctions in countries while retaining some leverage over key human rights issues by imposing due diligence reporting requirements on companies entering a newly opened market. Although the Reporting Requirements were terminated in October 2017 as the Obama administration announced the removal of most embargoes against Burma, this regulation creates a useful precedent as to how sanctions can encourage companies to better respect human rights. The requirements can be enforced when sanctions are being eased, as an alternative to asset freezes and visa bans, or as a strategy to complement other embargo measures in programs such as sectoral sanctions.¹¹¹

As with other programs, Burma sanctions were complicated, involving congressional and presidential authorities covering a number of different issues related to arms, trade,

and financial restrictions. After the Burmese government began to reduce political controls and open up to the international community, the United States responded by walking back sanctions targeting human rights violations that had been in place for nearly two decades.¹¹² The Obama administration claimed that it used these sanctions as incremental leverage to reward positive steps by the government, such as the release of political prisoners and conducting a more open election. Over the course of more than four years, the White House removed or waived certain provisions where permissible to promote investment in the country. Meanwhile, responding to concerns from human rights organizations regarding weak rule of law and continued human rights abuses in Burma, the White House imposed reporting requirements related to human rights for companies entering the country.

To perform its duties to administer and enforce sanctions, OFAC has wide authority to demand information on transactions and entities under its purview through administrative subpoenas and other reporting requirements. In the case of Burma, OFAC leveraged this authority to institute general reporting requirements for companies conducting transactions pursuant to a general license issued in 2012 authorizing new investment to the country.¹¹³ The Reporting Requirements mandated anyone who made new investments exceeding \$500,000 to provide information to the DOS. This requirement included an overview of the company's operations in Burma, its policies and assessments regarding human rights, workers' rights, corruption, and environmental risk.¹¹⁴

The Reporting Requirements suffered from a number of shortcomings. First, companies were allowed to designate some information as confidential by supplying the government with a public and a private version of the report. The existence of a threshold investment amount also excluded many corporate actors

from reporting. Finally, compliance was lackluster because OFAC failed to properly enforce the requirements.

However, the Reporting Requirements illustrate how existing authorities can create leverage where further designations or increased pressure is not feasible. Sanction considerations will often be guided by political expediency or foreign policy objectives, which may lead to the premature removal of designations or restrictions. The Reporting Requirements show how the United States can relax certain regimes while ensuring that American companies engage positively in at-risk situations and retain some leverage over potential abusers. Although the Reporting Requirements were terminated due to the removal of Burma sanctions, since its institution, civil society groups have advocated for similar reporting standards to be applied to other sanctions programs, both as they are being eased but also as a tool that can be used as an alternative to targeted pressures.¹¹⁵

IV. CONCLUSION

Economic sanctions are an effective resource to publicly repudiate and impose repercussions for human rights abuses, providing leverage in countries where accountability strategies are otherwise limited. Historically, the executive branch has been the most common promulgator of sanctions. Human rights issues in general have not appeared to be a high priority for the Trump administration. The delay in nominating political appointees and ambassadors, and the consolidation of special initiatives, further reduces the capacity of the DOS to lead on sanctions and advocate for human rights when there are competing priorities. Moreover, OFAC's growing responsibilities and the increasing complexity of sanctions regulations without additional resources has prioritized national security over human rights issues. These factors further dampen the executive branch's capacity to pursue human rights-related sanctions compared to previous administrations. However, the recent Executive Order and designations under the Global Magnitsky program suggest there may be space to push for strategic use of sanctions to promote human rights abroad under this administration.

In addition, Congress has shown a continued willingness to lead a sanction policy on human rights concerns despite of resistance from the executive branch. If an authority does not exist or has not been effectively implemented, Congress has the power to create new sanctions authorities or encourage the administration to pursue designations. Although successful legislation is typically driven by media and topical events, and condemnation of non-adversarial countries is rare, Congress can put informal pressure on the administration through a number of ways outside of legislation. For example, Congress can hold committee hearings, write letters to federal agencies, and request reports on

implementation. Lawmakers have routinely demonstrated a willingness to support human rights sanctions, and have engaged on issues such as the designation and delisting of individuals and entities on the SDN list, including with the Global Magnitsky Act.

By all indications, Congress and the White House will continue to use sanctions to address human rights concerns. There is an ever-increasing number of programs that cover more countries and issues, some of which provide new opportunities to respond to abuses in situations of lessened priority for policymakers or where political expediency constrains responses. To date, the 115th Congress has already passed legislation imposing more human rights-related sanctions on Iran, North Korea, and Russia.¹¹⁶ It has also introduced legislation or resolutions encouraging sanctions related to civil and political rights targeting Ethiopia,¹¹⁷ Hamas,¹¹⁸ Hizballah,¹¹⁹ Hong Kong,¹²⁰ Syria,¹²¹ Venezuela¹²² and Vietnam,¹²³ as well as broader authority for countries that persecute lesbian, gay, bisexual, and transgender individuals and communities.¹²⁴ New trends in transnational sanctions programs could provide leverage that was previously unavailable. The Global Magnitsky Act in particular, now implemented by the issuance of E.O. 13818, provides a program that could designate serious human rights abusers in countries where the U.S. government has other interests.

Despite the political challenges, sanctions remain a potentially powerful but underutilized tool. Human rights practitioners and advocates should stay engaged throughout the lifecycle of the creation, implementation, and revocation of sanctions regimes. Policymakers should also consider the use of sanctions to achieve human rights objectives. Ample legal grounds exist under the current legal framework for more

administrative and law enforcement action. In addition, the creation of authorities is also an ideal time to ensure their appropriate execution and provide assistance to relevant agencies. As the Burma Reporting Requirements demonstrate, even the end of a sanctions program is an equally important time for interventions. Sanctions regulations can be effectively used to change rights-harming behavior, or at the very least ensure that U.S. persons do not contribute to the deterioration of rights and to impose accountability on those responsible for human rights violations.

IV. END NOTES

¹ In particular, support for “smart sanctions” – which are more targeted, exempt humanitarian trade and emphasize multilateral coordination – over the past two decades has triggered renewed interest in economic restrictions as a foreign policy tool. See WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS, BUDGET JUSTIFICATIONS FOR THE FISCAL YEAR 2017 (2016).

² One commonly cited definition of sanctions is “coercive economic measures taken against one or more countries to force a change in policies, or at least to demonstrate a country’s opinion about the other’s policies.” Barry E. Carter, *International Economic Sanctions: Improving the Haphazard U.S. Legal Regime*, 75 CAL. L. REV. 1159, 1166 (1987).

³ Press Release, Remarks of Secretary Lew on the Evolution of Sanctions and Lessons for the Future at the Carnegie Endowment for International Peace, U.S. Dep’t of the Treasury (March 30, 2016).

⁴ See *Iraq Sanctions: Humanitarian Implications and Options for the Future*, GLOBAL POLICY FORUM (Aug. 6, 2002), <https://www.globalpolicy.org/component/content/article/170-sanctions/41947.html>.

⁵ Trade Sanctions Reform and Export Enhancement Act of 2000, Pub. L. 106 387, Title XI (2000) (the “TSRA”).

⁶ See EMANUELA-CHIARA GILLARD, RECOMMENDATIONS FOR REDUCING TENSIONS IN THE INTERPLAY BETWEEN SANCTIONS, COUNTER-TERRORISM MEASURES AND HUMANITARIAN ACTION 2 (2017).

⁷ See Dursun Peksen, *Better or worse? The Effect of Economic Sanctions on Human Rights*, 46 J. OF PEACE RES. 59, 77 (2009).

⁸ See Gregory Newbold, et. al, *Weighing Benefits and Costs of International Sanctions on Iran*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Dec. 06, 2012), <http://carnegieendowment.org/2012/12/06/weighing-benefits-and-costs-of-international-sanctions-on-iran-event-3884>.

⁹ For example, while the Iranian economy has been constrained by American sanctions for decades, improvements in international business relationships after the 2015 nuclear deal exposed the limits of the country’s corruption and anti-money laundering programs. See Richard Nephew & Elizabeth Rosenberg, *Iran’s Broken Financial System*, POLITICO (June 6, 2016), <https://www.politico.eu/article/iran-sanctions-broken-financial-system-nuclear-deal/>. Other examples include Venezuela and Sudan, which entered into an economic crisis after decades of U.S. sanctions were removed, laying bare the Sudanese government’s years-long mismanagement of the economy, while hiding behind anti-sanctions propaganda.

¹⁰ See Bill Keller, *The World; South Africa Sanctions May Have Worked, at a Price*, N.Y. TIMES (1993), <http://www.nytimes.com/1993/09/12/weekinreview/the-world-south-africa-sanctions-may-have-worked-at-a-price.html>.

¹¹ For example, the Obama administration issued an executive order at Congress’s urging in April 2015 creating a program to confront “malicious cyber-enabled activities.” Sanctions Related to Significant Malicious Cyber-Enabled Activities, U.S. DEP’T OF TREASURY, <https://www.treasury.gov/resource-center/sanctions/Programs/pages/cyber.aspx>.

¹² HUMAN RIGHTS WATCH, *Syria: World Should Impose Sanctions Leadership* (Apr. 24, 2011), <https://www.hrw.org/news/2011/04/24/syria-world-should-impose-sanctions-leadership>

¹³ HUMAN RIGHTS WATCH, *Burma: US should Retain Key Sanctions* (Sept. 6, 2016), <https://www.hrw.org/news/2016/09/06/burma-us-should-retain-key-sanctions>; Sophia Lin & Teresa Gilbert, *Un-warranted changes to sanctions endanger Burma’s transition to democracy*, THE HILL (July 21, 2016), <http://thehill.com/blogs/congress-blog/foreign-policy/288424-unwarranted-changes-to-sanctions-endanger-burmas>.

¹⁴ *International Campaign Finance for Human Rights in Iran: Testimony to Senate Committee on Foreign Relations* (2011) (statement of Rudi Bakhtiar).

¹⁵ BRAD BROOKS-RUBIN, YES, WE HAVE LEVERAGE, (Enough Project 2017).

¹⁶ Amanda Murdie, & Dursun Peksen, *The impact of human rights INGO activities on economic sanctions*, 8 THE REV. OF INT’L ORG. 33, 53 (2013).

¹⁷ EUR. COMM’N, European Union: Restrictive measures (sanction) in force (Apr. 26, 2017), https://eeas.europa.eu/sites/eeas/files/restrictive_measures-2017-04-26-clean.pdf (last visited Apr. 12, 2018).

¹⁸ Council Decision 2012/642/CFSP, Concerning Restrictive Measures against Belarus (Oct. 15, 2012), <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32012D0642>.

¹⁹ See, e.g., Exec. Order No. 13599, 3 C.F.R. 77 (2012) (blocking “all property and interests in property” of the Government of Iran,

including the Central Bank of Iran, and of all Iranian financial institutions, that are in the United States, that come within the United States, or that come within the possession or control of U.S. persons).

²⁰ In the context of U.S. sanctions and hereinafter in this paper, the term “persons” include individuals, corporations, partnerships, and other entities. See 22 U.S.C. § 2798(f) (2012).

²¹ The SDN list contains persons and entities whose assets are blocked and with whom U.S. persons and entities are prohibited from transacting. The Office of Foreign Assets Control (OFAC), in consultation with the Department of State, adds persons and entities to the SDN list when (i) the president names them in an executive order or (ii) the person or entity matches the criteria set forth in legislation or an executive order and codified in an OFAC regulation. Designated persons and entities, along with the sanctions program they are designated under, are listed in a downloadable document that U.S. persons and entities can check against their customer and vendor lists to ensure compliance.

²² This is primarily due to the prevalent use of U.S. dollars in international transactions. The international payment and value transfer system is set up in a way that 95% of transactions in U.S. dollars pass through the United States, providing OFAC with the jurisdictional hook for sanctions enforcement. See Barry Carter & Ryan Farha, *Overview and Operation of U.S. Financial Sanctions*, 44 GEO.J. INT’L L. 903, 909 (2013).

²³ U.S. DEP’T OF COMMERCE BUREAU OF INDUSTRY AND SECURITY, *Control Policy—CCL Based Controls*, <https://www.bis.doc.gov/index.php/documents/regulation-docs/416-part-742-control-policy-ccl-based-controls/file> (July 7, 2017).

²⁴ Most prominently in a case related to Nigerian citizens’ claims that Royal Dutch Shell’s local subsidiary had participated in violence and infringement of civil liberties against a local resistance movement. *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013).

²⁵ The president’s ability to authorize sanctions without declaring a national emergency is limited, predicated on a number of specific pieces of legislation. For example, the Immigration and Nationality Act of 1952 provides the president with wide discretion to impose visa restrictions through executive orders. In 2014, then president Obama invoked this authority to ban the entry of persons found to have been responsible for, complicit in, or to have engaged in the commission of human rights abuses against persons in South Sudan. Exec. Order No. 13,664, 3 C.F.R. § 1 (2014).

²⁶ 50 U.S.C. § 1701(a) (2012).

²⁷ See, e.g., *Beacon Prods. Corp. v. Reagan*, 633 F. Supp. 1191, 1194-95 (D. Mass. 1986), *aff’d* 814 F. 2d 1 (1st Cir. 1987).

²⁸ For example, President Bill Clinton declared a national emergency in response to the Burmese military junta’s repression and detention of pro-democracy activists following the country’s September 1996 election.

²⁹ 22 U.S.C. § 287c.

³⁰ Pursuant to Article 41 of the United Nations Charter, which is codified in the United Nations Participation Act, 22 U.S.C. § 287c(a). Such sanctions go into effect through executive order, and are often accompanied by a declaration of a national emergency, which invokes the president’s powers under the IEEPA. For instance, president George W. Bush imposed sanctions on Liberia’s former president Charles Taylor in 2004 following a unanimous resolution of the UN Security Council to freeze his money and property. S.C. Press Statement 2004/8024 (Mar. 12, 2004).

³¹ Countering America’s Adversaries Through Sanctions Act, Pub. L. No. 115-44, 131 Stat. 886, § 5 (2017).

³² This waiver authority grants the president wide latitude to adjust, suspend, or terminate congressionally authorized sanctions. See, e.g., PL 109-344 § 5(b).

³³ For the sanctions programs prescribed pursuant to the president’s emergency power, the president has two options when adjusting sanctions: (1) terminate the national emergency that justifies the sanctions (50 U.S.C. § 1622(a)(1)) or (2) adjust or terminate specific sanctions provisions without affecting the underlying national emergency. 50 U.S.C. § 1622(d). Retaining the national emergency allows the president to retain the powers afforded to him/her by IEEPA while easing some parts of the sanctions program. One example of its use was in the easing of sanctions against Sudan in E.O. 13761, in which then president Obama invoked his authority to waive provisions of the Comprehensive Peace in Sudan Act of 2004 and the Trade Sanctions Reform and Export Enhancement Act of 2000 as applied to Sudan. Sudan Accountability and Divestment Act of 2007, Pub. L. 110-74, 121 Stat. 2516 (2007).

³⁴ U.S. DEP’T OF STATE, *Economic Sanctions Policy and Implementation*, <https://www.state.gov/e/eb/tfs/spi/> (last visited Apr. 5, 2018).

³⁵ Robbie Gramer & Dan de Luce, *State Department Scraps Sanctions Office*, Foreign Policy (Oct. 26, 2017), <http://foreignpolicy.com/2017/10/26/state-department-scraps-sanctions-office/>.

³⁶ *See id.*

³⁷ *Infra* Section III.B.

³⁸ This is the type of scenario that resulted in the OFAC enforcement action against Schlumberger Oilfield, an entity incorporated in the British Virgin Islands and, thus, not directly prohibited from transactions with countries under U.S. sanctions. SHEARMAN & STERLING, LLP, “FACILITATION”: A NEW TOOL FOR EXTRATERRITORIAL SANCTIONS ENFORCEMENT? 2 (2015).

³⁹ Press Release, U.S. Dep’t of Justice, Statement of Offense of Schlumberger Oilfield Holdings, Ltd. (Mar. 25, 2015).

⁴⁰ *Id.*

⁴¹ Press Release, U.S. Dep’t of Justice, Schlumberger Oilfield Holdings Ltd. Agrees to Plead Guilty and Pay Over \$232.7 Million for Violating US Sanctions by Facilitating Trade with Iran and Sudan (Mar. 25, 2015), <https://www.justice.gov/opa/pr/schlumberger-oilfield-holdings-ltd-agrees-plead-guilty-and-pay-over-2327-million-violating-us>.

⁴² 5 U.S.C. § 706(2)(A) (2012).

⁴³ *Defs. of Wildlife v. U.S. Dep’t of Navy*, 733 F.3d 1106, 1115 (11th Cir. 2013) (quoting *Fund for Animals, Inc. v. Rice*, 85 F.3d 535, 541 (11th Cir. 1996)).

⁴⁴ *See, e.g., Epsilon Electronics, Inc. v. U.S. Dep’t of the Treasury*, 857 F.3d 913 (D.D.C. 2017).

⁴⁵ *See* Erich Ferrari, *Are you Dreaming of an OFAC SDN Designation*, SANCTION LAW (Aug. 10, 2017), <https://sanctionlaw.com/dreaming-ofac-sdn-designation/>.

⁴⁶ *See* 31 C.F.R. §§ 535.201-22 (2012).

⁴⁷ *See, e.g.,* 31 C.F.R. §§ 535.201 (2012).

⁴⁸ In performing its delegated authority to enforce sanctions, OFAC may request any person to “furnish under oath . . . from time to time and at any time as may be required by the director, Office of Foreign Assets Control, complete information relative to any transaction, regardless of whether such transaction is effected pursuant to license or otherwise, subject to the provisions of this chapter or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect.” 31 C.F.R. § 501.602. To do so, OFAC will issue a so-called “602 Administrative Subpoena” to compel information. Such authority is often used to investigate sanctions violations.

⁴⁹ 50 U.S. Code § 1702 (b) (2012).

⁵⁰ For example, after president Obama announced steps to ease sanctions against Burma in response to signs of positive political reform in the country in 2012, OFAC issued a series of general licenses to allow the exportation of U.S. financial services and investments as well as the importation of Burmese goods to the United States. OFAC has wide latitude to impose conditions on transactions exempted by general licenses. Under General License 17, which broadly authorized U.S. investments in Burma as part of the process of easing sanctions, OFAC namely established a set of reporting requirements. The Responsible Investment Reporting Requirements went through two iterations before president Obama terminated the national emergency vis-à-vis Burma, which in turn ended all U.S. sanctions against the country. *See* Exec. Order No. 13,742, 81 Fed. Reg. 70593 (2016); *see also* MILLER CHEVALIER, REPORTING REQUIREMENTS ON RESPONSIBLE INVESTMENT IN BURMA (2012).

⁵¹ *See* WHITE & CASE, GLOBAL INVESTIGATIONS: READING THE SIGNALS (2014).

⁵² Mitigating factors, such as lack of knowledge, are not relevant in the determination of a violation, but are only considered to assess the level of penalty. *See* WILLKIE FARR & GALLAGHER, FINANCIAL AND TRADE SANCTIONS BRIEFING III 5 (2013).

⁵³ 50 U.S.C. § 1705 (2007). The current ceiling is an adjustment to the statutory ceiling of \$250,000 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note). *See* 31 C.F.R. § 501, App. A, (V)(B)(1)(a) (2012).

⁵⁴ 50 U.S.C. § 1705(c). Criminal penalties apply to one who “willfully commits, willfully attempts to commit or will-fully conspires to commit, or aids or abets in the commission of” a violation, attempted violation, conspiracy to violate, or cause to violate any license, order, regulation or prohibition under IEEPA. These penalties can be adjust-ed pursuant to 18 U.S.C. 3571 (2012).

⁵⁵ *See* CHARITY & SECURITY NETWORK, REPORT ON FINANCIAL ACCESS FOR U.S. NONPROFITS REVEALS BROAD SCOPE OF PROBLEM 24 (2017).

⁵⁶ See Jamila Trindle, *Bank Crackdown Threatens Remittances to Somalia*, FOREIGN POLICY (Jan. 30, 2015), <http://foreignpolicy.com/2015/01/30/bank-crackdown-threatens-remittances-to-somalia/>.

⁵⁷ See CHARITY & SECURITY NETWORK, DERISKING: COMPLICATIONS AND CONSEQUENCES 23 (2017).

⁵⁸ See Press Release, U.S. Dep't of Treasury, Remarks by Treasury Secretary Steven T. Mnuchin on Sanctions (July 31, 2017).

⁵⁹ For example, in a 2015 letter to Treasury, House Foreign Affairs Committee Chairman Ed Royce noted that since then president Obama signed an Executive order in 2012 mandating OFAC to designate those complicit in human rights abuses in Burma, OFAC only added one individual to the SDN list. He stressed that the failure to update the list came against the backdrop of escalating human rights violations in the country, particularly the persecution of the Rohingya by various government actors. See Press Release, Foreign Affairs Committee, Chairman Royce, Rank-ing Member Engel Urge Treasury Department to Address Escalating Human Rights Abuses in Burma (Aug. 12, 2015). Human Rights Watch also criticized the agency for its "continued failure to update the SDN list despite the fact that some of our organizations have provided concrete examples, with supporting information, of individuals whom we believe should be designated as blocked persons" in regards to Burma sanctions. Joint Letter from Human Rights Watch, to President Barack Obama regarding Updating the Specifically Designated Nationals List (Nov. 7, 2013).

⁶⁰ See *id.*

⁶¹ In a 2016 report, the Enough team found that Congo sanctions failed to target the government elites, financiers, and associated business networks that have political and financial leverage over the Kabila regime. For instance, very few of the conflict gold traders are targeted by sanctions, despite the fact that gold mining is one of the country's primary economic drivers. See SASHA LEZHNEV, A CRIMINAL STATE: UNDERSTANDING AND COUNTERING INSTITUTIONALIZED CORRUPTION AND VIOLENCE IN THE DEMOCRATIC REPUBLIC OF CONGO (Enough Project 2016).

⁶² U.S. DEP'T OF TREASURY, *Financial Sanctions Programs*, <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> (last visited on April 2, 2018); see also PETER HARRELL & ELIZABETH ROSENBERG, THE NEXT GENERATION OF SANCTIONS 12 (Center for a New American Security 2016).

⁶³ See HARRELL & ROSENBERG, *supra* note 62, at 12.

⁶⁴ See *id.*

⁶⁵ See, e.g., Julia Manchester, *State Dept's Most Experienced Sanctions Negotiator Quits*, THE HILL (Jan. 19, 2018), <http://thehill.com/homenews/administration/369859-state-depts-most-experienced-sanctions-negotiator-quits>.

⁶⁶ See Colum Lynch, Robbie Gramer, & Dan de Luce, *U.S. Government Faces Critical 'Brain Drain' of Sanctions Experts*, FOREIGN POLICY (Jan. 19, 2018), <http://foreignpolicy.com/2018/01/19/united-nations-sanctions-state-department-treasury-trump-s-government-faces-critical-brain-drain-of-sanctions-experts/>.

⁶⁷ See, e.g., Exec. Order 13,712, 80 Fed. Reg. 73633 (2015); Exec. Order 13,553, 75 Fed. Reg. 60567 (2010); Exec. Order 13,664, 79 Fed. Reg. 19283 (2014). In addition, the authorizing language also commonly designates the following persons to be added to the list:

- any leader of any entity that has, or whose members have, engaged in human rights abuses; See, e.g., Exec. Order 13,712; Exec. Order 13,664.
- any leader of any entity whose property and interests in property are blocked by the order. See *id.*
- any person or entity that has materially assisted, sponsored, or provided financial material, or technological support for, or goods or services to or in support of human rights abuses or any person or entity blocked under the order. See, e.g., Exec. Order 13,712; Exec. Order 13,553; E.O. 13,664; 31 C.F.R. § 546.201(a)(2)(vii) (Darfur); 31 C.F.R. § 548.201(a)(2)(iv) (Belarus); 31 C.F.R. § 557.201(a)(2)(vi) (Democratic Republic of Congo); and
- any entity owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked under the order. See, e.g., Exec. Order 13,664 § 1(a)(iii)(B), 80 Fed. Reg. 39836 (South Sudan); Exec. Order 13,553 § 1(a)(ii)(C), 82 Fed. Reg. 18342 (Iran Human Rights); 31 C.F.R. § 546.201(a)(2)(viii) (Darfur); 31 C.F.R. § 548.201(a)(2)(v) (Belarus); 31 C.F.R. § 557.201(a)(2)(vii) (Democratic Republic of Congo);

⁶⁸ See, e.g., Exec. Order 13,405, 71 Fed. Reg. 35485 (2006); Exec. Order 13,172, 65 Fed. Reg. 64577 (2000); Exec. Order 13,671, 79 Fed. Reg. 39949 (2014); Exec. Order 13,606, 77 Fed. Reg. 24571 (2012); Exec. Order 13,067, 66 Fed. Reg. 55869 (2001); Exec. Order 13,692, 80 Fed. Reg. 12747 (2015).

⁶⁹ Countering America's Adversaries Through Sanctions Act § 321.

⁷⁰ 19 U.S.C. § 1307.

⁷¹ *North Korea's Forced Labor Enterprise: A State-Sponsored Marketplace in Human Trafficking Before the Tom Lan-tos Human Rights Commission*, 114th Cong. (2015) (statement of Greg Scarlatoiu, Executive Director of The Committee for Human rights in North Korea), <http://www.hrmk.org/events/congressional-hearings-view.php?id=11>.

⁷² BELFER CENTER FOR SCIENCE AND INTERNATIONAL AFFAIRS, *SANCTIONS AGAINST IRAN: A GUIDE TO TARGETS, TERMS, AND TIMETABLES 6* (2015).

⁷³ See Iran Threat Reduction and Syria Human Rights Act of 2012, 22 U.S.C. § 8772 (2012).

⁷⁴ See Iran Freedom and Counter-Proliferation Act of 2012, 22 U.S.C. § 8801 (2012).

⁷⁵ 22 U.S.C. § 8807(a)(1).

⁷⁶ 22 U.S.C. § 8807(a)(2).

⁷⁷ Press Release, U.S. Dep't of Treasury, Treasury Announces Sanctions Against Iran (Feb. 6, 2013), <https://www.treasury.gov/press-center/press-releases/Pages/tg1847.aspx>.

⁷⁸ See JUSTICE FOR IRAN, *CUT! TAKE PRESS TV OFF THE AIR 2* (2012).

⁷⁹ See *18th Meeting of the ITSO Advisory Committee—Washington*, ANACOM (Mar. 31, 2014), <https://www.anacom.pt/render.jsp?contentId=1194889>.

⁸⁰ See Provision of Certain Temporary Sanctions Relief, 79 Fed. Reg. 9,030 (Feb. 14, 2014).

⁸¹ See Press Release, Center for Human Rights in Iran, *New Report Reveals Iranian TV's Continued Human Rights Violations* (July 8, 2014).

⁸² See Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. 112-208, 126 Stat. 1496 (2012).

⁸³ See Julia Ioffe, *Why Does the Kremlin Care So Much about the Magnitsky Act?* THE ATLANTIC (July 27, 2017), <https://www.theatlantic.com/international/archive/2017/07/magnitsky-act-kremlin/535044/>.

⁸⁴ Global Magnitsky Human Rights Accountability Act, Pub. L. 114-328, Subtitle F, 130 Stat. 2533 (2016).

⁸⁵ The relevant definition of “gross violations of human rights” is provided in the Foreign Assistance Act of 1961, which states that “gross violations of human rights” includes “torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person.” 22 U.S.C. § 2304(d)(1) (2012).

⁸⁶ See S. 2943, 114th Cong. § 1263 (a)(1)-(2) (2016).

⁸⁷ Anyone who has “materially assisted, sponsored, or provided financial, material, or technological support” for the corruption will also be sanctioned. *Id.* at § 1263 (a)(3)-(4).

⁸⁸ Rob Berschinski, *Trump Administration Notches a serious Human Rights Win. No, Really*, JUST SECURITY (Jan 10, 2018), <https://www.justsecurity.org/50846/trump-administration-notches-human-rights-win-no-really/>.

⁸⁹ See Executive Order 13,818, 82 Fed. Reg. 60839 (2017).

⁹⁰ “The term “gross violations of internationally recognized human rights” includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person. 22 USC § 2304(d)(1) (2012).

⁹¹ Global Magnitsky Human Rights Accountability Act §1263(a).

⁹² See Executive Order 13,818, 82 Fed. Reg. 60839 (2017).

⁹³ See Global Magnitsky Human Rights Accountability Act §1263(c)(2) (2016).

⁹⁴ See Press Release, Office of the Press Secretary, *Statement by the President on Signing the National Defense Authorization Act for Fiscal Year 2017* (Dec. 23, 2016).

- ⁹⁵ See *Canadian Parliament Moves Closer to Approving Version of Magnitsky Act*, RADIO FREE EUROPE RADIO LIBERTY (Oct. 5, 2017), <https://www.rferl.org/a/canada-parliament-magnitsky-russia-corruption/28774753.html>.
- ⁹⁶ See *UK House of Commons Passes the Magnitsky Asset Freezing Sanctions*, ORGANIZED CRIME AND CORRUPTION REPORTING PROJECT (Feb. 21, 2017), <https://www.occrp.org/en/daily/6104-uk-house-of-commons-passes-the-magnitsky-asset-freezing-sanctions>.
- ⁹⁷ See Exec. Order 13,660, 79 Fed. Reg. 13493 (2014); Exec. Order 13,661, 79 Fed. Reg. 15535 (2014); Exec. Order 13,662, 79 Fed. Reg. 16169 (2014); Exec. Order 13,685, 79 Fed. Reg. 77357 (2014).
- ⁹⁸ Directive 1 (as Amended on September 29, 2017) under Exec. Order 13,662, U.S. Dep't of the Treasury Office of Foreign Assets Control, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive1_20170929.pdf (Sept. 29, 2017).
- ⁹⁹ See BRIAN ADEBA ET. AL., *BREAKING OUT OF THE SPIRAL IN SOUTH SUDAN* 3,4 (Enough Project 2017).
- ¹⁰⁰ See *id.*
- ¹⁰¹ See *generally* Iran and Libya Sanctions Act, Pub. Law 104-172, 110 Stat. 1541 (1996).
- ¹⁰² See Countering America's Adversaries Through Sanctions Act §§225, 226, 231.
- ¹⁰³ *E.g.*, Exec. Order 13,810, 82 Fed. Reg. 44705 (2017).
- ¹⁰⁴ Press Release, U.S. Dep't of the Treasury, Remarks by Secretary Mnuchin on President Trump's Executive Order on North Korea (Sept 21, 2017).
- ¹⁰⁵ Jeffrey A. Meyer, *Second Thoughts on Secondary Sanctions*, 30 U. PA. J. INT'L L. 905, 931-32 (2009).
- ¹⁰⁶ See Sheryl Gay Stolberg, *Bush Signs Bill Allowing Sudan Divestment*, N.Y. TIMES (Jan. 1, 2008), <http://www.nytimes.com/2008/01/01/world/africa/01sudan.html>.
- ¹⁰⁷ See Sudan Accountability and Divestment Act of 2007, Pub. Law 110-174, 121 Stat. 2516 (2007).
- ¹⁰⁸ See New Investment, 31 C.F.R. § 537.311 (2011); see also Meyer, *supra* note 101 at 932.
- ¹⁰⁹ See JOHN PRENDERGAST & BRAD BROOKS-RUBIN, *MODERNIZED SANCTIONS FOR SUDAN* 8 (Enough Project 2016).
- ¹¹⁰ See *id.*
- ¹¹¹ See Exec. Order 13,742, 81 Fed. Reg. 70593 (2016).
- ¹¹² Press Release, U.S. Dep't of State, Background Briefing on Burma (May 17, 2012).
- ¹¹³ See 31 C.F.R. § 537.311.
- ¹¹⁴ Reporting Requirements on Responsible Investment in Burma, U.S. Dep't of State, https://www.millerchevalier.com/sites/default/files/resources/Burma_Responsible_Investment_Regs.pdf (July 11, 2012).
- ¹¹⁵ Moreover, Coca-Cola and The Gap both publicly issued statements supporting the Burma Reporting Requirements and called on the State Department to further strengthen them.
- ¹¹⁶ See Countering America's Adversaries Through Sanctions Act (2017).
- ¹¹⁷ See H.R. Res. 128, 115th Cong. (2017); see also S. Res. 168, 115th Cong. (2017).
- ¹¹⁸ See Hamas Human Shields Prevention Act, H.R. 3542, 115th Cong. (2017).
- ¹¹⁹ See Sanctioning Hizballah's Illicit use of Civilians as Defenseless Shields Act, H.R. 3342, 115th Cong. (2017).
- ¹²⁰ See Hong Kong Human Rights and Democracy Act of 2017, S.417, 115th Cong. (2017).
- ¹²¹ See Caesar Syria Civilian Protection Act of 2017, H.R. 1677, 115th Cong. (2017).
- ¹²² See Venezuela Humanitarian Assistance and Defense of Democratic Governance, S.1018, 115th Cong. (2017).
- ¹²³ See Vietnam Human Rights Sanctions Act, S.1574, 115th Cong. (2017).
- ¹²⁴ See Global Respect Act of 2017, S.1170, 115th Cong. (2017); see also Global Respect Act, H.R.2491, 115th Cong. (2017).

