Facilitating Humanitarian Aid Amid Sanctions

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The sanctions imposed against Russia after its 2022 invasion of Ukraine were historic in their scope and coordinated nature across multiple jurisdictions. These sanctions, however, posed the same challenge that had accompanied other wide-ranging sanctions programs in the past: ensuring that the sanctions did not impact the supply of food, medicines and medical devices, or otherwise trigger disastrous human consequences. Ensuring humanitarian aid to Ukraine became deeply important following the invasion, as the invasion itself created a massive need for humanitarian assistance within Ukraine and to Ukrainian refugees. Minimizing sanctions’ impact on humanitarian assistance is also important to improve the situation of other heavily-sanctioned areas around the world, which have faced suffering where the large-scale presence of sanctions dissuades parties from the supply of essential humanitarian items and services to those areas. This Essay analyzes the efforts made by the United Nations, the European Union, the United States, and other jurisdictions following the imposition of the 2022 sanctions against Russia to help promote the continued flow of humanitarian aid to Ukraine and to improve the provision of humanitarian assistance around the world.

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I. INTRODUCTION

The economic response to the Russian invasion of Ukraine in early 2022 was massive. Numerous nations joined in the imposition of sanctions against individuals and entities both inside and outside Russia.1 They did so to cut off portions of financial resources that could be used to further support and sustain Russia’s war effort; to undercut political support for the invasion, particularly among influential oligarchs close to Putin’s regime; and to make a symbolic statement about the importance of international law, the rule of law, and Ukraine’s territorial sovereignty that had been violated by the Russian invasion.2

Yet this sanctions effort faced the same problem inherent to other sanctions regimes: ensuring that the imposition of sanctions does not trigger tragic humanitarian consequences. To counter that issue, the sanctioning jurisdictions created sanctions provisions with exemptions for goods, services, and funds for humanitarian activities, much as other sanctions regimes had been structured in the past.3 The sanctioning powers also issued guidance to clarify those humanitarian exemptions, and they modified existing legal frameworks to better facilitate humanitarian activities in other areas of the world also subject to sanctions.4 This Essay analyzes these measures taken by the coalition of

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4 See, e.g., Caroline Crystal, *Landmark UN Humanitarian Sanctions Exemption Is a Massive Win but Needs More Support*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Mar. 20,
sanctioning nations to encourage the continued flow of humanitarian aid to Ukraine and around the world.

II. THE SANCTIONS IMPOSED IN RESPONSE TO RUSSIA’S 2022 INVASION OF UKRAINE AND HUMANITARIAN NEEDS

A. The Sanctions Imposed Following Russia’s Invasion of Ukraine

Following the Russian invasion of Ukraine in early 2022, numerous rounds of sanctions, extensive in their scope, were imposed in coordination by multiple nations against targets mostly in Russia. Other sanctions targeted Belarus for its support of Russia, including through financial and military support. Later sanctions expanded to target more non-Russian parties who had supported the invasion in some way. Sanctioning jurisdictions included the European Union, the United States, the United Kingdom, Japan, South Korea, Canada, Australia, and others.

The United Nations did not impose sanctions on Russia, although the United Nations does in fact impose sanctions and maintains multiple sanctions regimes against other targets, as for example against North Korea.

United Nations sanctions, however, are implemented through resolutions of the


8 CORY WELT, CONG. RSLCH. SERV., IN11869, RUSSIA’S WAR AGAINST UKRAINE: OVERVIEW OF U.S. SANCTIONS AND OTHER RESPONSES 3 (2022).

Security Council, of which Russia is a permanent member.¹⁰ As would be expected, Russia has vetoed on multiple occasions proposed Security Council resolutions condemning its invasion of Ukraine, and thus the United Nations has not imposed sanctions against Russia on this basis.¹¹

But even without the presence of United Nations sanctions, the sanctions implemented by the multiple jurisdictions mentioned have had far-reaching effects, both on their Russian targets themselves and on third parties around the world. The sanctions imposed by the United States have had a particularly wide-reaching impact, due to the widespread use of the dollar in world trade and as a global reserve currency.¹² The U.S. office in charge of sanctions administration and enforcement, the Office of Foreign Assets Control (OFAC) within the U.S. Department of the Treasury, has brought enforcement actions in the past for violations of the U.S. sanctions regulations by non-U.S. parties, based on their use of the U.S. dollar.¹³ Because U.S. dollar clearing and settlement activities very often involve U.S. financial institutions, the use of the U.S. dollar very commonly carries with it the application of U.S. sanctions extraterritorially (that is, in this context, to non-U.S. parties outside of the United States).¹⁴ Thus U.S. sanctions may prevent non-U.S. parties from engaging in U.S. dollar-denominated transactions with U.S.-sanctioned parties.

The broad effects of the 2022 sanctions are also due to the fact that a huge number of targets were named by multiple jurisdictions.¹⁵ So while Russia is technically not a comprehensively sanctioned jurisdiction in the same way that North Korea or Syria are, for example, sanctions affect a significant number of

economic activities pertaining to Russia.\textsuperscript{16} Where sanctions are as extensive in nature as they are with respect to Russia, they can give rise to the occurrence of overcompliance and de-risking (described in further detail herein), which can affect the flow of goods, services, and funds for humanitarian purposes in a country subject to significant sanctions, such as Russia.\textsuperscript{17}

B. The Need for Continued Humanitarian Aid

Humanitarian aid is urgently required in Ukraine. Russia’s invasion of Ukraine has caused massive human suffering. As of January 2023, the U.N. Office for the Coordination of Humanitarian Affairs estimated that at least 17.6 million people were in need of humanitarian assistance, including 6.3 internally displaced people (IDPs).\textsuperscript{18} Many of the sanctioning nations have pledged millions in humanitarian aid to Ukraine.\textsuperscript{19} Some of this aid has come in the form of contributions to international organizations like the World Bank’s Ukraine Relief, Recovery, Reconstruction and Reform Trust Fund.\textsuperscript{20} Other donor-recipient organizations include the Disasters Emergency Committee, and Red

\textsuperscript{16}Susan Hannah Allen, \textit{The Uncertain Impact of Sanctions on Russia}, 6 \textbf{NATURE HUM. BEHAV.} 761, 761 (2022) ("Critics note that as targeted sanctions pile up, however, they begin to look more and more like damaging comprehensive sanctions.").

\textsuperscript{17}See infra Part III.


Cross and U.N. agencies.\textsuperscript{21} According to the United Nations, almost three hundred organizations were contributing to the humanitarian response in Ukraine as of June 2022.\textsuperscript{22}

Nor is the need for humanitarian aid limited to Ukraine. Humanitarian assistance is also required in Russia itself. The invasion has created new humanitarian needs for Ukrainian refugees located outside of Ukrainian territory. As of July 2022, the United Nations reported that about 1.4 million Ukrainian refugees were located in Russia.\textsuperscript{23} Another 9,800 more were located in Belarus, another heavily-sanctioned country.\textsuperscript{24} Further, the same humanitarian needs that existed in Russia before the 2022 invasion of Ukraine continue to require aid. For example, since before the invasion, Doctors Without Borders worked to combat drug-resistant tuberculosis in Russia, and also partnered with local organizations to address infectious diseases.\textsuperscript{25}

Ensuring an adequate supply of humanitarian aid in Ukraine and Russia is challenged by numerous obstacles. The military campaign itself hinders the safe provision of aid.\textsuperscript{26} The sanctions imposed to respond to the Russian invasion of Ukraine, even though they did not prohibit the supply of humanitarian aid to Ukraine or Russia, also pose an obstacle to the continued flow of humanitarian aid to the region. This is because the presence of broad sanctions in a particular area may discourage regulated parties from engaging in activities, like the provision of humanitarian aid, that are exempted from the prohibitions.\textsuperscript{27}

III. OVERCOMPLIANCE AND DE-RISKING

The presence of sanctions can stifle the supply of humanitarian aid when parties become concerned about complying with those sanctions. This is especially true when sanctions are broader in nature and enforcement is stringent, raising the probability and potential cost of sanctions violations. In such situations, regulated parties may choose to minimize their sanctions compliance risk by over-complying with existing sanctions.

\textsuperscript{21} UK FOREIGN, COMMONWEALTH & DEV. OFF., supra note 19.


\textsuperscript{24} Id.

\textsuperscript{25} Russia, MÉDECINS SANS FRONTIÈRES, https://www.msf.org/russia [https://perma.cc/63SJ-T4CN].

\textsuperscript{26} See Ukraine: Four Months After Russian Invasion, Humanitarian Needs Intensify, supra note 22.

\textsuperscript{27} Francesco Giumelli, The Role of For-Profit Actors in Implementing Targeted Sanctions: The Case of the European Union, in SECURITY PRIVATIZATION 123, 135 (Oldrich Bures & Helena Carrapico eds., 2018).
Overcompliance is the concept that organizations and other parties often take measures that go beyond what is required to conform to regulatory prohibitions such as sanctions. De-risking refers to decisions (generally, referring specifically to those made by financial institutions) on the basis of reducing regulatory risk (including sanctions risk but often focused on anti-money laundering and terrorist financing issues), even beyond what is legally required. Parties may engage in overcompliance and de-risking for various reasons. These include avoiding risk and minimizing their costs of compliance by engaging in a wholesale withdrawal from business with sanctioned parties or sanctioned regions rather than engaging in detailed analysis to understand the scope of the sanctions restrictions and how their operations interact with sanctions obligations. They may also be concerned that sanctions provisions will change in the future, such that their existing operations will run afoul of future sanctions regulations. Parties may therefore choose to align their current operations in such a way that they will not face future disruptions should new sanctions be enacted.

Overcompliance and de-risking have been observed with respect to a number of heavily-sanctioned regions. De-risking by financial institutions has notable consequences. When financial institutions engage in de-risking activities, they pass on their broader interpretation of sanctions prohibitions across wide segments of the economy, given their systemic importance in

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32 See, e.g., Barry Bozeman & Derrick M. Anderson, Public Policy and the Origins of Bureaucratic Red Tape: Implications of the Stanford Yacht Scandal, 48(6) ADMIN. & SOC’Y 736, 742 (2014) (citing Barry Bozeman & Leisha DeHart-Davis, Red Tape and Clean Air: Title V Air Pollution Permitting Implementation as a Test Bed for Theory Development, 9 J. PUB. ADMIN. RSCH. & THEORY 141 (1999) (discussing Title V Air Quality Act Amendment regulations)) (“Overcompliance was due to a lack of clarity of specific rules but it was also due in part to a fear of the sanctions anticipated as emanating from a rapidly changing and more restrictive regulatory environment.”).

facilitating transactions and their large number of customers. Thus while sanctions programs may allow certain activities in practice, parties may find themselves unable to actually carry out those activities where, for example, their financial institutions prevent transactions with certain parties or entire regions wholesale in the name of de-risking.

Overcompliance may be even more likely to occur where secondary sanctions have been made possible and seem likely to be imposed. The United States has been the most prominent user of secondary sanctions in recent history. Secondary sanctions are those sanctions that are imposed against targets outside of a sanctioning nation’s jurisdiction, generally based on their support of targets subject to existing sanctions. While the activities of these targets made subject to secondary sanctions may have been entirely legal under the law of both their home country and under U.S. sanctions law, they can be made subject to the harsh consequences of U.S. sanctions based on their support of sanctioned targets. Thus the possibility of being made subject to secondary sanctions themselves dissuades parties from non-sanctioning countries to engage even in legal activities with parties subject to U.S. sanctions.

34 DURNER & SHETRET, supra note 29, at 3 (discussing closure of financial institutions creating “a ripple effect on financial access for the individuals and populations served by” those institutions).


39 See What are Secondary Sanctions?, supra note 38; Terry supra note 37, at 7.

For example, the secondary sanctions imposed by the United States against Iran seem likely to have spurred overcompliance. The U.S.’s Iranian sanctions program contains sweeping prohibitions and has been subject to unpredictable regulatory change. After the Joint Comprehensive Plan of Action (JCPOA), the Obama administration removed U.S. secondary sanctions against parties doing business with Iran (but retained primary sanctions against Iranian targets themselves); secondary sanctions were once again made possible after President Trump withdrew from the JCPOA. Trump’s successor, President Biden, did not immediately cause the United States to re-join the JCPOA, thus leaving the secondary sanctions in place as of the time this Essay was written.

Overcompliance appears to be the result of these primary and secondary sanctions; for example, the Iranian Thalassemia Society has alleged that sanctions have chilled the supply of medical supplies to Iran. Overcompliance with sanctions provisions imposes negative effects on the regions where sanctions have been imposed. The United Nations Special Rapporteur on unilateral coercive measures, Alena Douhan, has expressed her concern that overcompliance with sanctions worldwide, and de-risking by financial institutions, has resulted in negative impacts like “undermin[ing] economic development and foster[ing] impoverishment.”

To study the issue,
she requested input from parties such as NGOs, compliance bodies, banks and banking agencies, and others as to the effects of sanctions, sanctions penalties, and overcompliance with sanctions. The resulting submissions came from states including Iran, Russia, and Belarus, and from a variety of organizations including NGOs. The DPRK International Federation of Red Cross and Red Crescent Societies stated that “[s]uppliers and service providers have shown reluctance or have refused to provide goods and services as they are related to a sanctioned country. This has caused the procurement process to become more complex and goods to be more expensive. It also has quality implications as there are fewer suppliers to choose from.”

Other nonprofit groups have reported difficulties in operating in sanctioned areas as well. A report discussed how “[i]n the case of the Syrian Network for Human Rights (SNHR),” a bank in France “refused to open an account because the members of the board of directors were Syrians.” A survey conducted for that report found that at least six NGOs (and twelve in a different survey) “saw their bank accounts closed without justifications.” A report of the Charity and Security Network cited banking difficulties faced by U.S. non-profit organizations operating abroad, such as delayed fund transfers, requests for additional or unusual documentation, and account closures.

IV. HUMANITARIAN AID IN UKRAINE AND RUSSIA IN LIGHT OF SANCTIONS

Given the likelihood that the presence of broad sanctions in a region results in overcompliance and de-risking, it has become particularly important for the nations sanctioning Russia to take steps to promote the continued flow of humanitarian aid to Ukraine and elsewhere in the region.
Following the imposition of sanctions against Russia, concerns about overcompliance and de-risking arose.\(^5^3\) Banks in Europe sought guidance from E.U. authorities about particulars of the sanctions restrictions.\(^5^4\) Compliance was made more difficult by the fact that, especially early in the sanctions response, the sanctions restrictions enacted by various jurisdictions including the United Kingdom, the European Union, and the United States did not always match each other exactly.\(^5^5\) Following Russia’s invasion of Ukraine, numerous companies stopped doing business in or with Russia or left the country.\(^5^6\) Reputational risk was also a major source of operational change, as the Russian invasion and presence of sanctions may have led companies to stop doing business with Russia for fear of reputational harm, even if they were still permitted to carry out certain types of activities in Russia.\(^5^7\)

Humanitarian aid seems likely to be particularly chilled in the comprehensively sanctioned regions of Ukraine. These include Crimea, which has been subject to comprehensive sanctions imposed by the United States since Russia’s invasion of the peninsula in 2014.\(^5^8\) They also include Donetsk and Luhansk regions, which were made subject to U.S. comprehensive sanctions on February 21, almost immediately after Russia’s recognition of those regions (as the so-called DNR and LNR) as independent in the days leading up to the general invasion of Ukraine.\(^5^9\) These are regions with humanitarian needs that


\(^5^4\) Id.


existed before Russia’s 2022 invasion, due to the fighting with Russian-backed separatists that has been ongoing in those areas since 2014.\(^{60}\) The Kherson and Zaporizhzhia regions of Ukraine were comprehensively sanctioned by the E.U. after Russia annexed those areas, along with the Donetsk and Luhansk regions, after sham referendums on joining Russia were conducted in all four areas.\(^{61}\)

These comprehensive sanctions are much different in nature than the targeted sanctions imposed against individual Russian targets. The comprehensive sanctions imposed by the United States with respect to the Donetsk and Luhansk regions, for example, prohibit new investment in those areas.\(^{62}\) They also prohibit the exportation, re-exportation, sale, or supply, directly or indirectly, of any goods, services, or technology from the United States or by a U.S. person to those areas.\(^{63}\) In these comprehensively sanctioned regions of Russia where sanctions restrictions are nearly all-encompassing, the provision of humanitarian aid seems more likely to be chilled.\(^{64}\)

As previously discussed, secondary sanctions have been an important mechanism for overcompliance in sanctioned areas such as Iran where secondary sanctions have been readily imposed.\(^{65}\) But primary sanctions, not secondary ones, initially seemed to be the most important lever of potential overcompliance with respect to the Ukraine/Russia-related sanctions. At the beginning of the sanctions response against Russia, the large number of nations imposing their own primary sanctions meant that a large number of entities around the world were subject to the restrictions imposed by primary sanctions.\(^{66}\) Overcompliance by regulated parties would thus theoretically result from their attempts to reduce their legal exposure to primary sanctions. This was also true because secondary sanctions were not a prominent feature of the initial sanctions response.\(^{67}\)


\(^{61}\) Council Regulation 2022/1903, art. 1, 2022 O.J. (L 259 I) 2 (EU).


\(^{63}\) Id.


\(^{65}\) See supra Part III.


This may change, however. As secondary sanctions are increasingly employed by the nations sanctioning Russia, overcompliance may be triggered by a fear of entities being made subject to secondary sanctions. Such entities may be located in countries like China and India, which did not impose their own primary sanctions to respond to Russia’s invasion of Ukraine. Secondary sanctions were imposed by the United States against parties supporting the Russian invasion of Ukraine increasingly during the latter half of 2022 and into 2023. And even the European Union, historically opposed to the use of secondary sanctions, was (as of May 2023) reportedly considering imposing secondary sanctions against certain Chinese firms for their support of the Russian invasion. Thus secondary sanctions might play a larger role in the future with respect to overcompliance concerns.

A. Other Humanitarian Effects

Of course, it must be remembered that the humanitarian effects of the invasion and the sanctions following it were not limited to Ukraine or Russia alone. The events of 2022 also had significant effects on the prices of food, fertilizer, and fuel in other parts of the world. Food supply and prices were also challenged by other factors in recent years, including causes attributable to

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72 Kibrom A. Abay et al., The Russia-Ukraine War: Implications for Global and Regional Food Security and Potential Policy Responses, 36 GLOB. FOOD SEC. 1, 1 (2023).
the climate crisis, the effects of the pandemic, and other factors like animal disease outbreaks.73

Before the invasion, Russia was a major exporter of the world’s fertilizer and materials used to manufacture fertilizer.74 Despite exemptions in the 2022 sanctions to allow for the sale and shipment of fertilizer, the invasion itself and possible overcompliance with the sanctions disrupted the regular supply and prices of fertilizer worldwide.75 By December 2022, fertilizer prices had risen.76 So too did food prices rise around the world, especially the price of wheat.77

IV. PROMOTING HUMANITARIAN AID

Recognizing the presence of overcompliance and third-party effects of the sanctions and the resulting need to facilitate humanitarian aid in comprehensively sanctioned regions, the United Nations and the sanctioning nations announced a number of measures beginning in 2022 to help address this problem. They also issued clarification and guidance for regulated parties about the nature and scope of the sanctions. As discussed below, these efforts were intended to allow parties to better understand their compliance obligations and to carry out humanitarian activities more easily in in both Ukraine and other sanctioned regions around the world. They were also intended to improve the situation around the world with respect to food and fertilizer.


A. Promoting Humanitarian Aid: The United Nations

In December 2022, the U.N. Security Council adopted Resolution 2664 (2022) (referred to within this Essay as “the Resolution” or “the U.N. Resolution”), which created an exemption for humanitarian aid to asset freezes imposed by the United Nations. This action did not directly impact any of the sanctions imposed against Russia following its 2022 invasion of Ukraine, since the United Nations did not adopt any sanctions against Russia due to Russia’s presence on the Security Council. But this action showed a clear recognition of the Security Council to address the issue of effectively supplying humanitarian aid to sanctioned regions, and the measure does apply to those sanctions frameworks adopted by United Nations. So too did the adoption of the resolution affirm the importance of establishing a default exemption that would not require the extended time or uncertainty associated with the procurement of individual licenses. The President of the International Committee of the Red Cross, Mirjana Spoljaric, hailed the passage of the resolution, and urged Member States of the United Nations to adopt similar provisions with respect to their own domestic sanctions frameworks.

And indeed, as described further herein, various states did, in fact, implement measures to incorporate the terms of the Resolution into their own domestic law so as to amend the provisions of their national sanctions (or in the case of the European Union, adopted by Council Decision which would then be implemented by the Member States) even beyond those directly corresponding to sanctions adopted by the United Nations. The adoption of the Resolution,


80 See Glauber & Laborde, supra note 75.

81 See infra notes 110–14 and accompanying text (describing a typical licensing program in the context of sanctions).


for example, mirrored the establishment of a general license for humanitarian aid by the U.K.’s sanctions authority, the Office of Financial Sanctions Implementation (OFSI), described in further detail below.\(^\text{84}\) Similarly, in the United States, OFAC in December 2022 revised and added general licenses to reflect the humanitarian exemption established within the Resolution.\(^\text{85}\)

The United Nations also coordinated the creation of the Black Sea Grain Initiative.\(^\text{86}\) The agreement, involving Ukraine, Turkey, and Russia, was signed in July 2022.\(^\text{87}\) It allowed shipments of grain, food, and fertilizer from certain Ukrainian ports through a safe maritime corridor.\(^\text{88}\) Shipments began in August 2022.\(^\text{89}\) According to the U.S. Agency for International Development, the deal doubled the amount of wheat shipped to least developed countries between August and September 2022.\(^\text{90}\) A report by United Nations Conference on Trade and Development found that the Black Sea Grain Initiative and a related memorandum of understanding signed between the United Nations and Russia in July 2022 “helped to bring down the cost of food, stabilize global markets and keep them open.”\(^\text{91}\) The deal was renewed, as of the time of the writing of this Essay in May 2023, for sixty days.\(^\text{92}\)

B. Promoting Humanitarian Aid: The United States

The United States, which already contained an exemption for humanitarian aid within its Ukraine/Russia-related sanctions program, took further action to standardize that exemption across multiple other sanctions programs. Within the United States, sanctions against Russia are imposed pursuant to multiple OFAC sanctions programs.\(^\text{93}\) The most significant of these programs with respect to

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84 See infra Part IV.D.
87 Id.
88 Id.
90 Id. at 2.
Russian targets are the Ukraine/Russia-related sanctions\(^94\) and the Russian Harmful Foreign Activities Sanctions Regulations.\(^95\) The Ukraine/Russia-related sanctions program places sanctions on parties designated for various reasons.\(^96\) Such bases for sanctions designations under this program include, for example, having engaged in “[a]ctions or policies that undermine democratic processes or institutions in Ukraine,” having engaged in “[a]ctions or policies that threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine,” having “asserted governmental authority over any part or region of Ukraine without the authorization of the Government of Ukraine,” being “an official of the Government of the Russian Federation,” operating in sectors of the Russian economy including the energy, financial services, or defense sectors, and numerous others.\(^97\) The program also contains various prohibitions such as that against the making of certain types of investment in Crimea and in certain sectors of the Russian economy.\(^98\) (There are numerous other prohibitions contained within this sanctions program besides those described here).

Russian targets are also sanctioned via other sanctions programs, including the Magnitsky Act Sanctions,\(^99\) the Global Magnitsky Act Sanctions,\(^100\) the Cyber-Related Sanctions,\(^101\) the Foreign Interference in U.S. Election Sanctions,\(^102\) the Transnational Criminal Organizations Sanctions.\(^103\) Other OFAC sanctions programs have been created to cover a variety of geographic areas, like those imposed against Cuba, North Korea, Iran, and others.\(^104\) Parties may also be sanctioned by OFAC via a number of programs created for other reasons, like the Non-Proliferation Sanctions, the Rough Diamond Trade Controls, the Chinese Military Companies Sanctions, and others.\(^105\)

The Ukraine/Russia-related sanctions regulations contain provisions exempting the provision of humanitarian aid from its prohibitions, and similar provisions generally appear in other sanctions programs applicable to Russian targets as well. Nongovernmental organizations are permitted to export and reexport services to Crimea that would otherwise be barred by the comprehensive trade embargo imposed by the U.S with respect to that region,

\(^{94}\)See 31 C.F.R. § 589.201 (2022).
\(^{95}\)See 31 C.F.R. § 587 (2022).
\(^{96}\)32 C.F.R. § 589.201 (2022).
\(^{97}\)Id.
\(^{100}\)31 C.F.R. § 583 (2022).
\(^{101}\)31 C.F.R. § 578 (2022).
\(^{102}\)31 C.F.R. § 579 (2022).
\(^{103}\)31 C.F.R. § 590 (2022).
\(^{105}\)Id.
so long as such services are made in support of specified not-for-profit activities. These include activities to meet basic human needs (like those concerning “drought and flood relief; food, nutrition, and medicine distribution; the provision of health services; assistance for vulnerable populations . . . and environmental programs); democracy building (as in support of the “rule of law, citizen participation, government accountability, universal human rights and fundamental freedoms, access to information, and civil society development projects”); education; “non-commercial development projects directly benefiting the Crimean people” (as for the prevention of infectious disease and promoting maternal/child health, and clean water assistance”); and “activities to support environmental protection.”

Also authorized are transactions for the conduct of the official business by the United States Government by its employees, grantees, or contractors. So too are authorized transactions that are for the official business of specified international organizations by its employees, grantees, and contractors. These organizations include the United Nations (including its Programmes, Funds, and Other Entities and Bodies, as well as its Specialized Agencies and Related Organizations); the International Centre for Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA); the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group (IDB Group), and any fund entity administered or established by those entities; and the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies.

In April 2022, OFAC issued Russia-related General License (GL) 27, which permitted certain transactions in support of nongovernmental organizations’ activities that would otherwise be prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, so long as the only involvement of sanctioned persons was by way of the involvement of financial institutions sanctioned pursuant to Executive Order 14024. Similarly, following the announcement of the U.N. Resolution, the United States implemented the aims of the Resolution through the issuance of general licenses, which were intended to better facilitate humanitarian aid across multiple sanctions programs administered by OFAC. Within the framework of U.S. sanctions programs, general licenses pursuant to each program provide authorization for the

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107 Id.
110 Id.
112 Press Release, U.S. Dep’t of the Treasury, supra note 85.
activities described within those licenses. These authorizations eliminate the need for parties to seek specific licenses from OFAC, which require approval from the agency after the submission of an application. Instead, setting up categories of permitted activities by way of general licenses creates regulatory transparency and administrative ease in allowing those activities. OFAC, among other actions, added a general license to multiple sanctions programs to authorize the official business of the U.S. government and international organizations, which were already in place, with respect to the Ukraine/Russia-related sanctions regulations but which were added with respect to other sanctions programs including the Magnitsky and Global Magnitsky programs.

OFAC also took actions following the imposition of the Ukraine/Russia-related sanctions to clarify compliance obligations of regulated parties in order to encourage the provision of humanitarian aid. For example, in April 2022 OFAC issued a general license authorizing some activities by NGOs in Russia and Ukraine. It also issued a fact sheet regarding its authorizations for NGO activities, agricultural commodities, medicine, and medical devices, emergency medical services, international organizations, and other areas. At that same time, Treasury Secretary Yellen spoke at an event with the Finance Ministers of Germany and Indonesia (in their capacities as the finance chairs of the G7 and the G20). She spoke about the need for international financial institutions to “help mitigate the global fertilizer shortage” and “increase investments in agricultural capacity and resilience to boost domestic food production.”

Similarly, in July 2022, OFAC issued a fact sheet “to further clarify that the United States has not imposed sanctions on the production, manufacturing, sale, or transport of agricultural commodities (including fertilizer), agricultural

114 See id.
115 See, e.g., Stolte, supra note 113, at 39 (describing how the absence of general license created confusion and increased costs in Yugoslavia).
120 Id.
equipment, or medicine relating to [Russia].”\textsuperscript{121} It also described the general license in place with respect to agricultural commodities, agricultural equipment, medicine, and medical devices.\textsuperscript{122} The United States in June 2022 also urged nations to ask for guidance if they faced difficulties in importing food or fertilizer from Russia.\textsuperscript{123}

In July 2023, OFAC and OFSI issued a joint fact sheet “[t]o provide additional clarity” on the scope of sanctions relevant to humanitarian assistance and food security.\textsuperscript{124} Both OFAC and OFSI noted that they prioritized humanitarian license applications.\textsuperscript{125}

\textbf{C. Promoting Humanitarian Aid: The European Union}

In April 2022, the E.U. introduced exceptions to the restrictive measures in place responding to Russia’s invasion of Ukraine.\textsuperscript{126} Under those exceptions, the E.U.’s humanitarian partners like the International Committee of the Red Cross and U.N. Specialized Agencies were exempted from sanctions prohibitions insofar as the activities at issue were exclusively humanitarian.\textsuperscript{127} Export controls were also made subject to exemptions for certain types of humanitarian organizations for exclusively humanitarian purposes where such exports would otherwise be prohibited to the Donetsk and Luhansk regions.\textsuperscript{128} Finally, other organizations could also request similar derogations from the export controls and other restrictive measures for humanitarian activities in Ukraine.\textsuperscript{129}

In its round of sanctions announced in December 2022, the E.U. implemented a measure intended to ease the sale and shipment of fertilizers


\textsuperscript{122} Id.


\textsuperscript{125} Id.


\textsuperscript{127} Id.

\textsuperscript{128} Id.

\textsuperscript{129} Id.
from Russia. Specifically, that sanctions package contained a derogation which allowed Member States to unfreeze assets of those sanctioned individuals who “held a prominent significant role in international trade in agricultural and food products, including wheat and fertilizers, prior to their listing” as subject to sanctions. The measure had been controversial; Poland and Lithuania had opposed the measure, which was promoted by France, Germany, the Netherlands, Belgium, Spain, and Portugal.

The E.U. also addressed questions from regulated parties and clarified means by which guidance could be sought. For example, the E.U. provided a statement that humanitarian providers could seek guidance from their national competent authority as to the scope of E.U. sanctions with respect to Russia.

In March 2023, the European Council created a humanitarian exemption to asset freeze measures across U.N. sanctions regimes, giving effect to the Resolution previously adopted by the United Nations.

D. Promoting Humanitarian Aid: The United Kingdom

The United Kingdom created a standard exemption for the provision of humanitarian aid to Ukraine. Specifically, in July 2022, OFSI introduced a general license “to ensure the timely delivery of humanitarian assistance activity in relation to the conflict in Ukraine.” The OFSI general license, as OFAC’s...
general licenses functioned, served as pre-clearance for activities specified in
the license and so eliminated the need to apply for and wait for an individual
license from OFSI. As with similar measures adopted such as by the United
States, the presence of a general license reduced the administrative burden for
those supplying humanitarian assistance.

E. Sanctions and Certain Russian Charitable Organizations

While in most cases the sanctioning nations sought to facilitate the efforts
of humanitarian organizations, certain charitable organizations in Russia have
been sanctioned by Ukraine for their alleged support of the Russian war effort
or for their role in the kidnapping of Ukrainian children. In February 2023,
Ukraine implemented sanctions against the Russian Red Cross and other
organizations including Home for Mommy, Gulfstream, and the Russian
Humanitarian Mission. Ukraine likely sanctioned the Russian Red Cross for
allegedly “reducing Russian costs of war,” based on its alleged support for the
Russian military, including purported support for their families and fundraising
for military items.

V. CONCLUSION

Despite the measures taken by the United Nations and the sanctioning
nations, issues of overcompliance and de-risking in heavily sanctioned regions
are likely to persist. U.S. sanctions programs for comprehensively sanctioned

https://ofsi.blog.gov.uk/2022/07/07/ofsi-issues-humanitarian-activity-general-licence-
under-russia-sanctions-regime/ [https://perma.cc/V6P4-LS93].

136 See id.

137 See, e.g., Stéphanie Maupas, Russian Policy of Deporting Ukrainian Children Under
Investigation by ICC, LE MONDE (Mar. 5, 2023), https://www.lemonde.fr/en/international/article/2023/03/05/russian-policy-of-deporting-
ukrainian-children-under-investigation-by-icc_6018196_4.html (on file with the Ohio State
Law Journal); Along the Sanctioned Persons: Yakimova Viktoria Vyacheslavovna, WAR
[https://perma.cc/5VJE-64HM]; “Help” for Abducted Orphans: How Russia Adopts
Children from Ukraine, SPRAVDI (Apr. 5, 2022), https://spravdi.gov.ua/en/help-for-
abducted-orphans-how-russia-adopts-children-from-ukraine/ (on file with the Ohio State
Law Journal).

138 Hanna Shtepa, Ukraine Introduces Three New Sets of Sanctions Against Persons
Contributiong to the Russian Aggression Against Ukraine, BAKER MCKENZIE (Feb. 28, 2023),
https://sanctionsnews.bakermckenzie.com/ukraine-introduces-three-new-sets-of-sanctions-
against-persons-contributing-to-the-russian-aggression-against-ukraine [https://perma.cc/3P3P-
5XCE].

139 See Tom Norton, Fact Check: Is Red Cross Funding Families of Mobilized
funding-families-mobilized-russians-1754605 [https://perma.cc/4EAV-LZLR].
regions have long contained humanitarian exemptions. Yet those legal provisions have not prevented the humanitarian harms that have resulted in Iran and elsewhere.

Certainly, the measures taken by the United Nations and the sanctioning nations to improve the provision of humanitarian aid in sanctioned areas are commendable. Clarifying the available legal exemptions for humanitarian aid and taking steps to encourage the provision of such aid within existing regulatory sanctions structures are helpful for parties to understand their compliance obligations. Other actions should be taken to that end. Alexandra Francis, for example, has proposed that BIS “provide a license exception for any humanitarian activities authorized by OFAC.” This would reduce the compliance burden on parties seeking to provide humanitarian assistance by excusing those parties from seeking a license where OFAC already provides a humanitarian exemption.

Yet despite these attempts, overcompliance and de-risking seem to be a fundamental feature of sanctions programs. Where the potential profit to be made in a heavily-sanctioned region is low, and the legal and reputational risks and probability of a potential sanctions violation are high, overcompliance may be an economically efficient decision for a regulated entity to make. Pierre-Hugues Verdier suggests that this equation might be modified were sanctioning governments to take measures, such as the provision of subsidies, to encourage regulated parties to facilitate humanitarian transactions.

Absent some such subsidy or other input to change behavior, a sanctioning power thus must take into account the probable overcompliance, and its chilling effect on humanitarian aid, when enacting sanctions. So too must it be recognized that economic disruption is often a goal of economic sanctions, and at a fundamental level cannot be deployed without economic harm to civilians. The mass enactment of sanctions on a large scale must be reserved for the most egregious cases, where the economic weapon of sanctions is to be used in a context similar to where military action might be considered in its place.

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143 See supra Part II.

144 Verdier, supra note 31, at 496–97.

Such is the case of the sanctions enacted after Russia’s invasion of Ukraine, where Russia violated Ukraine’s territorial sovereignty. This violation of international law calls for some sort of response such as the enactment of sanctions that did in fact occur. As such, the technical adjustments made by the United Nations and the sanctioning powers to the mechanics of their sanctions programs likely represent the best possible way to ameliorate the impact of sanctions on the provision of humanitarian aid to Ukraine, Russia, and the region, with the possible addition of the strategies identified by Francis and Verdier to further promote and facilitate humanitarian aid. In other contexts, the provision of humanitarian aid might be best ensured by examining whether sanctions are the appropriate policy decision in the first instance.