

LOUBOUTIN LAWFARE:  
EXPLORING CONCEPTIONS OF SANCTIONS'  
UTILITY THROUGH EXPORT CONTROLS ON  
LUXURY GOODS

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**ABSTRACT**—There is widespread consensus amongst scholars that sanctions—the deliberate withdrawal of customary trade and financial relations—do not work. Despite this perception, states are deploying sanctions at an increasing rate. This Article explains this paradox by arguing the predominant notion of sanctions' utility employed by scholars is unduly constrained, narrowly focusing on the ability of such measures to modify the behavior of sanctioned parties while disregarding the alternative benefits this instrument can deliver. To support this argument, this Article uses export controls on luxury goods deployed in connection with the Russo–Ukraine War as a case study. Under prevailing perceptions of sanctions' utility, these measures would be considered unsuccessful on their face—it is unlikely constraining access to luxury goods would end the war. Yet the export controls were levied nonetheless. To explain the deployment of these and other sanctions, this Article asserts sanctions offer a wide range of benefits beyond behavioral modification. Drawing on international relations theory, it examines how such measures can be used to shape international law, send important messages to domestic and foreign audiences, internalize international norms amongst domestic constituencies, and impact the relative balance of power between sanctioned and sanctioner. In doing so, this Article offers a descriptive account that not only explains the contradiction at the heart of sanctions usage—a contradiction prevailing discourse has not meaningfully addressed—but presents a starting point for a paradigm shift in conceptions of sanctions' utility that will enable a more pragmatic understanding, evaluation, and usage of sanctions.

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Grewal, Todd Huntley, Emily Hughes, Adrien Wing, and David Jonas for their thoughtful comments.

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## INTRODUCTION

In early 2022, the question of whether sanctions “work” once again entered mainstream political discourse as pundits debated the best response to Russia’s escalating aggression against Ukraine. In the days immediately following Russia’s invasion, the United States and the European Union (EU) jointly deployed an unprecedented package of sanctions against Russia as the aggressor state.<sup>1</sup> Yet now—more than two years on and hundreds of sanctions later—there is no end to the Russo–Ukraine War in sight. The conflict continues unabated with strong evidence of war crimes, human rights abuses, and even allegations of genocide.<sup>2</sup>

<sup>1</sup> See *infra* Part II.

<sup>2</sup> See Karim A.A. Khan KC, Prosecutor, Int’l. Crim. Ct., Statement by Prosecutor Karim A.A. Khan KC on the Issuance of Arrest Warrants in the Situation in Ukraine (Mar. 5, 2024), <https://www.icc-cpi.int/news/statement-prosecutor-karim-aa-khan-kc-issuance-arrest-warrants-situation-ukraine>

This outcome evokes the biting criticism of one scholar, voiced in the days preceding Russia's assault:

[Sanctions are] the most-popular diplomatic dodge of our time . . . [with] an impeccable record of failure . . . . The primary function of economic sanctions is to allow us the comforting delusion that we have shown resolve while still behaving responsibly. Meanwhile, the oppression, aggression, nuclear-weapons research, and anti-democracy coups continue.<sup>3</sup>

While scathing, this perspective is not novel. After a century of regular use, it has become clear sanctions are not consistently able to change the behavior of sanctioned parties. This has led to the widespread conclusion that sanctions are an ineffective foreign policy instrument—they simply do not “work.”<sup>4</sup> Yet, despite this judgment, sanctions remain a staple of states' foreign policy arsenals. Why?

This Article seeks to resolve this paradox by arguing the prevailing notions of sanctions' utility employed by scholars and pundits expect unrealistic outcomes and ignore the wide range of real and achievable benefits that these measures offer. Skeptics of sanctions narrowly focus on their ability to change the behavior of sanctioned parties. In doing so, they fail to consider the lessons learned about this instrument and disregard the full utility of such economic measures. In particular, while scholars have empirically proven that sanctions modify the behavior of targets in limited circumstances,<sup>5</sup> they consistently offer alternative benefits, including (i) shaping international law, (ii) signaling to critical actors, (iii) internalizing international norms amongst domestic constituents, and (iv) affecting the global balance of power.

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[<https://perma.cc/Z6MN-ZPB7>]; Jade McGlynn, *Russia Is Committing Cultural Genocide in Ukraine*, FP (Apr. 23, 2024, 2:01 PM), <https://foreignpolicy.com/2024/04/23/russia-ukraine-cultural-genocide-looting-indoctrination-deportation/> [<https://perma.cc/3L74-MPKA>].

<sup>3</sup> Ralph Peters, *The Decadence of Deterrence*, STRATEGIKA, Feb. 15, 2022, at 1, 1, [https://www.hoover.org/sites/default/files/issues/resources/Strategika77\\_WebreadyPDF.pdf](https://www.hoover.org/sites/default/files/issues/resources/Strategika77_WebreadyPDF.pdf) [<https://perma.cc/LX5Z-FDHE>].

<sup>4</sup> See, e.g., Taehee Whang, *Playing to the Home Crowd? Symbolic Use of Economic Sanctions in the United States*, 55 INT'L STUD. Q. 787, 787 (2011) (“The conventional wisdom is that sanctions rarely work as a measure of coercion.”); Francesco Giumelli, *How EU Sanctions Work: A New Narrative*, CHAILLOT PAPERS, May 2013, at 1, 15 (“[T]here are few subjects in political science that command more consensus than those which claim that sanctions do not work.”); Adrian U-Jin Ang & Dursun Peksen, *When Do Economic Sanctions Work? Asymmetric Perceptions, Issue Salience, and Outcomes*, 60 POL. RSCH. Q. 135, 136 (2007) (“The question, ‘Do economic sanctions work?’ has been perhaps the most fundamental inquiry in the literature debating the effectiveness of sanctions, and the conventional wisdom appears to be that sanctions are ineffective and failed policy instruments in the vast majority of cases.” (citations omitted)).

<sup>5</sup> See *infra* notes 63–69.

To illustrate the wide range of advantages sanctions can offer beyond the predominant perception of sanctions' utility, this Article examines export controls on luxury goods levied by the United States and the EU in connection with Russia's 2022 invasion of Ukraine. These sanctions are a pointed example of measures that would, *prima facie*, be considered "unsuccessful" under the prevailing notion of sanctions' success. After all, it is difficult to believe limiting trade in luxury goods would be sufficient to restrain a ruthless dictator's designs to amass further territory. Yet these measures were deployed nonetheless. Using these sanctions as a case study and drawing from international relations—a discipline that offers rich insight into international law and foreign policy—this Article proposes four alternative uses for sanctions. In doing so, it establishes sanctions can offer material benefits—even if they are unable to change the behavior of sanctioned parties.

This Article proceeds in five parts. Part I begins by discussing historic and modern uses of sanctions as a foreign policy tool. This background offers a foundation for the central argument presented herein. Next, Part II introduces the mechanics of the export controls on luxury goods that the United States and the EU deployed in early 2022 in response to Russian aggression. Part III then analyzes these measures under the prevailing notion of sanctions' success. Through this examination, this work determines it is unlikely the export controls were intended to modify the behavior of Russia's elites. Rather, they were likely deployed to achieve alternative objectives. This conclusion demands a reevaluation of the prevailing conception of sanctions' utility and, by extension, the metrics by which scholars and pundits measure sanctions' success.

Part IV—the heart of this work—reconceptualizes sanctions' utility by proposing four alternative paradigms of sanctions' success, each inspired by insights from the field of international relations. Section IV.A begins by presenting the Contribution Paradigm, which posits sanctions can be used to contribute to development of international law. Next, Section IV.B presents the Signaling Paradigm, which posits sanctions can be used to communicate desired messages to various audiences. Then, Section IV.C presents the Internalization Paradigm, which posits sanctions can be used to influence the value sets of domestic constituencies. Finally, Section IV.D presents the Power Paradigm, which posits sanctions can be used to impact the relative balance of power between sanctioned and sanctioner. In applying these paradigms to export controls, Part IV demonstrates sanctions can achieve important goals even if they are unable to modify behavior.

This Article makes two important contributions to ongoing discussions regarding sanctions in the fields of law, political science, and international

relations. First, it offers a descriptive account that explains the contradiction at the heart of sanctions usage—a contradiction prevailing discourse has yet to meaningfully address. Second, it presents a starting point for a paradigm shift in conceptions of sanctions’ utility that will enable a more pragmatic understanding, evaluation, and usage of this tool.

# I. SANCTIONS IN THEORY AND PRACTICE

To properly contextualize discussions of sanctions’ utility, Part I discusses both the ways in which states have historically employed such economic measures and the modern faces of such measures. While scholars and practitioners define the term “sanctions” differently, this Article adopts the following meaning: “the deliberate, government-inspired withdrawal, or threat of withdrawal, of customary trade or financial relations.”<sup>6</sup> Consistent with other literature on this topic, this Article refers to states that have issued sanctions as “senders” and actors that have been sanctioned as “targets.”<sup>7</sup>

Sanctions have been employed for millennia. Though evidence suggests the Hittites levied an embargo against the Mycenaeans during the late bronze age (1550–1200 B.C.E.),<sup>8</sup> the Megarian Decree deployed by the Athenians in 432 B.C.E. is often considered the first recorded package of sanctions.<sup>9</sup> These facts illustrate that from an early age, civilizations have recognized economic interaction can be leveraged to achieve geopolitical goals.

Humans have since continued to deploy sanctions, often motivated by one of two major goals. First, sanctions were frequently implemented to preserve strategic advantage in various realms. Export and import controls were not only a popular method of maintaining superiority against adversaries in defensive capability<sup>10</sup> but were also frequently implemented

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<sup>6</sup> GARY CLYDE HUFBAUER, JEFFREY J. SCHOTT, KIMBERLY ANN ELLIOTT & BARBARA OEGG, *ECONOMIC SANCTIONS RECONSIDERED* 3 (3d ed. 2007).

<sup>7</sup> *Id.* at 2.

<sup>8</sup> See Eric Cline, *A Possible Hittite Embargo Against the Mycenaeans*, 40 *HISTORIA: ZEITSCHRIFT FÜR ALTE GESCHICHTE* 1, 1 (1991).

<sup>9</sup> See *Sanctions: What Everyone Needs to Know*, WILSON CTR. (Sept. 28, 2022), <https://www.wilsoncenter.org/video/sanctions-what-everyone-needs-know> [<https://perma.cc/L45H-WPV8>].

<sup>10</sup> For instance, to hamper perceived attack on Christendom, the Third Lateran Council promulgated a canon in 1179 C.E. that punished Christians who sold arms, iron, or timber to the Saracens with excommunication, expropriation, and enslavement. 1 G. ALBERIGO, J.A. DOSSINI, P.P. JOANNOU, C. LEONARDI & P. PRODI, *DECREES OF THE ECUMENICAL COUNCILS* 223 (Norman P. Tanner ed., 1990). Moreover, in 1462 C.E., the Republic of Venice attempted to preserve the superiority of its naval fleet by barring trade with the Ottomans via high-tonnage vessels to inhibit Ottoman seizure and impressment of such ships. See Stefan Stantchev, *The Medieval Origins of Embargo as a Policy Tool*, 33 *HIST. POL. THOUGHT* 373, 394–96 (2012).

to preserve and cultivate exceptional economic strength.<sup>11</sup> Second, sanctions were often levied to coerce targets into modifying their behavior in a manner directly favorable to senders. Leveling such measures was not uncommon in the context of war to coerce adversaries into surrender through inducing economic austerity via sieges, embargoes on trade, and naval blockades.<sup>12</sup> Though, perhaps to a lesser extent, such measures were also deployed outside of war.<sup>13</sup>

The twentieth century saw a distinct expansion in sanctions use. At the outbreak of World War I, the Allied Powers established a crippling naval blockade against Germany.<sup>14</sup> This left a lasting impression on Western leaders, proving that economic coercion—even absent use of force—could have dramatic effects on targets. Thereafter, Western statesmen championed the “economic weapon” as a revolutionary “prophylactic against war,” which could be deployed against states to stave off conflict.<sup>15</sup> The community of states widely embraced this novel use of sanctions.

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<sup>11</sup> For instance, in the Chinese Empire, Emperor Yongzheng issued a decree in 1729 C.E. interdicting importation and sale of opium in response to an alarming trade deficit and widespread opium addiction. See *The Opening to China Part I: The First Opium War, the United States, and the Treaty of Wangxia, 1839–1844*, U.S. DEP’T STATE OFF. HISTORIAN, <https://history.state.gov/milestones/1830-1860/china-1> [<https://perma.cc/CZS6-U2NM>]; U.N. OFF. ON DRUGS & CRIME, 2008 WORLD DRUG REPORT 173 (2008), [http://www.unodc.org/documents/wdr/WDR\\_2008/WDR\\_2008\\_eng\\_web.pdf](http://www.unodc.org/documents/wdr/WDR_2008/WDR_2008_eng_web.pdf) [<http://perma.cc/UFQ3-MSY3>].

<sup>12</sup> For instance, on the Indian subcontinent, the Delhi Sultanate laid siege to the Chittorgarh Fort, then-capital of the Kingdom of Mewar, in 1303 C.E., starving its adversaries into engagement through interdicting passage of necessary commodities into the city. See Wu Mingren, *Chittorgarh Fort: A Tale of Sieges, Conquest and Singing Ecstasy*, ANCIENT ORIGINS (Aug. 20, 2020, 6:59 PM), <https://www.ancient-origins.net/ancient-places-asia/chittorgarh-fort-0014146> [<https://perma.cc/D4P8-YKRU>]. Moreover, in the Middle East, in connection with ongoing conflict with the Safavid Empire, Ottoman Sultan Selim I levied an “extensive embargo on all silk traffic from Persia to the Ottoman lands and Europe” in 1514 C.E., depriving the Safavid Shah of revenue from the lucrative silk trade. 9 THE ENCYCLOPAEDIA OF ISLAM 128 (C.E. Bosworth, E. van Donzel, W.P. Heinrichs & G. Lecomte eds., 1997).

<sup>13</sup> For instance, in Europe, the German Hanse banned trade with Novgorod in 1388 C.E. in an effort to force Russian compliance with existing treaties. See Stantchev, *supra* note 10, at 394. Moreover, in North America, colonists entered into nonimportation agreements between 1765 and 1775 C.E. to boycott British goods in an effort to force Britain to recognize and respect their political rights. See *Nonimportation Agreements*, ENCYC. BRITANNICA (Feb. 17, 2024), <https://www.britannica.com/money/Nonimportation-Agreements> [<https://perma.cc/JC7N-XGK6>]; *Nonimportation Agreements*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/history/dictionaries-thesauruses-pictures-and-press-releases/nonimportation-agreements> [<https://perma.cc/8GZ8-UWQF>].

<sup>14</sup> NICHOLAS MULDER, THE ECONOMIC WEAPON: THE RISE OF SANCTIONS AS A TOOL OF MODERN WAR 5 (2022) (noting that more deaths resulted from the starvation catalyzed by the blockade than resulted from use of air power and gas warfare combined).

<sup>15</sup> *Id.* at 3. On the part of the United States, President Woodrow Wilson championed the economic weapon, characterizing it as “a terrible remedy. It does not cost a life outside of the nation boycotted, but it brings a pressure upon that nation which, in my judgment, no modern nation could resist.” *Id.* at 1–2

With this newfound popularity, uses for the economic weapon soon expanded further to include coercing changes in target behavior *indirectly* beneficial to the sender. Indeed, Article 16 of the Covenant of the League of Nations established:

Should any Member of the League resort to war in disregard of its covenants [hereunder] . . . it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations . . .<sup>16</sup>

The Covenant thereby encouraged (and even legally obligated) states to levy sanctions even if they were not directly affected by target behavior. Such conduct was justified under the theory that, while a war might *directly* affect a limited number of states, it also *indirectly* affected all states as a contravention of the international law prohibiting use of force. Thus, the common usage of sanctions materially expanded to include coercing targets that derogated from international law (and related norms) back into compliance, even when such derogation did not directly impact the sender.<sup>17</sup>

In the twenty-first century, sanctions are a staple of every state's foreign policy arsenal. This tool rests somewhere between diplomacy and the use of

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(quoting President Woodrow Wilson, Address at the Coliseum at the State Fair Grounds in Indianapolis, Indiana (Sept. 4, 1919)).

<sup>16</sup> League of Nations Covenant art. 16. Note that the Covenant of the League of Nations was ratified by a great majority of then-existing States. *The League of Nations*, UNITED NATIONS, <https://www.ungeneva.org/en/about/league-of-nations/overview> [https://perma.cc/X3F3-P9RP].

<sup>17</sup> For instance, in the early 1960s, the U.N. General Assembly and U.N. Security Council called upon U.N. member states to deploy sanctions against South Africa in an effort to pressure the state into abandoning its apartheid policies. *See* G.A. Res. 1761 (XVII), at 9 (Nov. 6, 1962); S.C. Res. 181, ¶ 3 (Aug. 7, 1963). These measures were consistent with international law's contemporaneous embrace of human rights—including equal treatment of persons under the law regardless of race. For example, the International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195, was adopted by the U.N. General Assembly shortly thereafter and entered into force in 1969, and the International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171, was adopted by the U.N. General Assembly in 1966 and entered into force in 1976. In the same vein, in 1991, the U.N. Security Council called upon member states to sanction Iraq for various actions it characterized as violative of international law until the Security Council determined Iraq had returned to compliance with international law. *See* S.C. Res. 687, ¶¶ 24–25 (Apr. 3, 1991) (asserting Iraq's conduct during the Gulf War was violative of several of its obligations under international law, including its obligations as a signatory to the Geneva Protocol (prohibiting use of bacteriological and chemical weapons in international armed conflict) and the Treaty on the Non-Proliferation of Nuclear Weapons and calling for a return to compliance with these obligations). Beyond the United Nations, other organizations and states have also called for blanket sanctions in an effort to coerce realignment with international law. Consider the Palestinian-led Boycott, Divestment, Sanctions movement, which calls upon “international civil society organizations and people of conscience all over the world” to boycott and divest from Israel in an effort to compel Israel to comply with its obligations towards the Palestinian people under international law. *Palestinian Civil Society Call for BDS*, BDS MOVEMENT (July 9, 2005), <https://bdsmovement.net/call> [https://perma.cc/E2NZ-RLGE].

force.<sup>18</sup> In recent decades, states have levied sanctions with increasing frequency. Nowhere is this trend more apparent than the United States.<sup>19</sup> Of those sanctions deployed today, most are not tied to a direct conflict (e.g., war) between sender and target.<sup>20</sup>

Sanctions come in a variety of forms that can be uniquely tailored and layered to fit the circumstances in which they are deployed. Senders regularly experiment with new methods to impact targets.<sup>21</sup> Without limitation, sanctions include restrictions on exports and imports, denial of foreign assistance, blocking of interests in tangible and intangible property, restrictions on investment, restrictions on international payments, and travel bans.<sup>22</sup>

In considering the types of sanctions that can be deployed to effectuate a particular goal, senders must strike a balance between such goals and efforts to maintain and strengthen their domestic economy and industrial base.<sup>23</sup> While sanctions are aimed at targets, they necessarily impact sender's economies. Depending on the economic ties between sender and target, cutting off certain services or trade with a target may materially detriment a sender. Thus, in deciding whether and to what extent a state will pursue such measures, senders must consider the consequent harm they will suffer.

As Part III discusses in greater detail, the predominant contemporary notion of sanctions' success adopts a narrow perspective of the utility of such measures. Today, the efficacy of sanctions is almost exclusively measured by changes in target behavior deemed desirable by the sender.<sup>24</sup> Under this

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<sup>18</sup> See LARRY E. CHRISTENSEN & ABIGAIL E. COTTERILL, *EXPORT CONTROLS AND ECONOMIC SANCTIONS: COUNTERTERRORISM, NONPROLIFERATION, NATIONAL SECURITY, AND THE FOREIGN POLICY OF THE UNITED STATES* 1389–90 (2015).

<sup>19</sup> See, e.g., HUFBAUER ET AL., *supra* note 6, at 20–38 (documenting U.S. economic sanctions for foreign policy goals from 1914 onward).

<sup>20</sup> See, e.g., *id.* (indicating most major sanctions levied by states in the past century have not related to war between target and sender). For instance, the United States has implemented sanctions in relation to trafficking of narcotics, proliferation of nuclear weapons, support of terrorist organizations, and cybercrime. Illicit Drug Trade Sanctions Regulations, 31 C.F.R. § 599 (2024); 15 C.F.R. § 736.2(b)(7) (2024) (setting forth prohibitions on exports that would support proliferation activities); Global Terrorism Sanctions Regulations, 31 C.F.R. § 594 (2024); Cyber-Related Sanctions Regulations, 31 C.F.R. § 578 (2024).

<sup>21</sup> See Meredith Rathbone, Peter Jeydel & Amy Lentz, *Sanctions, Sanctions Everywhere: Forging a Path Through Complex Transnational Sanctions Laws*, 44 GEO. J. INT'L L. 1055, 1055 (2013).

<sup>22</sup> CONG. RSCH. SERV., R45415, U.S. SANCTIONS ON RUSSIA 3–4 (2022).

<sup>23</sup> See CHRISTENSEN & COTTERILL, *supra* note 18, at 1389–90.

<sup>24</sup> See, e.g., *Do Sanctions Actually Work? Experts Evaluate the Efficacy of This Widely Used Foreign Policy Tool*, JOHNS HOPKINS UNIV. (Feb. 12, 2024), <https://washingtondc.jhu.edu/news/do-sanctions-actually-work-experts-evaluate-the-efficacy-of-this-widely-used-foreign-policy-tool/> [<https://perma.cc/8JJ5-2576>] (“Sanctions work in two ways . . . Either they’re supposed to put enough pressure on the regime and targeted state to change its behavior, or they’re supposed to put enough pressure on society to rise up against the state to then topple the state.” (quoting Professor Narges Bajoghli)).



perception, economic measures that fail to trigger such a change are considered useless, regardless of any other effects they may produce. Within this paradigm, sanctions are widely considered an ineffective tool. This Article challenges this notion. While this perspective is not surprising in light of the common purposes that have historically motivated deployment of such measures, it unnecessarily pigeonholes this tool, wasting its potential in the process.

## II. EXPORT CONTROLS ON LUXURY GOODS

To illustrate the ways sanctions can be impactful, even in the absence of changes to target behavior, this Article examines export controls on luxury goods levied by the United States and the EU in early 2022 in response to Russian aggression. On their face, it seems unlikely such sanctions could produce sufficient pressure—economic or otherwise—to halt the Russian war against Ukraine. Yet, they were levied nonetheless. Before discussing the utility of such sanctions, it is important to understand their substance.

### A. U.S. Export Controls on Luxury Goods

On March 11, 2022, President Biden issued Executive Order 14,068 (E.O. 14,068), “Prohibiting Certain Imports, Exports, and New Investment With Respect to Continued Russian Federation Aggression.”<sup>25</sup> E.O. 14,068 augmented an increasing body of U.S. sanctions, building since the 2014 annexation of Crimea and significantly expanded in early 2022, following Russia’s invasion of Ukraine.<sup>26</sup> Among other economic measures, it announced new limitations on the export of luxury goods to persons located in Russia and delegated authority to the Secretary of Commerce to effect such prohibitions.<sup>27</sup> E.O. 14,068 did not provide a rationale for the decision to deploy export controls on luxury goods, let alone the choice to do so at that precise point in time.

The Department of Commerce’s Bureau of Industry and Security (BIS) swiftly discharged the Secretary of Commerce’s duties under the executive order. On March 16, 2022, it issued a notice of changes to the Export Administration Regulations (EAR) incorporating controls on luxury goods.<sup>28</sup>

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<sup>25</sup> Exec. Order No. 14,068, 87 Fed. Reg. 14381 (Mar. 15, 2022).

<sup>26</sup> See CONG. RSCH. SERV., R45415, at 1 (summarizing the U.S. sanctions regime against Russia before the 2022 aggression).

<sup>27</sup> Exec. Order No. 14,068, 87 Fed. Reg. at 14381 (prohibiting the “exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a U.S. person, wherever located, of luxury goods, and any other items as may be determined by the Secretary of Commerce . . . to any person located in the Russian Federation”).

<sup>28</sup> Imposition of Sanctions on ‘Luxury Goods’ Destined for Russia and Belarus, 87 Fed. Reg. 14785 (Mar. 16, 2022) (announcing a final rule retroactively effective as of March 11, 2022).

Therein, it indicated the measures were responsive to Russian action in Ukraine, which “flagrantly violate[d] international law, [was] contrary to U.S. national security and foreign policy interests, and undermine[d] global order, peace, and security, necessitating the imposition of stringent sanctions.”<sup>29</sup> It further stated these export controls were intended to build upon sweeping sanctions deployed some two weeks prior.<sup>30</sup> The BIS noted the measures would “undermine the ability of [Russian elites] . . . to acquire luxury items, thereby further highlighting to these influential individuals the financial consequences to their lifestyle of Russia’s invasion of Ukraine.”<sup>31</sup> Thus, it appears the export controls targeted the symbiotic relationship between Putin’s regime and the oligarch class.

To effect these measures, the BIS wired two new limitations into the EAR (the U.S. Controls). First, it added a prohibition on the unlicensed export, reexport, or transfer of “luxury goods” to or within Russia.<sup>32</sup> This limitation applies not only to transactions in which end users of luxury goods are located within Russia but also to transactions in which luxury goods pass through Russia on their way to end users elsewhere. Second, the BIS added a prohibition on the unlicensed export, reexport, or transfer of “luxury goods” to an “oligarch or malign actor.”<sup>33</sup> The EAR defines the term “oligarch or malign actor” through reference to a list of specially designated persons.<sup>34</sup> In its drafting, the BIS is clear that this second limitation applies regardless of where an “oligarch or malign actor” is located—that is, it applies on a worldwide basis—and regardless of whether such person is an end user of “luxury goods” or a mere consignee thereof.<sup>35</sup>

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<sup>29</sup> *Id.* at 14785.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 15 C.F.R. § 746.10(a)(1) (2024). These regulations have since been consolidated into 15 C.F.R. § 746.8(a)(7).

<sup>33</sup> *Id.* § 746.10(a)(2).

<sup>34</sup> An “oligarch or malign actor” is any natural person who is “designated on the Department of the Treasury, Office of Foreign Assets Control’s (OFAC) List of Specially Designated Nationals and Blocked Persons (SDN List) with any of the following designations: [RUSSIA-EO14024], [UKRAINE-EO13660], [UKRAINE-EO13661], [UKRAINE-EO13662], [UKRAINE-EO13685], [BELARUS], and [BELARUS-EO14038].” *Id.* Amongst such persons are Vladimir Putin’s close associates, Oleg Deripaska, billionaire captain of industry, Viktor Vekselberg, billionaire energy tycoon, Alisher Burhanovich Usmanov, billionaire metal and mining mogul, and Nikolai Petrovich Tokarev, oil baron. *See* Press Release, U.S. Dep’t of the Treasury, Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity (Apr. 6, 2018), <https://home.treasury.gov/news/press-releases/sm0338> [<https://perma.cc/4TQQ-68A4>]; Press Release, U.S. Dep’t of the Treasury, Treasury Sanctions Russians Bankrolling Putin and Russia-Backed Influence Actors (Mar. 3, 2022), <https://home.treasury.gov/news/press-releases/jy0628> [<https://perma.cc/8U66-NJFS>].

<sup>35</sup> 15 C.F.R. § 746.10(a)(2).

The U.S. Controls constructively bar both types of export activity. While each limitation prohibits *unlicensed* export, the EAR clarifies that applications for such licenses “will be reviewed with a policy of denial.”<sup>36</sup> Thus, save for limited exceptions, the new regulations function as a de facto ban on the flow of “luxury goods” to or within Russia as well as to oligarchs and malign actors.<sup>37</sup>

A wide catalog of items trigger the U.S. Controls. The EAR defines the term “luxury goods” by reference to a considerable list of goods. Included on this list are:

TABLE 1: SAMPLE LIST OF “LUXURY GOODS” AFFECTED BY THE U.S. CONTROLS<sup>38</sup>

Item	Value Threshold per Unit (USD)
Alcoholic beverages	None
Apparel and footwear	≥ 300
Handbags	None
Cars	≥ 50,000
Precious metals and gemstones (including jewelry)	None
Watches	≥ 300
Art works	≥ 300

As a practical matter, the definition of luxury goods is limited by the scope of the EAR. Thus, the U.S. Controls only touch those items that “are (1) of US origin; (2) located in the United States; (3) produced outside the United States with more than 25% by value of U.S.-controlled content; and (4) produced outside the United States and covered by the special ‘foreign direct product rules for Russia.’”<sup>39</sup> Thus, the U.S. Controls are predicated on

<sup>36</sup> *Id.* § 746.10(b).

<sup>37</sup> *See id.* (offering an exception for items meeting humanitarian needs, such as certain medical devices); *see also id.* § 746.10(c) (carving out very limited exceptions for aircrafts, baggage, and consumer electronics in certain circumstances).

<sup>38</sup> *Id.* § 746 supp. 5. Note, luxury goods are also defined to include a variety of other goods that are not commonly considered luxury items, including motorcycles valued at or above \$5,000 and various electronic devices that transmit information across long distances. *See id.* In this sense, these sanctions also prohibit the export of items that could be used or repurposed for use in Russia’s war effort.

<sup>39</sup> Pauline Mutuc, *Update: Extensive Sanctions on Russia Focus on Luxury Goods*, MORGAN LEWIS (Apr. 11, 2022), <https://www.morganlewis.com/pubs/2022/04/update-extensive-sanctions-on-russia-focus-on-luxury-goods> [https://perma.cc/LL2B-MUTR]; *see also* 15 C.F.R. § 734.3(a). Note, with

two bases of jurisdiction. First, they rely on territorial jurisdiction in that they attach to all goods within U.S. territory.<sup>40</sup> Second, they rely on what some practitioners in the field refer to as “quasi in rem jurisdiction,” in that they attach to goods that are, in whole or in part, of U.S. origin, regardless of where they may be in the world.<sup>41</sup>

### B. *EU Export Controls on Luxury Goods*

The same day E.O. 14,068 was issued, Ursula von der Leyen, President of the European Commission, announced the EU would imminently deploy new sanctions against Russia, including a ban on the export of luxury goods.<sup>42</sup> To the press, she communicated such measures were intended to deal “a direct blow to the Russian elite,”<sup>43</sup> as “[t]hose who sustain Putin’s war machine should no longer be able to enjoy their lavish lifestyles while bombs fall on innocent people in Ukraine.”<sup>44</sup> Thus, as with the U.S. Controls, these sanctions struck at Russia’s crony capitalism.

On March 15, 2022, the Council of the EU issued a decision that effected such export controls, among other sanctions targeted at Russia.<sup>45</sup> The decision generally noted:

By its illegal military actions, Russia is grossly violating international law and the principles of the UN Charter and undermining European and global security and stability . . . . In view of the gravity of the situation, and in response to

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respect to prong (3), the EAR regime reaches certain foreign-made items that incorporate (or are bundled or commingled with) U.S.-origin items that require a license from the BIS for export to the foreign-made items’ ultimate country of destination. *See id.* § 734.3(a)(3). Under certain circumstances, these foreign-made items are identified by comparing the value of the U.S.-origin items incorporated to the total value of the foreign-made item at issue. *See id.* §§ 734.3(a)(3), 734.4(c). Note further, with respect to prong (4), the EAR’s “foreign direct product rules” essentially address foreign-made items that are produced using certain U.S. technology, equipment, or software. *See id.* § 734.9.

<sup>40</sup> *See* Barbara Linney & Saskia Zandieh, *Have Laws, Will Travel*, TRADE SEC. J., Sept. 2017, at 25, 26.

<sup>41</sup> *See id.* (“This Latin expression [‘quasi in rem’] meaning ‘as if against a thing’ is used to describe the exercise of jurisdiction over property.”). Notably, this form of jurisdiction does not readily fall within any of the bases for a state’s prescriptive power that are recognized under international law. *See* RESTATEMENT (FOURTH) OF FOREIGN RELATIONS LAW §§ 402, 407–413 (AM. L. INST. 2017) (indicating a state’s power to prescribe law is based upon six types of jurisdiction: territoriality, effects, active personality, passive personality, protective principle, and universal).

<sup>42</sup> Sarah Anne Aarup, *EU Hits Russia with New Sanctions on Luxury Goods, Metals and Energy Projects*, POLITICO (Mar. 11, 2022, 6:21 PM), <https://www.politico.eu/article/brussels-set-to-slam-russia-with-fresh-sanctions-on-luxury-goods-iron-steel-and-more/> [<https://perma.cc/3CDY-VYFY>]; *see also* Exec. Order No. 14,068, 87 Fed. Reg. 14381 (Mar. 15, 2022).

<sup>43</sup> Aarup, *supra* note 42.

<sup>44</sup> *EU Expands Sanctions Against Russia to Ban Luxury Goods and Energy Investments*, EURONEWS (Mar. 15, 2022, 10:42 AM), <https://www.euronews.com/my-europe/2022/03/15/eu-expands-sanctions-against-russia-to-ban-luxury-goods-and-energy-investments> [<https://perma.cc/J5WC-5GZR>].

<sup>45</sup> Council Decision 2022/430, art. 1(9), 2022 O.J. (L 87) 56, 59.

Russia's military aggression against Ukraine, it is appropriate to introduce further restrictive measures.<sup>46</sup>

Like the U.S. Controls, such measures were intended to augment an increasing body of EU sanctions building since Russia's 2014 annexation of Crimea.<sup>47</sup>

The EU implemented this decision through contemporaneously issued regulations (the EU Controls) intended to ensure uniform and simultaneous application of such measures across all EU member states.<sup>48</sup> In particular, the EU Controls instituted a prohibition on the sale, "supply, transfer or export, directly or indirectly, [of] luxury goods . . . to any natural or legal person, entity or body in Russia or for use in Russia."<sup>49</sup> In subsequent guidance, the European Commission clarified these export controls do not apply to transfer of "luxury goods" *already* imported into Russia by a Russian person or company before these measures were deployed within Russia and do not apply to "luxury goods" transiting through Russia on their way to another state.<sup>50</sup> Thus, the EU Controls differ materially from the U.S. Controls in that they do not touch movement of "luxury goods" (i) once in Russia and in the hands of a Russian person or (ii) to or via "oligarchs and malign actors."

The EU Controls are triggered by a wide catalog of items. As with the U.S. Controls, the EU Controls define "luxury goods" by reference to an extensive list of items across various categories.<sup>51</sup> Included on this list are:

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<sup>46</sup> *Id.* pmbl. para. 4, at 56.

<sup>47</sup> In fact, this Decision was intended to amend Council Decision 2014/512, originally issued in July of 2014, in response to Russia's intentional contribution to activities destabilizing Ukraine during that time. Council Decision 2014/512, 2014 O.J. (L 229) 13, 13–14.

<sup>48</sup> Council Regulation 2022/428, pmbl. para. 9, 2022 O.J. (L 87) 13, 13 ("These measures fall within the scope of the Treaty and, therefore, in particular with a view to ensuring their uniform application in all Member States, regulatory action at the level of the Union is necessary."); *see also id.* art. 2, at 17 ("This Regulation shall be binding in its entirety and directly applicable in all Member States.").

<sup>49</sup> *Id.* art. 1(8), at 16. Note, the EU regulation provides exceptions to these restrictions, including for goods necessary for diplomatic purposes. *Id.*

<sup>50</sup> *See* DIRECTORATE-GEN. FOR FIN. STABILITY, FIN. SERVS. & CAP. MKTS. UNION, EUR. COMM'N, LUXURY GOODS: FREQUENTLY ASKED QUESTIONS – AS OF 26 JULY 2023 (July 26, 2023) [hereinafter LUXURY GOODS: FREQUENTLY ASKED QUESTIONS], [https://finance.ec.europa.eu/document/download/cbaefd48-dbcd-46ee-9d96-6c8eb031b9dd\\_en?filename=faqs-sanctions-russia-luxury-goods\\_en.pdf](https://finance.ec.europa.eu/document/download/cbaefd48-dbcd-46ee-9d96-6c8eb031b9dd_en?filename=faqs-sanctions-russia-luxury-goods_en.pdf) [<https://perma.cc/Z6D6-7CRN>].

<sup>51</sup> *See* Council Regulation 2022/428, *supra* note 48, art. 1(8), at 16.

TABLE 2: SAMPLE LIST OF “LUXURY GOODS” AFFECTED BY THE EU CONTROLS<sup>52</sup>

Item	Value Threshold per Unit (EUR) <sup>53</sup>
Alcoholic beverages	≥ 300
Apparel and footwear	≥ 300
Handbags	≥ 300
Cars	≥ 50,000
Precious metals and gemstones (including jewelry)	≥ 300
Watches	≥ 300
Art works	≥ 300

While the EU Controls’ definition of “luxury goods” is generally analogous to the U.S. Controls’ definition, there are limited distinctions, many of which are attributable to the difference in products produced by the two markets.<sup>54</sup>

Unlike the U.S. Controls, the EU Controls are predicated on territorial and citizenship jurisdiction.<sup>55</sup> Specifically, the EU Controls apply:

- (a) within the territory of the [European] Union;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person . . . who is a national of a Member State;
- (d) to any legal person, entity or body . . . which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the [European] Union.<sup>56</sup>

<sup>52</sup> These values come from Council Regulation 2022/428, *supra* note 48, annex XVIII, at 29–40.

<sup>53</sup> *Id.* art. 1(8).

<sup>54</sup> As with the U.S. Controls, the EU Controls also extend to items that are not traditionally considered “luxury” items, such as railway coaches over 50,000€ in value. *Id.* annex XVIII(17), at 38–39. Limitation of the export of such items is likely intended to hamper their use and repurpose for use in Russia’s war effort. This is where the two sanctions’ definitions of “luxury goods” primarily diverge.

<sup>55</sup> See generally Linney & Zandieh, *supra* note 40 (discussing citizenship jurisdiction and territorial jurisdiction). “Citizenship jurisdiction” likely aligns with what is known as “active personality” jurisdiction under international law—one of the six bases for a state’s prescriptive power that are recognized under international law. See RESTATEMENT (FOURTH) OF FOREIGN RELATIONS LAW §§ 402, 410 (AM. L. INST. 2017).

<sup>56</sup> Council Regulation 833/2014, art. 13, 2014 O.J. (L 229) 11.

### III. THE PREVAILING CONCEPTION OF SANCTIONS' UTILITY DOES NOT COMPORT WITH THE LUXURY CONTROLS

When viewed in light of prevailing notions of sanctions' utility, the U.S. and EU Controls (together, the Luxury Controls) appear doomed from deployment. If sanctions are intended to catalyze changes in target behavior—as many scholars and policymakers assert—then such measures should be no exception. But can a bar on acquisition of luxury goods really exert enough pressure—economic or otherwise—to end war? Or, at least, elite endorsement thereof? When issued following much more aggressive sanctions, could such measures be the straw that breaks the proverbial camel's back? Despite stereotypes of Russian elites obsessing over luxury items, both common sense and reasoned analysis indicate such measures would not be effective at triggering such ambitious changes in behavior.

In an effort to demonstrate the limitations of the predominant notion of sanctions' utility, Part III examines the Behavioral Modification Paradigm in three Sections. First, Section III.A introduces this paradigm and its origins. Second, Section III.B examines how success is assessed under this paradigm. Finally, Section III.C concludes that, while the Luxury Controls have yet to succeed under the Behavioral Modification Paradigm, it is likely these measures were intended to achieve objectives other than behavioral modification. Through this examination, Part III demonstrates continued deployment of sanctions despite lackluster success under the Behavioral Modification Paradigm demands a reconceptualization of sanctions' utility.

#### A. *Introducing the Behavioral Modification Paradigm*

The majority of sanctions analyses by policymakers and scholars evaluate the success of sanctions by reference to their ability to modify a target's behavior as the sender desires (the Behavioral Modification Paradigm).<sup>57</sup> If a target does not alter their conduct as desired, the measures are considered unsuccessful. This is so even if such measures take a meaningful economic toll on the target or produce other effects beneficial to the sender.

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<sup>57</sup> See, e.g., Susan Hannah Allen, *The Determinants of Economic Sanctions Success and Failure*, 31 INT'L INTERACTIONS 117, 120 (2005) ("Sanctioners apply economic pressure to bring about a change in political behavior."); Ioana M. Petrescu, *Rethinking Economic Sanction Success: Sanctions as Deterrents* 1 (Dec. 2010) (unpublished manuscript), <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=974da7f099124e7bda4bde73b10d86c1a5841aea> [https://perma.cc/RC3M-GR5S] ("In theory, the way sanctions work is simple; sanctioned countries . . . suffer costs resulting from actions taken by sanctioning countries . . . . In order to avoid the costs, targets modify their behavior in the direction desired by the [sanctioners]."); HUFBAUER ET AL., *supra* note 6, at 3 ("We define foreign policy goals to encompass changes the sender state explicitly or implicitly seeks in the target state's political behavior.").

The Behavioral Modification Paradigm is grounded in classical liberalism, a political ideology that flourished in the nineteenth century, driving globalization and informing political thought into the twentieth century. As a philosophy, classical liberalism emphasized individual autonomy and economic freedoms, positing war could be eliminated through the proliferation of democratic governance and free trade.<sup>58</sup> In particular, classical liberalism asserted the economic interdependence resulting from free trade would naturally cause states to avoid resorting to warfare.<sup>59</sup> The desire to maintain and cultivate economic strength would incentivize states to avoid conflict in an effort to maintain interstate economic ties.

This ideology opened the door to the reconceptualization of sanctions' utility that took place in the early twentieth century. Following World War I, statesmen inverted classical liberalism to construct the modern economic weapon to preserve peace.<sup>60</sup> That is, states actively leveraged economic interdependence to prevent and end war.<sup>61</sup> This philosophy thus played a crucial role in wedding notions of sanctions' utility to behavioral modification.

Contemporary primacy of the Behavioral Modification Paradigm is likely attributable to the skewed nature of twentieth-century discourse regarding sanctions' utility. As discussed in Part I of this work, sanctions have been deployed throughout history for various purposes, including to achieve goals unrelated to modifying target conduct. However, in the early twentieth century, discussions regarding sanctions were dominated by appeals to the tenets of classical liberalism and calls for a revolutionary application of such measures to prevent war or coerce compliance with international law.<sup>62</sup> The fervor of such assertions seems to have drowned out alternative conceptions of sanctions' utility. Today, the assumptions of classical liberalism are inherent to current understandings of the utility and

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<sup>58</sup> See Scott Burchill, *Liberalism*, in THEORIES OF INTERNATIONAL RELATIONS 55, 58 (3d ed. 2005); Ralph Raico, *What Is Classical Liberalism?*, MISES INST. (Nov. 1, 2018), <https://mises.org/library/what-classical-liberalism> [https://perma.cc/2V8A-DDD8].

<sup>59</sup> See Burchill, *supra* note 58, at 63.

<sup>60</sup> MULDER, *supra* note 14, at 2 (“Sanctions . . . changed how [classical] liberalism conceived of coercion, and altered the course of international law.”).

<sup>61</sup> *Id.* at 3.

<sup>62</sup> For instance, Woodrow Wilson championed use of sanctions as an economic weapon that, through severing trading relationships, could coerce a target into submission—including into ending war. *Id.* at 1–2 (“[A]n absolute isolation . . . that brings a nation to its senses just as suffocation removes from the individual all inclinations to fight . . . . Apply this economic, peaceful, silent, deadly remedy and there will be no need for force. It is a terrible remedy. It does not cost a life outside of the nation boycotted, but it brings a pressure upon that nation which, in my judgment, no modern nation could resist.” (quoting President Woodrow Wilson)).



functioning of sanctions, transposing the goal of behavioral modification onto every sanction deployed regardless of form or circumstance.

*B. Generally Assessing Sanctions' Success Under the Behavioral Modification Paradigm*

Under the Behavioral Modification Paradigm, sanctions are largely considered unsuccessful.<sup>63</sup> Scholars from the Peterson Institute for International Economics estimate that, on average, only 34% of deployed sanctions are successful at modifying target behavior in a manner desirable to the sender.<sup>64</sup> This value varies meaningfully when the data is analyzed more particularly, with success increasing where intended behavioral modification was minor<sup>65</sup> and decreasing where it was more ambitious, such as regime change or impairment of military potential.<sup>66</sup> Indeed, these scholars found sanctions implemented “to disrupt relatively minor military adventures” only succeeded 20% of the time.<sup>67</sup>

Through empirical analysis, scholars have come to a consensus that sanctions are unlikely to change target behavior in certain critical circumstances. For instance, targets that are autocratic—especially those with a stable political and economic system—tend to be less responsive to sanctions.<sup>68</sup> Moreover, sanctions are much less likely to change target behavior where they do not produce a meaningful economic impact on the target.<sup>69</sup> This is especially so where the sender has ambitious goals of behavioral modification, as the costs of complying with the sender’s demands are generally high, and the target is more intensely interested in the outcome than the sender. This divergence seems obvious when the demand is for the targeted government to give up power (in regime-change cases) or desist from a military excursion deemed vital to national security. The sender’s goals in these cases are important but less critical to the sender than to the target.<sup>70</sup>

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<sup>63</sup> See *supra* note 5 and accompanying text.

<sup>64</sup> See HUFBAUER ET AL., *supra* note 6, at 158. Note, while these scholars assess the success of sanctions under the Behavioral Modification Paradigm, they make clear that success can be measured by other metrics. See *id.* at 5–7.

<sup>65</sup> Success markedly increased to 51% where the expectation of behavioral modification was narrowly tailored, such as “freeing a political prisoner, inducing a more friendly foreign policy, or protecting one’s emigrants abroad.” *Id.* at 163.

<sup>66</sup> Only 30% of sanctions deployed with such ambitious goals were successful. See *id.* at 158–59.

<sup>67</sup> See *id.* at 159.

<sup>68</sup> See *id.* at 166–67; Allen, *supra* note 57, at 118.

<sup>69</sup> See HUFBAUER ET AL., *supra* note 6, at 168.

<sup>70</sup> See *id.* at 163.

Where sanctions have produced desired changes in target behavior, scholars estimate the average economic costs of such measures to targets has been roughly 3.3% of target Gross National Product (GNP).<sup>71</sup> Taken together, these findings indicate sanctions are unlikely to succeed under the Behavioral Modification Paradigm in many of the circumstances in which policymakers and statesmen have traditionally called for their deployment.

Finally, causation is difficult to pin down under the Behavioral Modification Paradigm. Even if a target modifies their behavior as desired, it can be unclear whether the change is a direct response to sanctions, other factors, or a combination of both.<sup>72</sup> This is especially true as time passes, and the window of assessment becomes wider. Where multiple sanctions are deployed, it is nearly impossible to assess which aspect of such package contributed to modification and which did not.

*C. While Unsuccessful Under the Behavioral Modification Paradigm,  
the Luxury Controls Demand Alternative Metrics for Assessing  
Sanctions' Success*

The obvious weaknesses of the Luxury Controls under the Behavioral Modification Paradigm indicate these measures were likely intended to achieve goals other than behavioral modification. Applying this paradigm to assess these measures, it would appear these sanctions have failed—now, almost two years from their deployment, the Russo–Ukraine War continues to rage, with very few members of the Russian elite having spoken out against the conflict.<sup>73</sup> However, this outcome is not at all surprising. Indeed, this Section demonstrates it would have been unreasonable to expect the Luxury Controls to trigger behavioral modification. The U.S. Controls, though strict, are unlikely to exert sufficient economic pressure to catalyze behavioral modification. Moreover, the EU Controls are too narrow to meaningfully constrain elites' access to luxury goods. When coupled with additional factors, it was clear even before deployment that the Luxury Controls would be unable to produce the pressure needed to catalyze a change in target conduct. In light of these facts, it is likely the sanctions were levied with the intent of effecting alternative objectives. As such, the Luxury

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<sup>71</sup> See *id.* at 168.

<sup>72</sup> See Jonathan Marcus, *Analysis: Do Economic Sanctions Work?*, BBC NEWS (July 26, 2010), <https://www.bbc.com/news/world-middle-east-10742109> [<https://perma.cc/2USE-A9C3>] (“There are very few cases where you can definitely identify sanctions as having had a success, except sometimes in combination with other factors . . . [but, in such cases] it is impossible to say . . . that sanctions were the decisive factor.” (quoting Professor Adam Roberts)).

<sup>73</sup> Maxim Trudolyubov, *Why Russian Elites Are Silent*, WILSON CTR.: THE RUSS. FILE (Mar. 8, 2024), <https://www.wilsoncenter.org/blog-post/why-russian-elites-are-silent> [<https://perma.cc/LDQ4-U9KY>].

Controls demand new methods of evaluation that gauge their success in achieving the objectives for which they were deployed.

*I. The Limited Economic Ties Between the United States and Russia Undermine the U.S. Controls*

The limited trade relationship between Russia and the United States meaningfully constrains the United States' ability to exert pressure against Russia or Russian elites through export controls. Even without considering the narrow category of luxury goods affected by the U.S. Controls, U.S. exports comprise only a small portion of total Russian imports. Of the \$273 billion in goods imported by Russia in 2021, only \$7.08 billion came from the United States (2.6% of total imports by value).<sup>74</sup> Imports from the United States comprise an even smaller portion of Russia's GNP—only 0.4%.<sup>75</sup>

Figures related specifically to luxury goods further confirm the U.S. Controls are unlikely to exert meaningful economic pressure on Russia. While it may be difficult to ascertain the full toll of the U.S. Controls given the scope of the EAR, U.S. export statistics paired with Russian import statistics can provide material insight into the impact of these measures. Table 3 (below) provides such data for select luxury goods affected by the U.S. Controls, illustrating the extent to which Russia imported these goods from the United States in 2021—the year before these measures were instituted.

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<sup>74</sup> *Where Does Russia Import from? (2021)*, OEC, <https://oec.world/en/profile/country/rus?yearSelector1=2021&yearlyTradeFlowSelector=flow1> [<https://perma.cc/Z4YW-T6TL>].

<sup>75</sup> This figure comes from comparing total U.S. imports to Russia's 2021 GNP, using \$1.735 trillion as the GNP figure. See *Russia Gross National Product (GNP)*, CEIC DATA, <https://www.ceicdata.com/en/indicator/russia/gross-national-product> [<https://perma.cc/JGK6-UY2N>].

TABLE 3: RUSSIAN IMPORTS OF SELECT LUXURY GOODS IN 2021 (DENOMINATED IN USD)<sup>76</sup>

Category <sup>†</sup>	Russian Imports <sup>*</sup>	U.S. Origin <sup>**</sup>	% of Imports <sup>^</sup>	Primary Exporter		
				Country <sup>77</sup>	Exports	% <sup>^^</sup>
Whiskey <sup>78</sup>	200 M	10.4 M	5.2	LVA	74.5 M	37.2
Wine <sup>79</sup>	892 M	9.2 M	1.03	LTU	201 M	22.5
Handbags <sup>80</sup>	463 M	1.02 M	0.22	CHN	225 M	48.5
Fine Jewelry <sup>81</sup>	273 M	36.5 M	13.4	ITA	46 M	16.8
Cars <sup>82</sup>	12.9 B	800 M	6.21	JPN	2.75 B	21.3
Precious Metal Watches <sup>83</sup>	129 M	353 K	0.27	CHE	104 M	80.9
Art (Paintings & Prints) <sup>84</sup>	57.3 M	20.1 M	35.1	USA	20.1 M	35.1
<b>Total</b>	<b>14.91 B</b>	<b>877.6 M</b>	<b>5.89</b>			

<sup>†</sup> Figures include all items in the category, not only those exceeding the Luxury Controls' value threshold.

<sup>\*</sup> Value of all imports of relevant item into Russia in 2021

<sup>\*\*</sup> Value of all imports of relevant item into Russia from the United States in 2021

<sup>^</sup> U.S. items as a share of all imports of relevant item into Russia during 2021

<sup>^^</sup> Country's share of all imports of relevant item into Russia during 2021

<sup>76</sup> An expanded version of this table including data for Russia's secondary and tertiary exporters is available in the Online Appendix, which is linked at the end of this Article.

<sup>77</sup> The countries identified in this table and the Online Appendix include Latvia (LVA), Lithuania (LTU), China (CHN), Italy (ITA), Japan (JPN), Switzerland (CHE), the United Kingdom (GBR), the United States (USA), Germany (DEU), Korea (KOR), the United Arab Emirates (UAE), Ireland (IRL), and France (FRA).

<sup>78</sup> See *Where Does Russia Import Whiskey from? (2021)*, OEC, [https://oec.world/en/visualize/tree\\_map/hs92/import/rus/show/4220830/2021/](https://oec.world/en/visualize/tree_map/hs92/import/rus/show/4220830/2021/) [https://perma.cc/8Y7R-FBKH].

<sup>79</sup> See *Where Does Russia Import Wine from? (2021)*, OEC, [https://oec.world/en/visualize/tree\\_map/hs92/import/rus/show/42204/2021/](https://oec.world/en/visualize/tree_map/hs92/import/rus/show/42204/2021/) [https://perma.cc/9E32-K8WU].

<sup>80</sup> See *Where Does Russia Import Handbags with Outer Surface of Leather, Handbags with Outer Surface Plastics, Textile Material, and Handbags, of Vulcanised Fibre or Paperboard from? (2021)*, OEC, [https://oec.world/en/visualize/tree\\_map/hs92/import/rus/show/8420221.8420222.8420229/2021/](https://oec.world/en/visualize/tree_map/hs92/import/rus/show/8420221.8420222.8420229/2021/) [https://perma.cc/GL8H-AZ3D].

<sup>81</sup> See *Where Does Russia Import Jewellery from? (2021)*, OEC, [https://oec.world/en/visualize/tree\\_map/hs92/import/rus/show/147113/2021/](https://oec.world/en/visualize/tree_map/hs92/import/rus/show/147113/2021/) [https://perma.cc/E7U4-U4UZ] (data limited to jewelry made from precious metals and stones).

<sup>82</sup> See *Where Does Russia Import Cars from? (2021)*, OEC, [https://oec.world/en/visualize/tree\\_map/hs92/import/rus/show/178703/2021/](https://oec.world/en/visualize/tree_map/hs92/import/rus/show/178703/2021/) [https://perma.cc/44J6-GNH2] (figures include non-luxury vehicles unaffected by the U.S. Controls).

<sup>83</sup> See *Where Does Russia Import Precious Metal Watches from? (2021)*, OEC, [https://oec.world/en/visualize/tree\\_map/hs92/import/rus/show/189101/2021/](https://oec.world/en/visualize/tree_map/hs92/import/rus/show/189101/2021/) [https://perma.cc/LZT3-C7P8].

<sup>84</sup> See *Where Does Russia Import Paintings and Prints from? (2021)*, OEC, [https://oec.world/en/visualize/tree\\_map/hs92/import/rus/show/219701.219702/2021/](https://oec.world/en/visualize/tree_map/hs92/import/rus/show/219701.219702/2021/) [http://perma.cc/8FDQ-QEQ5] (limiting art data to paintings and prints).

Table 3 indicates the U.S. Controls were—and continue to be—unlikely to generate sufficient pressure to coerce changes in target behavior. While the data provided examines only a limited selection of goods affected by the U.S. Controls, it offers helpful insight into the extent of economic ties between the United States and Russia with respect to luxury goods. Russia receives the vast majority of luxury goods from countries other than the United States. Thus, as a starting point the data establishes it is unlikely the U.S. Controls can meaningfully impair Russian elite's access to luxury items. Moreover, the economic pressure generated by the measures is unlikely to be significant. Table 3 provides the aggregate value of these select luxury goods imported from the United States by Russia is roughly \$877.6 million—0.05% of Russia's GNP in 2021.<sup>85</sup> Together, these findings indicate the limited trade relationship between Russia and the United States in this regard inhibits the U.S. Controls' ability to exert meaningful pressure on either Russia or Russian elites.

## 2. *The Limited Scope of the EU Controls Undermines Their Efficacy*

The EU is better positioned than the U.S. to exert pressure on Russia and Russian elites through leveraging export of luxury goods. Though Table 3 examines only a limited selection of goods affected by the EU Controls, it provides helpful insight into the economic ties between the EU and Russia with respect to luxury goods. The data contained therein reveals that Russia relies much more on the EU than the United States for access to such items. Of the seven categories of luxury goods examined, EU member states are among the top three exporters to Russia in six categories.<sup>86</sup> In contrast, the United States is only among the top three exporters in two of these categories.<sup>87</sup> Thus, it appears the EU may be able to more effectively constrain the Russian elite's access to luxury goods. However, Table 3 also suggests the economic pressure generated by the EU Controls is unlikely to be significant. The data offered therein puts the aggregate value of these select luxury goods imported by Russia from EU member states at roughly \$827.69 million—0.05% of Russia's GNP in 2021.<sup>88</sup> Thus, although the economic toll of the EU Controls may not be significant, the measures could

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<sup>85</sup> Note, this figure is likely inflated given that the data offered applies to all categorized items, not only those that meet the U.S. Controls' value thresholds. This calculation is based on \$1.735 trillion as Russian GNP. See *Russia Gross National Product (GNP)*, *supra* note 75.

<sup>86</sup> See Online Appendix.

<sup>87</sup> See Online Appendix.

<sup>88</sup> Note, this figure is likely inflated given the data offered applies to all categorized items, not only those that meet the EU Controls' value thresholds. This calculation is based on \$1.735 trillion as Russian GNP. See *Russia Gross National Product (GNP)*, *supra* note 75.

more effectively limit Russian elites' access to luxury goods than the U.S. Controls.

Despite this potential, the limited scope of the EU Controls meaningfully undercuts their effectiveness. First, the extraterritorial applications of the EU Controls leave meaningful workarounds for Russian elites. The U.S. Controls are predicated on territorial and quasi in rem jurisdiction. The U.S. measures attach to specific items, regardless of their location or the number of times they are reexported or transferred. In this sense, the U.S. Controls do not necessarily cease to apply when luxury goods change hands outside of the territorial United States. In contrast, the EU Controls are predicated on territorial and citizenship jurisdiction. Unlike the U.S. Controls, these measures do not follow luxury goods themselves but apply where actor or actions have a connection to the EU. Therefore, luxury goods originating from an EU member state or EU person can lawfully end up in Russia after some geographic hopscotching.<sup>89</sup> Second, the EU Controls do not contain any prohibition specifically applicable to oligarchs or malign actors like the U.S. Controls. As such, Russian elites living outside of Russia that continue to hold influence within the state can still lawfully purchase luxury goods otherwise subject to the EU Controls. While the U.S. Controls are certainly not without loopholes, these characteristics of the EU Controls dampen their effects, leaving elites with more room to continue to access relevant luxury goods.

### 3. *It Is Likely the Luxury Controls Were Intended to Achieve Objectives Other than Behavioral Modification*

From the outset, it was clear the Luxury Controls would only have a limited impact under the Behavioral Modification Paradigm—an indication that they were crafted with the purpose of achieving an alternative goal. While the effect of the U.S. Controls was constrained by the limited trade relationship between the United States and Russia, the effect of the EU Controls was constrained by their limited scope. In this sense, it was apparent that the measures would neither dramatically constrain elite access to luxury goods nor strike a significant economic blow to the Russian economy.

But these were not the only factors that strongly heralded such an outcome. To the extent the measures *did* impact Russian elites, it was clear

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<sup>89</sup> Cameron Manley, *Tricks for Dodging Sanctions – or, Why You Can Still Buy a Coca-Cola in Moscow*, WORLD CRUNCH (Apr. 29, 2023), <https://worldcrunch.com/focus/sanctions-russia-don-t-work> [<https://perma.cc/SB4M-WXWC>] (“[M]any intermediaries have appeared too: from large companies to private traders, luxury goods are delivered to Russia both directly from Italy and in parcels through Eurasian Economic Union countries . . . [Moreover,] [t]he French luxury jeweler Cartier arranged a trip to Kazakhstan for its regular [Russian] customers last year [(2022)] to get acquainted with local boutiques and managers.”).

Russia could reasonably mitigate these effects through strengthening preexisting trade relationships. Table 3 establishes that in 2021 Russia acquired a significant amount (by value) of luxury goods from countries such as China, Turkey, South Korea, and the United Arab Emirates. At the time the Luxury Controls were deployed, none of these states joined the senders in instituting similar export controls against Russia. Thus, it would not have been surprising or unprecedented for Russia to supplement decreased imports from the European Union and the United States through increasing reliance on alternative trading relationships.<sup>90</sup> Moreover, the cost to targets of modifying their behavior—i.e., voicing disagreement with the War—was significant. President Vladimir Putin has a reputation for being ruthless with dissenters. Voicing disagreement with Putin’s war surely ran the risk of harsh retribution. As a result, the cost to the targets of acquiescence to the sanctions would greatly outweigh the benefit to the senders.

True to these predictive factors, the Luxury Controls do not seem to have meaningfully altered the behavior of targets. Now, two years after deployment of the Luxury Controls, the Russo–Ukraine War rages on, with few members of the Russian elite voicing disagreement with the ongoing conflict.<sup>91</sup> What’s more, alternative trading partners have been more than happy to step into the void created by the measures, facilitating supply of the same goods through different channels.<sup>92</sup>

The foregoing analysis establishes that measuring the success of the Luxury Controls using the Behavioral Modification Paradigm is not appropriate. As discussed directly above, many factors indicated the sanctions would be unable to modify the behavior of Russian elites. Each of these factors was readily apparent even before the measures were deployed. Thus, it is likely the senders understood the Luxury Controls would not change target behavior. In light of these facts, it appears the measures were deployed to achieve a *different* goal. Therefore, these sanctions demand an alternative metric for evaluating success that properly accounts for the

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<sup>90</sup> See CONG. RSCH. SERV., R45415, U.S. SANCTIONS ON RUSSIA 43 (2022) (“[S]ome Russian firms have minimized the sanctions’ impact by . . . forging alternative economic partnerships.”).

<sup>91</sup> See Olga Khvostunova, *Why Russian Elites Are Standing by Putin*, FOREIGN POL’Y RSCH. INST. (July 22, 2022), <https://www.fpri.org/article/2022/07/why-russian-elites-are-hanging-together-for-now/> [<https://perma.cc/THF8-QJUW>] (examining why Russia’s elites “appear to stand united and refuse to challenge the president, his system, or at least protest the war”). While a small group of Russian oligarchs did voice their disagreement with the conflict in the summer of 2022, elites have overwhelmingly remained silent on the issue. *Id.*

<sup>92</sup> See *Turkish Retailers Gain Rights to Distribute US, EU Sports Brands in Russia*, TEXTILE EXCELLENCE (Aug. 31, 2022), <https://www.textileexcellence.com/single-news/6149/turkish-retailers-gain-rights-to-distribute-us-eu-sports-brands-in-russia> [<https://perma.cc/P9XB-45MJ>]. This development highlights an increasing “use of Turkey as a regional supply chain and distribution hub for the Russian market” in an effort to avoid sanctions on luxury goods. *Id.*

objectives motivating their deployment. It is to these alternatives that we now turn our attention.

#### IV. RECONCEPTUALIZING SANCTIONS' SUCCESS

Having concluded the Behavioral Modification Paradigm may not properly account for the full range of objectives motivating sanctions, the remainder of this Article examines alternative paradigms of sanctions' success through reference to the field of international relations. As a discipline, international relations is dedicated to the study of interactions between states for explanatory, predictive, and problem-solving purposes. Of the many contributions offered by this field, scholars have developed various theories to broadly explain and predict interstate interaction. This Article draws on these theories to understand why senders deploy sanctions. The resulting insights offer new paradigms by which to assess sanctions' success, reconceptualizing sanctions' utility in the process.

Part IV introduces and applies four such paradigms to the Luxury Controls, each drawn from a theory of international relations. Section IV.A presents the Contribution Paradigm, which is rooted in the theory of constructivism and posits senders can use sanctions to contribute to the development of international law. When assessed under this paradigm, the Luxury Controls are successful. Next, Section IV.B presents the Signaling Paradigm, which is rooted in the theory of liberalism and posits senders can use sanctions to communicate distinct messages to domestic and foreign audiences. When evaluated under this paradigm, the Luxury Controls are successful. Then, Section IV.C presents the Internalization Paradigm, which is also rooted in liberalism but posits senders can use sanctions to influence domestic constituencies to internalize international norms within their own value sets. When measured under this paradigm, it is inconclusive whether the Luxury Controls are successful. Finally, Section IV.D presents the Power Paradigm, which is rooted in the theory of realism and posits senders can use sanctions to impact the relative balance of power between sender and target. When measured under this paradigm, the Luxury Controls are not successful, but other sanctions contemporaneously issued by the EU and the United States are. Through its examination, Part IV demonstrates that sanctions can be used to achieve various important objectives beyond behavioral modification.

##### *A. Success as Contributing to Development of International Law*

Sanctions can be used to contribute to the development of international law (the Contribution Paradigm). Integral to understanding this paradigm is a basic knowledge of international law. Thus, Subsection IV.A.1 begins



by providing a brief background on this topic. Next, Subsection IV.A.2 introduces the Contribution Paradigm. Then, Subsection IV.A.3 explores how success can be assessed under this paradigm. Finally, Subsection IV.A.4 applies the Contribution Paradigm to evaluate the success of the Luxury Controls.

### 1. *Sources of International Law*

In the anarchic international system, no state can forcibly bind another, as each state is equal in their sovereignty. In this context, international law generally arises where states consent to be bound, either explicitly or implicitly.<sup>93</sup> The community of states has coalesced around three primary sources of international law which arise from such assent: treaties, custom, and general principles of law.<sup>94</sup> Where the first source is created through express state consent, the others emerge through implicit consent. Customary international law (CIL) develops where “two key requirements are met: (1) a relatively uniform and consistent state practice regarding a particular matter; and (2) a belief among states that such practice is legally compelled [i.e. *opinio juris*].”<sup>95</sup> In contrast, general principles of law are those principles of domestic law autonomously adopted by states with respect to their internal affairs.<sup>96</sup> Where many states widely observe a general principle, it may be interpreted as international law.<sup>97</sup>

Thus, formation of international law is a collaborative and dialectical process between states. Treaties are formed through the interstate negotiation of terms upon which states agree to be bound. Custom and general principles beget international law where they are widely observed by states. Thus, material consensus must be found for international law to develop.

Because international law arises from the consent of states, it operates as a forum in which states contest and redefine the broader international

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<sup>93</sup> S.S. Lotus (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 18 (Sept. 7) (“The rules of law binding upon States therefore emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law . . . . Restrictions upon the independence of States cannot therefore be presumed.”).

<sup>94</sup> The Statute of the International Court of Justice indicates the court will rely on these three sources as primary sources of international law. Statute of the International Court of Justice, art. 38, ¶ 1, Apr. 18, 1946, 59 Stat. 1055.

<sup>95</sup> SEAN D. MURPHY, PRINCIPLES OF INTERNATIONAL LAW 93–95 (2d ed. 2012).

<sup>96</sup> See *General Principles, Public International Law: A Beginner's Guide*, LIBR. CONG., <https://guides.loc.gov/public-international-law/general-principles> [<https://perma.cc/MDE8-JF9W>] (“Enduring examples of general principles of law, typically followed in most jurisdictions, are the doctrines of good faith, estoppel, and equity.”).

<sup>97</sup> “[G]eneral principles of law [are used] as a source of international law in order to allow international law to be a coherent legal system instead of a mere ‘aggregate of legal norms’ that States have directly consented to.” Xuan Shao, *What We Talk About when We Talk About General Principles of Law*, 20 CHINESE J. INT’L L. 219, 229 (2021).

order. International law represents a critical body of values around which states have coalesced; the community of states not only recognizes such values as legitimate but agrees that states have a legal obligation to uphold them. As states evolve in their conception of their responsibility towards one another and towards persons, so does international law. Just as international law is made, it can be unmade or redefined through (i) withdrawal of consent or (ii) assent to concepts that imbue preexisting international law with new meaning.

## 2. *Introducing the Contribution Paradigm*

Under the Contribution Paradigm, the objective of sanctions is to shape international law, whether by reaffirming preexisting CIL, clarifying preexisting CIL, or contributing to the crystallization of new CIL. As such, this paradigm finds value in sanctions regardless of whether they change target behavior.

The Contribution Paradigm is rooted in the unique nature of CIL. Because CIL is based on state practice—that is, state actions—it contains laws that are dynamic. Ongoing state practice constantly redefines CIL, adding greater nuance to preexisting rules of CIL or contributing to the crystallization of new CIL. This paradigm posits that, as a form of internationally facing state action, sanctions can be one aspect of the state practice that contributes to CIL.

In this capacity, such measures not only impact the development of international law but aid in its preservation in the case of challenges to the international order. State conduct is constantly shaping the development of CIL—not only adding substantive rules to the body of preexisting CIL but also eliminating or chipping away at such rules. Indeed, states can unspool CIL by availing themselves of the subsequent objector doctrine, under which a state “gain[s] an exemption from a rule of customary law if, and to the extent that, its departure is not opposed by other states.”<sup>98</sup> Where a material number of states deviate from a rule of CIL and such deviation is met with acquiescence from those that previously observed such rule, CIL is unmade.<sup>99</sup> With this doctrine in mind, actions clearly contesting another state’s deviation from CIL—such as sanctions issued in response to a derogation from international law—take on new importance. Not only does

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<sup>98</sup> Vincy Fon & Francesco Parisi, *Stability and Change in International Customary Law*, 17 SUP. CT. ECON. REV. 279, 294 (2009). This subsequent objector doctrine modifies a rule as between the derogating state and any acquiescing state, so any resulting exemption from CIL “only affects relations between these states.” *Id.*

<sup>99</sup> *Id.* at 293. Note, however, the subsequent objector doctrine cannot cleanse derogation from CIL, where (i) such CIL is considered *jus cogens* or (ii) a third-party state (neither a derogating state nor acquiescing state) is harmed by such derogation. *Id.* at 294 n.37.

such action bar deviating states from taking advantage of the subsequent objector doctrine, but in doing so it obstructs any related unspooling of preexisting CIL.

This perspective of sanctions' utility finds support in the international relations theory of constructivism. Constructivism posits that "neither agents . . . nor social structures are logically preexistent or determining; each is constituted through interaction with the other."<sup>100</sup> That is, while normative and ideational structures shape the identities of states, so too do states shape these structures—the two are mutually constituted through ongoing interactions.<sup>101</sup> Under this theory, the international system is constructed and reconstructed through continuous interactions between actors, which function to negotiate meanings and shape the collective intersubjective understandings undergirding the international order.<sup>102</sup>

Against this theoretical backdrop, international law—as one of these collective intersubjective understandings—is made, remade, and unmade through ongoing interplay and communication between states.<sup>103</sup> Within this framework, sanctions are one of the ways in which states interact with each other and the broader international order. Regardless of whether they catalyze changes in target conduct, such economic measures can be used to reinforce, redefine, or raze preexisting normative structures that constrain state conduct, such as international law.

### 3. *Generally Assessing Sanctions' Success Under the Contribution Paradigm*

Under the Contribution Paradigm, sanctions are considered successful when they clearly communicate the sender's understanding of CIL to the broader international community. CIL only evolves where both state practice and *opinio juris* are easily ascertainable. As such, bare deployment of sanctions would not result in success under this metric—practice absent *opinio juris* is insufficient to contribute to the development of CIL. Thus, sanctions are only successful under this paradigm where senders explain their choice to deploy such measures.

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<sup>100</sup> Jutta Brunnée & Stephen J. Toope, *Constructivism and International Law*, in INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART 119, 123 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2013).

<sup>101</sup> Christian Reus-Smit, *Constructivism*, in THEORIES OF INTERNATIONAL RELATIONSM, *supra* note 58, at 188, 197–98.

<sup>102</sup> See Brunnée & Toope, *supra* note 100, at 124; MURPHY, *supra* note 95, at 19 ("For constructivists, the international system is an ideational construct of state actors, in which there are widely shared inter-subjective beliefs (ideas, conceptions, assumptions). States 'construct' one another in their relations; a concept such as 'sovereignty' is not objectively true, but is the product of states constantly defining and redefining it through social interactions.").

<sup>103</sup> See Brunnée & Toope, *supra* note 100, at 135.

This explanation must provide clear insight into the sender's understanding of CIL. How this clarity is achieved varies depending upon the way in which the sender seeks to contribute to the development of CIL. For instance, if a sender intends to use sanctions to preserve preexisting CIL in the face of derogation therefrom, the explanation should demonstrate opposition to such derogation. This can be achieved by (i) describing the preexisting rule of CIL in connection with which the sanction has been levied; (ii) asserting the sanction has been deployed in response to derogation therefrom; and (iii) denouncing such derogation as wrongful under international law. In contrast, if a sender intends to use sanctions to elaborate upon or operationalize preexisting CIL, the explanation should communicate and substantiate the sender's particularized interpretation of such CIL. This can be achieved by (i) generally describing the CIL rule in connection with which the sanction has been deployed; (ii) discussing the sender's interpretation of such rule, with emphasis on the desired elaboration or operationalization; and (iii) detailing the sender's rationale for interpreting the rule in such a manner. Alternatively, if a sender intends to use sanctions to contribute to the crystallization of new CIL, the explanation should describe this new CIL and the sender's rationale for embracing it. This can be achieved by (i) asserting the sender believes a new rule of CIL has crystallized; (ii) clearly describing such rule; (iii) and detailing the sender's rationale for asserting such rule has risen to the level of CIL.

Notably, this prerequisite for success under the Contribution Paradigm presents an interesting dilemma for senders that desire to maintain peak strategic ambiguity with respect to international law. While ambiguity in articulating a sender's understanding of CIL may preserve flexibility in sender conduct, it may render sanctions unsuccessful under the Contribution Paradigm. On the other hand, articulating a sender's understanding of CIL with too much specificity may yield sanctions' success under this paradigm but undesirably constrain future sender conduct.<sup>104</sup> As such, in providing explanations for the implementation of sanctions, senders must deftly walk the line between strategic ambiguity and clarity.

Finally, success under the Contribution Paradigm requires that any explanation a sender offers in connection with the deployment of sanctions be accessible to international audiences. Where senders wish to contribute to the development of international law through the deployment of sanctions, they must ensure their reason for instituting sanctions is accessible to the community of states. This can be achieved by circulating an explanation for

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<sup>104</sup> *Id.*

such measures through press releases or public statements easily accessible on the website of authoritative political organs of the sender. This can also be achieved through enlisting credible press consumed by international audiences.

#### 4. *Assessing the Luxury Controls Under the Contribution Paradigm Yields Success*

Though similar in effect, the explanations provided for the EU Controls and the U.S. Controls vary, yielding distinct outcomes under the Contribution Paradigm. First, to the extent the Luxury Controls were deployed to preserve the CIL prohibition on the use of force, they would be considered successful. Second, to the extent the EU Controls were levied to preserve a CIL rule of sovereignty, territorial integrity, or independence, they would be considered unsuccessful. Finally, to the extent the Luxury Controls were employed to contribute to or preserve any other rule of CIL, they would be considered unsuccessful.

##### *a. CIL prohibition on unprovoked aggression*

The U.S. Controls are accompanied by a clear explanation for deployment, accessible by the international community. Executive Order 14,068 and the BIS notice regarding effectuation of the U.S. Controls can be read together to provide an explanation that adopts the rationales for sanctions deployment offered with respect to other sanctions contemporaneously issued in response to Russian aggression against Ukraine.<sup>105</sup> This explanation characterizes Russia's actions as an "unjustified, unprovoked, unyielding, and unconscionable war against Ukraine . . . in violation of international law, including the United Nations Charter"<sup>106</sup> and asserts the U.S. Controls are "one aspect of the broad U.S. Government response to Russia's unprovoked aggression."<sup>107</sup> The executive order was released through the White House Press Office while the BIS notice was released through the Federal Register.<sup>108</sup> Both are accessible to

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<sup>105</sup> E.O. 14,068 offers no rationale for any of the sanctions it institutes, instead referring to E.O. 14,066 for explanation. See Exec. Order No. 14,068, 87 Fed. Reg. 14381 (Mar. 15, 2022). While the Department of Commerce's notice of promulgation of the U.S. Controls itself states "Russia's invasion of Ukraine . . . flagrantly violates international law," in coming to this conclusion, it also refers to the explanation provided in connection with sanctions deployed in the preceding weeks. Imposition of Sanctions on 'Luxury Goods' Destined for Russia and Belarus, 87 Fed. Reg. 14785 (Mar. 16, 2022).

<sup>106</sup> Exec. Order No. 14,066, 87 Fed. Reg. 13625 (Mar. 10, 2022).

<sup>107</sup> Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR), 87 Fed. Reg. 12226 (Mar. 3, 2022) [hereinafter Russia Sanctions Rule].

<sup>108</sup> See *Executive Order on Prohibiting Certain Imports, Exports, and New Investment with Respect to Continued Russian Federation Aggression*, WHITE HOUSE BRIEFING ROOM (Mar. 11, 2022),

international audiences through the internet.<sup>109</sup> The preceding sanctions from which such explanation was derived were made accessible through similar means.<sup>110</sup>

The EU Controls are also accompanied by a clear explanation for deployment, accessible to international audiences. The Council decision announcing the export controls characterized Russia's "unprovoked and unjustified military aggression against Ukraine" as "grossly violating international law and the principles of the UN Charter."<sup>111</sup> It further noted the measures were directly responsive to such action.<sup>112</sup> The EU Controls were publicly announced through international-facing press in anticipation of their deployment.<sup>113</sup> Immediately thereafter, the decision and regulations effecting such measures were made widely available online by the Publications Office of the European Union.<sup>114</sup>

The explanations for the Luxury Controls clearly communicate the senders' opposition to Russian derogation from the CIL prohibition on unprovoked aggression. Each of the explanations offered (i) describes the CIL prohibition against unprovoked aggression, (ii) indicates the sanctions were deployed in response to Russia's derogation from this CIL rule, and (iii) denounces such derogation as wrongful under international law. As such, to the extent the Luxury Controls were intended to reaffirm the CIL

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<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/11/executive-order-on-prohibiting-certain-imports-exports-and-new-investment-with-respect-to-continued-russian-federation-aggression/> [<https://perma.cc/BHW3-2PNN>].

<sup>109</sup> *Imposition of Sanctions on 'Luxury Goods' Destined for Russia and Belarus and for Russian and Belarusian Oligarchs and Malign Actors Under the Export Administration Regulations (EAR)*, FED. REG. (Mar. 16, 2022), <https://www.federalregister.gov/documents/2022/03/16/2022-05604/imposition-of-sanctions-on-luxury-goods-destined-for-russia-and-belarus-and-for-russian-and-belarusian-oligarchs-and-malign-actors-under-the-export-administration-regulations-ear> [<https://perma.cc/A7X3-5HHB>] (posting 87 Fed. Reg. 14785 (Mar. 16, 2022) online).

<sup>110</sup> *See Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR)*, FED. REG., <https://www.federalregister.gov/documents/2022/03/03/2022-04300/implementation-of-sanctions-against-russia-under-the-export-administration-regulations-ear> [<https://perma.cc/SEQ5-BQAL>] (posting 87 Fed. Reg. 12226 (Mar. 3, 2022) online); *Executive Order on Prohibiting Certain Imports and New Investments with Respect to Continued Russian Federation Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine*, WHITE HOUSE BRIEFING ROOM (Mar. 8, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/08/executive-order-on-prohibiting-certain-imports-and-new-investments-with-respect-to-continued-russian-federation-efforts-to-undermine-the-sovereignty-and-territorial-integrity-of-ukraine/> [<https://perma.cc/G6B5-GDWN>].

<sup>111</sup> Council Decision 2022/430, *supra* note 45, art. 1(9), at 56.

<sup>112</sup> *Id.* ("In view of the gravity of the situation, and in response to Russia's military aggression against Ukraine, it is appropriate to introduce further restrictive measures.")

<sup>113</sup> *See Aarup, supra* note 42.

<sup>114</sup> *See Council Decision 2022/430 of 15 March 2022 Amending Decision 2014/512/CFSP Concerning Restrictive Measures in View of Russia's Actions Destabilising the Situation in Ukraine*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022D0430> [<https://perma.cc/233L-YWVA>] (posting Council Decision 2022/430, *supra* note 45, online).

prohibition on unprovoked aggression, they do so successfully under the Contribution Paradigm.<sup>115</sup>

*b. CIL rule of sovereignty, territorial integrity, and independence*

In contrast, to the extent the EU Controls were intended to affirm a CIL rule of sovereignty, territorial integrity, or independence, they would be considered unsuccessful under the Contribution Paradigm. The Council decision effecting these measures not only voices strong support for Ukraine's sovereignty but further indicates that Russia's invasion "is a blatant violation of the territorial integrity, sovereignty and independence of Ukraine."<sup>116</sup> This emphasis indicates the EU may have sought to affirm CIL rules of sovereignty, territorial integrity, or independence.<sup>117</sup> This is especially so given use of the word "violate," which indicates the EU perceived Russian conduct as breaching some preexisting obligation. However, these statements alone do not provide sufficient clarity regarding the sender's understanding of applicable CIL. Unlike the CIL prohibition against unprovoked use of force—which is relatively well defined in international law—the contours of CIL rules regarding sovereignty, territorial integrity, and independence remain relatively unclear.<sup>118</sup> As such, voicing broad support for these concepts without (i) establishing a belief they are rules of CIL and (ii) providing further clarity regarding the substance of such rules does little to contribute to the development of CIL. Thus, to the

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<sup>115</sup> From a practical perspective, the Luxury Controls prevent Russia's derogation from contributing to the development of CIL. To the extent the CIL prohibition on use of force is not *jus cogens*, the Luxury Controls operate as firm opposition under the subsequent objector doctrine, preventing CIL from changing as between Russia, the United States, and EU member states on the issue of unprovoked state use of force. See *supra* notes 98–99 and accompanying text. To the extent the CIL prohibition on the use of force is *jus cogens* (which is likely the case), the Luxury Controls further reaffirm the continuing relevance and applicability of this rule to the modern world. See *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgment, 1986 I.C.J. 14, ¶ 190 (June 27) (indicating CIL prohibition on the use of force is *jus cogens*).

<sup>116</sup> Council Decision 2022/430, *supra* note 45, art. 1(9), at 56.

<sup>117</sup> In contrast, the explanation of the U.S. Controls simply states Russia's invasion "threatens the peace, stability, sovereignty, and territorial integrity of Ukraine," without further qualification. Exec. Order No. 14,066, 87 Fed. Reg. 13625 (Mar. 10, 2022). This limited mention of sovereignty seems to indicate the United States did not intend to contribute to any CIL rule of sovereignty through issuance of the U.S. Controls.

<sup>118</sup> Samantha Besson, *Sovereignty*, OXFORD PUB. INT'L L. (Apr. 2011), <https://opil.oup.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1472#law-9780199231690-e1472-div1-4> [<https://perma.cc/X56L-3H3Y>] (noting the international law principles of territorial integrity and independence are often conceptualized as stemming from the international law principle of sovereignty but also how, "[c]uriously for such a pivotal concept, but maybe precisely because it is such, . . . [the] meaning [of sovereignty] has been changing across historical and political contexts and has also been heavily contested at any given time and space").

extent the EU Controls were intended to provide support for CIL rules of sovereignty, territorial integrity, or independence, they did not properly communicate the sender's support for such rules, and would therefore be considered unsuccessful in this regard under the Contribution Paradigm.

*c. Other rules of CIL*

As neither the U.S. Controls nor the EU Controls are accompanied by explanations that sufficiently allude to any other aspect of CIL, to the extent the Luxury Controls were intended to further contribute to CIL, they would be considered unsuccessful under the Contribution Paradigm. While the explanations could have addressed additional rules of CIL, such as the right of states to self-determination,<sup>119</sup> the prohibition against intervention into the *domaine réservé* of another state,<sup>120</sup> a duty of states to cooperate to maintain peace and security,<sup>121</sup> or a prohibition against state corruption,<sup>122</sup> they did not do so. As such, the explanations do not clearly communicate the senders' recognition of any other aspect of CIL, rendering the Luxury Controls unsuccessful in contributing to the development of CIL beyond the CIL rule prohibiting unprovoked use of force.

*B. Success as Signaling to Observers*

Economic measures can be used to send important signals to international and domestic audiences (the Signaling Paradigm). Subsection IV.B.1 introduces the Signaling Paradigm. Next, Subsection IV.B.2 explores how success can be assessed under this paradigm. Finally, Subsection IV.B.3 applies the Signaling Paradigm to evaluate success of the Luxury Controls.

*1. Introducing the Signaling Paradigm*

Under the Signaling Paradigm, the objective of sanctions is primarily to communicate messages to an audience of critical actors, including: targets, victims, allies, domestic constituents, and the broader international community. For instance, senders may employ sanctions to communicate attentiveness to the preferences of domestic audiences or to inform

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<sup>119</sup> See U.N. Charter art. 1, ¶ 2; *id.* art. 55 (affirming the right of self-determination, likely reflecting CIL); International Covenant on Civil and Political Rights art. 1, Dec. 19, 1966, 999 U.N.T.S. 171 (widely ratified multilateral treaty that affirms the right of self-determination).

<sup>120</sup> See *Nicar. v. U.S.*, 1986 I.C.J. ¶ 292 (deciding the United States intervened in Nicaragua's affairs in contravention of international law).

<sup>121</sup> While there is no such recognized CIL duty, the United States and the EU could have included discussions of such rule in the explanations accompanying such sanctions in an effort to begin the crystallization of CIL on the matter.

<sup>122</sup> While there is no such recognized CIL duty, the United States and the EU could have included discussions of such rule in the explanations accompanying such sanctions in an effort to begin the crystallization of CIL on the matter.



international onlookers of the extent to which a sender is willing to engage in action responsive to target conduct, including collective action. In doing so, sanctions clarify the sender's position on specific foreign conduct, informing the ways in which domestic and foreign actors assess their own range of action with respect to the events catalyzing such economic measures. As such, the Signaling Paradigm finds value in sanctions that effectively convey various messages to key actors, regardless of whether they coerce changes in target behavior.

Currently, a small portion of the academic literature related to sanctions' success explores the Signaling Paradigm (though not by this moniker).<sup>123</sup> Such dialogue was spurred by states' unabated and prolific implementation of sanctions despite overwhelming conclusions these measures have only achieved minimal success under the Behavioral Modification Paradigm.<sup>124</sup> This seeming contradiction between action and effect pushed scholars and policymakers to begin the endeavor of reconceptualizing sanctions' success by asking whether the Behavioral Modification Paradigm truly captured the full range of sanctions' utility. Of those scholars who have made this inquiry, many have focused on the ability of sanctions to concretely signal to a broad audience.<sup>125</sup> Sanctions can symbolize different things to different constituencies, including condemnation, solidarity, or resolve to action. Once these messages have been communicated through deployment of sanctions, they influence the broader status quo by altering the perceptions of observers, such as victims, allies, domestic populations, and the broader international community.<sup>126</sup>

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<sup>123</sup> Note that the signaling I refer to in this work is generally termed "symbolism" in the field of political science.

<sup>124</sup> See, e.g., Giumelli, *supra* note 4, at 16 ("[The Behavioral Modification Paradigm] is not only misleading, but it is also erroneous. It is misleading because it does not help to explain why sanctions are used if they do not change the behaviour of targets. The behavioural change of targets is clearly only one aspect of the story and to focus on the micro level with such a rigid approach may hide crucial elements of sanctions dynamics."); Anna P. Schreiber, *Economic Coercion as an Instrument of Foreign Policy: U.S. Economic Measures Against Cuba and the Dominican Republic*, 25 *WORLD POL.* 387, 405 (1973) (concluding that while sanctions on Cuba were ineffective at changing target behavior, they were nonetheless "applied and maintained as a symbolic affirmation of . . . U.S. opposition to the spread of revolution and Communist influence in an area deemed to be within its 'sphere of influence'").

<sup>125</sup> See Giumelli, *supra* note 4, at 19 ("[T]he signalling aspect of certain sanctions should not be relegated to a residual category of non-effective sanctions."); Schreiber, *supra* note 124, at 413 ("Regardless of its concrete impact on the target state, a government may consider economic coercion useful if it serves to declare its position to internal and external publics, or helps to win support at home or abroad."); HUFBAUER ET AL., *supra* note 6, at 54 ("Indeed, the tactical mix of sanctions may be shaped more for domestic symbolism than for foreign efficacy.").

<sup>126</sup> See Giumelli, *supra* note 4, at 19 ("In other words, targets of signalling sanctions can be the international community, states, populations, non-state entities and individuals. This dimension of

The Signaling Paradigm finds support in the international relations theory of liberalism (not to be confused with the political ideology of classical liberalism discussed in Section III.A). In explaining states' international engagement, liberalism adopts a bottom-up approach. Theorists in this school perceive the state as "a representative institution that aggregates and channels those interests and ideals [of social actors (such as individuals and organizations)] according to their relative weight in society, ability to organize, and influence in political processes."<sup>127</sup> Thus, liberal theory asserts that states' international conduct is the result of internal bargaining and negotiation amongst domestic constituencies with varied levels of influence and competing preferences regarding cross-border interactions.

As such, liberalism asserts that states' international engagement—including the issuance of sanctions—carries distinct meanings for domestic and international audiences. Against this theoretical background, sanctions represent a synthesis between differing domestic preferences for state action (or inaction) in response to particular foreign events. As the output of a domestic compromise, such economic measures function to both react to domestic constituencies and inform them of the ways in which their preferences are factored into states' broader interests and policies. Sanctions also decrease asymmetries of information on the international level by informing international audiences of the sender's willingness to engage in various forms of conduct in light of constraints posed by domestic constituencies. As such, sanctions provide foreign observers with insight into the sender's range of responsive action—including collective action—which is helpful in strategizing their *own* future conduct.

In contrast with the Behavioral Modification Paradigm, the Signaling Paradigm is not expected to catalyze specific changes in behavior. The latter posits that sanctions can be used to send a message clarifying the sender's stance on specific foreign affairs. Thus, for the Signaling Paradigm, the value of sanctions lies in the message they disseminate rather than any responsive change in audience behavior.<sup>128</sup>

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sanctioning is relevant to show commitment, to escalate a dispute, to prove political coherence, to underline the importance of a norm of international relations and to stigmatise non-compliance with that norm.”).

<sup>127</sup> Andrew Moravcsik, *Liberal Theories of International Law*, in INTERDISCIPLINARY PERSPECTIVES ON INTERNATIONAL LAW AND INTERNATIONAL RELATIONS: THE STATE OF THE ART, *supra* note 100, at 83, 84.

<sup>128</sup> See HUFBAUER ET AL., *supra* note 6, at 54–55 (“Whether or not foreign governments or foreign policies change, the imposition of sanctions declares the values of the sender country, and that declaration of national values serves important purposes in and of itself.”).

Similarly, the Signaling Paradigm finds value in sanctions beyond that emphasized by the Contribution Paradigm. While the former may recognize as signals what the latter recognizes as contributions to CIL, it also finds significance in sanctions that evoke principles of CIL but fall short of the clear communication required for success under the latter.

## *2. Generally Assessing Sanctions' Success Under the Signaling Paradigm*

Under the Signaling Paradigm, sanctions are considered successful if they clearly communicate a sender's desired messages to intended audiences. Like the Contribution Paradigm, success under this paradigm requires meeting both formal and substantive elements connected with the institution of such measures.

Formally, sanctions must be deployed in a manner visible to intended audiences to achieve success under the Signaling Paradigm. As with success under the Contribution Paradigm, this is achieved through announcing the implementation of such measures through modes that are readily evident to desired domestic and international audiences—such as through a public statement attributable to an authoritative political organ of the sender or through widely consumed media sources. From a practical perspective, such announcement places audiences on inquiry notice regarding the relevant sanctions.

Substantively, sanctions must clearly convey intended messages to desired audiences to achieve success under the Signaling Paradigm. This can be done in various ways. Senders can explicitly communicate messages through publicly issuing explanations for deployment of sanctions. However, this is not necessary where the purpose of such measures can readily be deciphered by intended audiences from the circumstances of deployment, including from the content of implementing law. Essentially, to the extent announcement of the deployment of sanctions places desired audiences on inquiry notice, senders must assure the circumstances sufficiently enable onlookers to deduce intended messages.

Messaging under the Signaling Paradigm does not require the robust explanation that is a prerequisite for success under the Contribution Paradigm. Though the Contribution Paradigm also deals with messaging, the bar for success is much higher as sanctions must demonstrate a clear intention to contribute to specific aspects of CIL. In contrast, the latter paradigm does not involve the precision necessary for development of law, leaving significant room to maintain strategic ambiguity.

### 3. *Assessing the Luxury Controls Under the Signaling Paradigm Yields Success*

The Luxury Controls were successful at conveying a number of distinct messages to a variety of audiences. In particular, these economic measures conveyed clear signals to the Ukrainian government and people, domestic constituencies, the Russian government, Russian elites, and onlooking states. Each of these five messages is examined in greater detail below.

As an initial matter, the Luxury Controls meet the formal requirements for success under the Signaling Paradigm. The United States and the EU widely publicized deployment of these measures. As discussed in Part II and Subsection IV.A.4, the Luxury Controls were announced publicly through press release, media, and online publication of relevant legal documents, each of which were readily accessible to domestic and international audiences. As such, the senders clearly communicated deployment of such measures to all possible observers.

The Luxury Controls not only renewed important messages communicated by previously deployed sanctions but conveyed new messages, thereby meeting the substantive elements for success under the Signaling Paradigm with respect to a number of intended signals. First, such measures reaffirmed solidarity with the Ukrainian government and people. Second, they reaffirmed condemnation of the Russian government's actions. Renewal of these signals can be readily deduced from statements issued by the senders to explain deployment of the Luxury Controls (discussed in Part II and Subsection IV.A.4).

Third, such economic measures confirmed a desire to exhaust nonforcible efforts to deter Russian aggression, thereby demonstrating responsiveness to varying preferences of domestic constituencies. The Luxury Controls mediated between two of the senders' vocal domestic constituencies—those that desired immediate action against Russian aggression and those that desired to avoid expending resources on a foreign conflict that did not directly involve the senders.<sup>129</sup> While perhaps not explicitly conveyed by either sender, this message can be deduced from the circumstances of the Luxury Controls. While the EU and the United States explicitly voiced strong condemnation of Russia's conduct, their initial responsive action did not include direct involvement in the War. These

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<sup>129</sup> See, e.g., *Public Expresses Mixed Views of U.S. Response to Russia's Invasion of Ukraine*, PEW RSCH. CTR. (Mar. 15, 2022), <https://www.pewresearch.org/politics/2022/03/15/public-expresses-mixed-views-of-u-s-response-to-russias-invasion-of-ukraine/> [<https://perma.cc/ZS3W-KKEM>] (noting that while “[a]n overwhelming majority of the public (85%) . . . favors maintaining strict economic sanctions [against Russia.] . . . most Americans (62%) say they would oppose the U.S. ‘taking military action even if it risks a nuclear conflict with Russia’”).

factors illustrate tension between expressed interest and conduct that seems to indicate, at worst, the senders are constrained in their range of action by domestic preferences, and, at best, the senders wish to proceed with extreme caution in an effort to honor the preferences of hesitant domestic constituencies.

Fourth, such economic measures reaffirmed the senders' willingness to engage in limited collective action in response to Russian aggression. This message can be readily deduced from the senders' expressed willingness to work cooperatively to respond to Russian aggression through nonforcible means, as demonstrated through the jointly coordinated sanctions packages that both preceded the Luxury Controls and of which the Luxury Controls were a part.

Fifth, such economic measures newly signaled an intent to hold Russian elites to account for the conduct of the regime from which they benefit. At the time the Luxury Controls were instituted, the senders had already implemented pointed sanctions against specific Russian oligarchs.<sup>130</sup> In this sense, the Luxury Controls reaffirmed the senders' intent to hold explicitly named Russian influence actors responsible for Russia's conduct. However, the general nature of the Luxury Controls—in barring the flow of luxury goods to Russia, without attention to specific Russian end users—also broadened this preexisting signal to apply to all Russian elites, not only those explicitly named. Thus, the Luxury Controls signaled the senders' intent to prevent *all* Russian elites from insulating themselves from the negative effects of the Russo–Ukraine War, a material expansion of previously deployed messages. This signal was readily decipherable not only from the explanations provided for deployment of such measures (discussed in Part II and Subsection IV.A.4) but also from the terms of the Luxury Controls' implementing measures, made readily accessible via the Federal Register and Eur-Lex, platforms employed to apprise the public of changes in law.

It is important to note this Subsection does not provide an exhaustive exploration of all signals communicated by the Luxury Controls. While this Article's evaluation of these economic measures under the Signaling Paradigm has explored five distinct signals, it is possible these sanctions were also intended to convey additional messages to further audiences. To the extent this is true, each message must be evaluated independently for success under this paradigm. While the Luxury Controls were successful

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<sup>130</sup> European Commission Press Release IP/22/1828, Enforcing Sanctions Against Listed Russian and Belarussian Oligarchs: Commission's "Freeze and Seize" Task Force Steps Up Work with International Partners, (Mar. 17, 2022), [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_1828](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1828) [<https://perma.cc/8YF8-ZY34>] (discussing EU sanctions against Russian oligarchs already in place prior to institution of the EU Controls).

under the Signaling Paradigm at communicating the five signals explored herein, it is possible they were not successful with respect to conveying other intended signals.

Based on the foregoing, it is clear the Luxury Controls served an important function in sending meaningful messages to a broad array of actors. In doing so, such sanctions altered the status quo by providing audiences with further information regarding senders' willingness to act and the range of such possible action. In this sense, the Luxury Controls altered observers' perceptions of the Russo-Ukraine War and global reactions thereto, informing and influencing observers' own range of possible responsive actions in the process.

### *C. Success as Internalizing International Norms*

Sanctions can be used to internalize international norms amongst senders' domestic constituencies (the Internalization Paradigm). Subsection IV.C.1 introduces the Internalization Paradigm. Subsection IV.C.2 then explores how success can be assessed under this paradigm. Finally, Subsection IV.C.3 applies the Internalization Paradigm to evaluate success of the Luxury Controls.

#### *1. Introducing the Internalization Paradigm*

Sanctions can be used to trigger domestic internalization of international norms, including those reflected in international law. Under the Internalization Paradigm, the objective of sanctions is primarily to "bring international norms home" by influencing actors under a sender's jurisdiction to incorporate international norms into their own internal value sets.<sup>131</sup> Once internalized, domestic actors calculate their behavior with such norms as given.<sup>132</sup> By doing so, they reaffirm such values and ensure their continuity on both a domestic and international level. Thus, unlike the Behavioral Modification Paradigm, the Internalization Paradigm is inward facing, examining the way in which sanctions impact the conduct and values of domestic actors.

The Internalization Paradigm is deeply rooted in the international relations theory of liberalism. As discussed in Section IV.B, liberal theory examines the ways in which states' domestic processes alter their

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<sup>131</sup> See generally Harold Hongju Koh, *The 1998 Frankel Lecture: Bringing International Law Home*, 35 HOUS. L. REV. 623 (1998) (explaining how sanctions can be used to influence actors into internalizing international law norms).

<sup>132</sup> For the sake of simplicity, Section IV.C uses the adjective "domestic" to refer to persons (natural or legal) over which the sender has jurisdiction. Note, however, it is possible the sender's jurisdiction extends to persons that are not formed within its territory, including persons that operate within its territory.

international engagement. However, scholars have recently inverted the theory and asked how states' international engagement influences their domestic processes.<sup>133</sup> This analytical shift proves particularly relevant when examining why states choose to comply with international law—several liberal theorists assert “compliance with many international legal norms does not rely on ‘horizontal’ interstate reciprocity and retaliation, but instead on ‘vertical’ enforcement embedded in domestic politics (‘internalization’).”<sup>134</sup>

Of particular interest to this Article are liberal theorists' examinations of the manner in which domestic law is used to transform the preferences of domestic actors in a way that leads to internal support for state compliance with international law and norms. Liberals recognize law can be used to craft powerful incentives or disincentives to act.<sup>135</sup> For instance, promulgating a law prohibiting particular conduct under threat of legal penalty can present a strong inducement to avoid such conduct. Where avoidance becomes habitual, the norm of avoidance is incorporated into actors' value systems over time—the norm becomes “internalized.”<sup>136</sup> Thereafter, domestic actors will make decisions predicated on such norm, reaffirming its validity and continuity in the process.<sup>137</sup> Leveraging this mechanism, states can shift the interests of their own populations to support compliance with international norms. Consider, for instance, the impact on economic actors of domestic legislation implementing a new bilateral trade agreement:

To the extent that domestic economic groups reorient their behavior around these [new legally driven] norms, making investments in economic activity predicated on their continued validity, the norms are internalized. When a state

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<sup>133</sup> Moravcsik, *supra* note 127, at 110.

<sup>134</sup> *Id.* at 96.

<sup>135</sup> See generally Koh, *supra* note 131, at 628 (discussing the process of internalization of norms arising from law).

<sup>136</sup> See *id.*

<sup>137</sup> See *id.* at 642. Professor Harold Koh offers the widespread use of seatbelts by U.S. persons as an example of legally driven norm internalization. *Id.* at 629–33. In 1984, New York implemented the first U.S. law incentivizing use of seat belts. *MV PICCS Intervention: Primary Enforcement of Seat Belt Laws*, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION (May 16, 2024), <https://www.cdc.gov/transportation-safety/calculator/seat-belt.html> [<https://perma.cc/5QKW-ZZK6>]. By imposing financial penalties on drivers who failed to wear seat belts, the state attempted to incentivize motorists to adopt safer conduct. At that time, only 14% of U.S. drivers wore seat belts. *Id.* Within ten years, a majority of U.S. states had promulgated similar legislation. *Id.* Though originally mandated by law, the use of seat belts became internalized amongst U.S. motorists over time. As of 2020, 90% of U.S. motorists wore seat belts in front seats. *Id.* Professor Koh's characterization finds support in statistics from New Hampshire, a state that has never had a seat belt mandate. As of 2019, 70.7% of New Hampshire drivers wore seat belts, a clear indication seat belt use has become a norm independent of the law. U.S. DEP'T OF TRANSPORT., NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., DOT HS 812 947, SEAT BELT USE IN 2019—USE RATES IN THE STATES AND TERRITORIES 2 (Apr. 2020), <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812947> [<https://perma.cc/MZ6C-N355>].

implements a trade liberalization agreement, for example, the resulting import competition eliminates some domestic firms that opposed liberalization, causes others to adjust in ways that reduce their demand for protection, and expands or creates exporting firms that benefit from free trade. The result is greater support for enforcement of trade liberalization.<sup>138</sup>

Against this theoretical landscape, sanctions can catalyze internalization of international norms within the value sets of domestic constituencies, ultimately leading sender populations to make decisions that reaffirm the validity and continuity of such norms by contributing to internal support for (i) sender compliance therewith and (ii) sender action against states that derogate therefrom.

## 2. *Generally Assessing Success Under the Internalization Paradigm*

Sanctions achieve success under the Internalization Paradigm where the private sector environments affected by such measures internalize those international norms the sender intends to “bring home.” Success here is not measured by mere compliance. Rather, it is assessed through examining whether the affected private sector ecosystems have evolved in a manner that confirms broader systemic internalization. This evolution can be manifested in various ways, three of which this Article examines.<sup>139</sup> First, success is achieved where affected private sector ecosystems experience “death” of businesses reliant on sanctioned conduct. As enterprises dependent on sanctioned activity either learn how to thrive through other avenues (that is, adapt) or become defunct, the relevant environment evolves away from engagement in such conduct.<sup>140</sup> Second, success is achieved where

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<sup>138</sup> Moravcsik, *supra* note 127, at 98–99 (citations omitted).

<sup>139</sup> To aid discussion of success under the Internalization Paradigm, this Article offers, and returns to, the following hypothetical. The State of Greenacre prohibits persons under its jurisdiction from purchasing textiles made in the State of Blackacre. Through such measures, Greenacre intends to spark domestic internalization of a norm against purchasing products produced using child labor, a significant portion of the labor pool facilitating Blackacre’s textile industry. Such a norm implicates article 10(3) of the International Covenant on Economic, Social, and Cultural Rights, which specifies “[c]hildren and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.” International Covenant on Economic, Social, and Cultural Rights art. 10(3), Jan. 3, 1976, 993 U.N.T.S. 3.

<sup>140</sup> For instance, following implementation of Greenacre’s sanctions, the apparel companies operating within Greenacre are forced to adapt or fall to the wayside. Of those enterprises reliant on textiles from Blackacre, some cannot find adequate alternatives and must shutter. However, others can shift their operations to fill their needs. In this way, the apparel industry within Greenacre evolves away from reliance on Blackacre’s textiles as firms build alternative supply chains and business relationships to survive. Going forward, members of this private-sector ecosystem are unlikely to resist Greenacre’s efforts to hold Blackacre accountable for continuing child labor practices. Moreover, they may even lobby for prolonged deployment of such sanctions in an effort to bar entry of competitors into the industry that may gain an advantage through using Blackacre’s low-cost textiles.



businesses within the affected private sector ecosystem change their broader decision-making calculus to incorporate the norms incentivized by sanctions into decisions regarding conduct unrelated to such measures.<sup>141</sup> Third, success is achieved where the affected private sector ecosystem continues to refrain from the previously prohibited conduct even once sanctions are lifted. What previously appeared to be mere compliance while sanctions were in force emerges as an internalized norm.<sup>142</sup>

Like the Behavioral Modification Paradigm, the Internalization Paradigm analyzes changes in conduct when evaluating sanctions' success. Unlike the Behavioral Modification Paradigm, however, the Internalization Paradigm examines changes in the conduct of domestic actors rather than foreign targets. This distinction is salient. Senders have a significantly higher likelihood of changing the conduct of those over which they have jurisdiction than that of foreign actors beyond their jurisdiction, especially those with whom they have limited economic ties.

Evaluation under the Internalization Paradigm requires passage of time. Internalization via sanctions is unlikely if sanctions have not had the opportunity to percolate throughout the relevant private sector ecosystem. While success may not be achieved immediate, it may be forthcoming so long as the sanctions remain in force.

Assessing sanctions' success under the Internalization Paradigm does not always yield clear results. Like the Behavioral Modification Paradigm, pinpointing the motivations for shifts amongst affected actors poses challenges. Changes in private sector environments can be driven by

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<sup>141</sup> For instance, following implementation of Greenacre's sanctions, apparel companies operating within Greenacre note the state may deploy similar sanctions against other states that have authorized child labor. As such, many of the businesses in this industry not only comply with the Blackacre sanctions but cease purchasing textiles made in any country that relies on child labor for production of such goods. In this way, the affected private-sector ecosystem evolves away from reliance on textiles produced through child labor, as companies build new supply chains and business relationships that enable them to successfully continue operations through alternative means. Going forward, members of this private sector ecosystem are unlikely to resist Greenacre's efforts to hold other states accountable for such labor practices. Moreover, they may even lobby for the prolonged deployment of these and similar sanctions in an effort to bar entry of competitors into the industry that may gain an advantage through using low-cost textiles produced by child labor.

<sup>142</sup> For instance, imagine Greenacre lifts its sanctions after one year, though Blackacre continues to condone usage of child labor to produce textiles. Cognizant Greenacre may once again implement similar sanctions in the future; apparel companies operating within Greenacre, now comfortable with their alternative business relationships and internal infrastructure developed to eliminate reliance on textiles from Blackacre, continue to refrain from purchasing Blackacre's textiles. Going forward, members of this private-sector ecosystem are unlikely to resist Greenacre's renewed efforts to hold Blackacre accountable for such labor practices. Moreover, they may even lobby for redeployment of such sanctions in an effort to bar entry of competitors into the industry that may gain an advantage through using Blackacre's low-cost textiles.

legal internalization, but they can also be driven by unrelated factors such as supply chain difficulties, emergence of new technology, changes in law unconnected to such sanctions, or even social pressure. Moreover, where overlapping sanctions packages are involved, it can be difficult to decipher which aspect of such packages yield success.

3. *Assessing the Luxury Controls Under the Internalization Paradigm Yields Unclear Results*

At this time, it is unclear whether the Luxury Controls have been successful under the Internalization Paradigm. Following escalation of the Russo–Ukraine War in early 2022, many companies not only ceased exports of luxury goods into Russia but imposed more dramatic limitations on their commercial activities therein. While these developments could superficially appear as legally driven internalization of norms triggered by the Luxury Controls, other factors played a material role in driving these actions.

To properly assess the Luxury Controls under the Internalization Paradigm, this Article must first establish both (i) the international norm the senders intended to “bring home” and (ii) the parties amongst which the senders intended to trigger the internalization process. Based on the explanations provided for the Luxury Controls (discussed in Subsection IV.A.4), this Article assumes the sanctions were—at minimum—aimed at triggering the internalization of a norm against conducting business within states that unrepentantly engage in uses of force prohibited under international law. The pointed nature of the Luxury Controls indicates the senders sought to trigger internalization of this norm within private sector ecosystems involved in the production and sale of luxury goods.

In the two weeks following Russia’s escalated aggression against Ukraine, hundreds of multinational companies based in the EU and the

United States suspended their business activities connected with Russia.<sup>143</sup> Several of these companies were engaged in the sale of goods that would later fall within the purview of the Luxury Controls. Table 4 (below) illustrates the way in which key players across luxury sectors chose to minimize their Russian activities even before the Luxury Controls were deployed.

TABLE 4: LIMITATION OF RUSSIAN OPERATIONS WITHIN THE LUXURY GOODS SECTOR PRIOR TO DEPLOYMENT OF THE LUXURY CONTROLS

Sector	Company	Regional Affiliation	Brands	Action	Date (2022)
Apparel	LVMH <sup>144</sup>	EU	E.g., Louis Vuitton, Fendi, Christian Dior, Givenchy	Temporarily closing all stores in Russia	Mar. 4
Apparel	Kering <sup>145</sup>	EU	E.g., Alexander McQueen, Yves Saint Laurent, Gucci, Balenciaga	Temporarily closing all stores in Russia	Mar. 4
Tech	Apple <sup>146</sup>	U.S.	N/A	Suspending all product sales in Russia	Mar. 1
Tech	Dell <sup>147</sup>	U.S.	N/A	Suspending all product sales in Russia	Mar. 1
Beauty	LVMH <sup>148</sup>	EU	E.g., Guerlain, Maison Francis Kurkdjian	Temporarily closing all stores in Russia	Mar. 4

<sup>143</sup> See Ward Williams, *Nearly 330 Companies Have Withdrawn from Russia*, INVESTOPEDIA (Mar. 10, 2022, 2:45 PM), <https://www.investopedia.com/nearly-330-companies-have-withdrawn-from-russia-5221814> [<https://perma.cc/FNV8-5VCP>]; *Stop Doing Business with Russia*, KSE INSTIT., <https://leave-russia.org/leaving-companies> [<https://perma.cc/3ZU4-5BL4>].

<sup>144</sup> Sapna Maheshwari, *Luxury Giants LVMH and Hermès Will Close Stores in Russia Temporarily*, N.Y. TIMES (Mar. 4, 2022), <https://www.nytimes.com/2022/03/04/business/lvmh-hermes-russia.html> [<https://perma.cc/FG3D-3W6H>].

<sup>145</sup> Kering, LINKEDIN (Mar. 4, 2022), [https://www.linkedin.com/posts/kering\\_due-to-growing-concerns-regarding-the-current-activity-6905614579250925568-1WN6/](https://www.linkedin.com/posts/kering_due-to-growing-concerns-regarding-the-current-activity-6905614579250925568-1WN6/) [<https://perma.cc/WR2R-AYDY>].

<sup>146</sup> Brian Fung, *Apple Suspends All Product Sales in Russia*, CNN (Mar. 1, 2022, 5:22 PM), [https://www.cnn.com/2022/03/01/tech/apple-russia/index.html#:~:text=Apple%20\(AAPL\)%20has%20stopped%20selling,product%20sales%E2%80%9D%20in%20the%20country](https://www.cnn.com/2022/03/01/tech/apple-russia/index.html#:~:text=Apple%20(AAPL)%20has%20stopped%20selling,product%20sales%E2%80%9D%20in%20the%20country) [<https://perma.cc/9NR3-DJR9>].

<sup>147</sup> Sarah E. Needleman, *Dell Halts Sales in Russia*, WALL ST. J. (Mar. 1, 2022, 10:23 AM), <https://www.wsj.com/livecoverage/russia-ukraine-latest-news-2022-03-01/card/dell-halts-sales-in-russia-fvpuoKHYCV3WKSJOGly> [<https://perma.cc/6FJX-PMY3>].

<sup>148</sup> Maheshwari, *supra* note 144.

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Beauty	Estée Lauder Companies <sup>149</sup>	U.S.	E.g., Tom Ford Beauty, Editions de Parfum Frédéric Malle, La Mer	<ul style="list-style-type: none"> <li>• Suspending investments in Russia</li> <li>• Closing all stores in Russia</li> <li>• Closing brand sites and ending shipments to Russian retailers</li> </ul>	Mar. 7
Beverage	LVMH <sup>150</sup>	EU	E.g., Dom Perignon, Krug, Veuve Clicquot	Temporarily closing all stores in Russia	Mar. 4
Beverage	Beam Suntory <sup>151</sup>	U.S.	E.g., Suntory Whisky Toki, Courvoisier, Laphroaig, Jim Beam	Suspending shipments to Russia	Early March
Auto	General Motors <sup>152</sup>	U.S.	E.g., Cadillac, Chevrolet	Temporarily suspending all vehicle exports to Russia	Feb. 28
Auto	Volkswagen Group <sup>153</sup>	EU	E.g., Audi, Lamborghini, Bentley, Bugatti	<ul style="list-style-type: none"> <li>• Immediately suspending all vehicle exports to Russia</li> <li>• Immediately halting production of vehicles in Russia</li> </ul>	Mar. 3
Jewelry	LVMH <sup>154</sup>	EU	E.g., Bulgari, Hublot, Tiffany & Co.	Temporarily closing all stores in Russia	Mar. 4
Jewelry	Kering <sup>155</sup>	EU	E.g., Boucheron	Temporarily closing all stores in Russia	Mar. 4

<sup>149</sup> *Company Update Regarding the Invasion in Ukraine and ELC's Business in Russia*, ESTÉE LAUDER COS. (Mar. 7, 2022), <https://www.elcompanies.com/en/news-and-media/newsroom/company-features/2022/update-on-ukraine-invasion-and-business-in-russia> [https://perma.cc/T5G6-35WP].

<sup>150</sup> Maheshwari, *supra* note 144.

<sup>151</sup> *Beam Suntory Russia Statement*, BEAM SUNTORY (July 18, 2022), <http://www.beamsuntory.com/en/news/Beam-Suntory-Russia-Statement> [http://perma.cc/2C2H-2SSS].

<sup>152</sup> Ben Klayman, *GM, Other Automakers Suspend Some Business in Russia Following Invasion*, REUTERS (Feb. 28, 2022, 3:55 PM), <https://www.reuters.com/business/autos-transportation/auto-truck-makers-suspend-some-business-russia-following-invasion-2022-02-28/#:~:text=On%20Monday%2C%20GM%20said%20it,Gm%20said%20in%20a%20statement> [https://perma.cc/JV53-QWD5].

<sup>153</sup> *Statement on the Volkswagen Group's Business Activities in Russia*, ŠKODA (Mar. 3, 2022), <https://www.skoda-storyboard.com/en/press-releases/statement-on-the-volkswagen-groups-business-activities-in-russia/> [https://perma.cc/7SHM-2ZYJ].

<sup>154</sup> Maheshwari, *supra* note 144.

<sup>155</sup> *See* Kering, *supra* note 145.

Jewelry	Swarovski <sup>156</sup>	EU	N/A	<ul style="list-style-type: none"> <li>• Temporarily closing stores in Russia</li> <li>• Temporarily suspending e-commerce in Russia</li> <li>• Temporarily suspending deliveries into Russia</li> </ul>	Mar. 8
Apparel	LVMH <sup>157</sup>	EU	E.g., Louis Vuitton, Fendi, Christian Dior, Givenchy	Temporarily closing all stores in Russia	Mar. 4
Apparel	Kering <sup>158</sup>	EU	E.g., Alexander McQueen, Saint Laurent, Gucci, Balenciaga	Temporarily closing all stores in Russia	Mar. 4

This data establishes that, by March 11, 2022 (the effective date of the U.S. Controls), key players across luxury goods sectors had already decided to limit engagement in Russia, sometimes through measures more aggressive than the forthcoming Luxury Controls required.<sup>159</sup> Thus, such decisions are not attributable to legally driven internalization of norms arising from the Luxury Controls but must be ascribed to other factors.

Social pressure likely played a strong role in incentivizing withdrawal of luxury brands from Russia prior to the deployment of the Luxury Controls. Russia's aggression was immediately followed by public outrage. This fury spilled into the private sector, pushing enterprises to reevaluate their connections with Russia as employees and consumers demanded solidarity with the Ukrainian peoples and condemnation of Russia's actions.<sup>160</sup> Failure to acquiesce to this social pressure ran the risk of incurring reputational harm that would translate into financial harm. As one business adviser noted in March of 2022, "[t]hose corporations that do not exit the Russian market will deplete their political capital and will also likely face other issues – employee

<sup>156</sup> Sam Lewis, *Swarovski Becomes Latest Brand to Pull Out of Russia amid Ukraine Invasion*, PRO. JEWELLER (Mar. 8, 2022), <https://www.professionaljeweller.com/swarovski-becomes-latest-brand-to-pull-out-of-russia-amid-ukraine-invasion/> [<https://perma.cc/B2AG-M2JZ>].

<sup>157</sup> Maheshwari, *supra* note 144.

<sup>158</sup> See Kering, *supra* note 145.

<sup>159</sup> For instance, the EU Controls did not bar persons from selling goods already in Russia at the time the EU Controls were deployed. LUXURY GOODS: FREQUENTLY ASKED QUESTIONS, *supra* note 50. Thus, decisions to immediately shutter all stores within Russia, whether or not they had goods on hand, were more aggressive than the limitations imposed by the EU Controls.

<sup>160</sup> See Douglas Schuler & Laura Marie Edinger-Schons, *How the Rise of Corporate Activism Led to the World's Biggest Companies Leaving Russia*, CORP. KNIGHTS (Mar. 15, 2022), <https://www.corporateknights.com/leadership/corporate-citizenship-russia/> [<https://perma.cc/FGU2-3GWH>].

activism, boycotts of their products and services in the West, and so on.”<sup>161</sup> Companies in the luxury goods space were not immune to these developments.<sup>162</sup>

In turn, this social pressure sparked a freeze on private-sector services offered with respect to Russia that likely played an important role in triggering withdrawal of luxury brands prior to deployment of the Luxury Controls. By March 2, 2022, leading logistics firms had suspended deliveries to and from Russia of their own volition. Amongst such firms were FedEx and UPS, dominant in the U.S. logistics market, and the DHL Group and Kuehne+Nagel, dominant in the EU logistics market.<sup>163</sup> As a result, foreign businesses were forced to materially reevaluate the ways in which they transported goods to and from Russia.<sup>164</sup> Immediately thereafter, Visa, Mastercard, and American Express paused facilitation of transactions by Russian cardholders outside of Russia, including international online payments.<sup>165</sup> Given “Visa and Mastercard alone control about 90% of credit and debit payments in the world, outside of China,” this development presented a severe impediment to the sale of foreign goods to Russian consumers via e-commerce.<sup>166</sup>

Finally, it is likely sanctions imposed by the United States and the EU immediately following Russia’s aggression played a strong role in triggering

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<sup>161</sup> Eric Johansson, *Does It Matter that Visa and Mastercard Have Pulled Out of Russia?*, VERDICT (Mar. 14, 2022), <https://www.verdict.co.uk/does-it-matter-that-visa-and-mastercard-have-pulled-out-of-russia/> [<https://perma.cc/2RVQ-PBX4>].

<sup>162</sup> See, e.g., Silvia Aloisi, *Armani Pays Tribute to Ukraine Suffering with Silent Show*, REUTERS (Feb. 27, 2022, 11:24 AM), <https://www.reuters.com/lifestyle/armani-pays-tribute-ukraine-suffering-with-silent-show-2022-02-27/> [<https://perma.cc/T7XD-ZEQP>] (indicating Giorgio Armani held his Fall Winter 2022–2023 show in silence during Milan fashion week “out of respect for the people caught in the Ukrainian conflict”); see also Vogue Ukraine (@vogue\_ukraine), INSTAGRAM (Mar. 1, 2022), <https://www.instagram.com/p/CakG2POMLS0/?hl=en> [<https://perma.cc/B7V2-R27Y>] (urging “all international fashion and luxury conglomerates and companies to cease any collaborations on the aggressor’s market effective immediately”).

<sup>163</sup> Paul Ziobro, *UPS, FedEx Halt Shipments into Russia*, WALL ST. J. (Feb. 27, 2022, 11:04 AM), <https://www.wsj.com/livecoverage/russia-ukraine-latest-news-2022-02-26/card/ups-fedex-halt-shipments-into-russia-gMS7Vik7WuZXVnVxh8Ju> [<https://perma.cc/K3ZW-DBZG>]; Stephen Jones, *DHL and Kuehne+Nagel Suspend Services to Russia, Further Weakening Russia’s Ability to Send and Receive Goods*, BUS. INSIDER (Mar. 2, 2022, 7:14 AM), <https://www.businessinsider.com/dhl-kuehnenagel-suspend-freight-services-supply-chain-russia-ukraine-invasion-2022-3> [<https://perma.cc/XEC9-MMLK>].

<sup>164</sup> See Kati Chitrakorn & Laure Guibault, *Luxury Goods to Russia Stall as DHL and Fedex Halt Shipping*, VOGUE BUS. (Mar. 2, 2022), <https://www.voguebusiness.com/consumers/luxury-retailers-matches-fashion-mytheresa-farfetch-dhl-and-fedex-halt-shipping-to-russia> [<https://perma.cc/7W8S-XBR4>].

<sup>165</sup> *Visa and Mastercard Suspend Russian Operations*, BBC (Mar. 6, 2022), <https://www.bbc.com/news/business-60637429> [<https://perma.cc/JTP9-EPGZ>].

<sup>166</sup> *Id.*

the withdrawal of luxury brands from Russia prior to deployment of the Luxury Controls. In particular, the United States and the EU announced joint action to remove several Russian banks from the SWIFT financial messaging system, thereby impairing the connection of such banks to international financial markets.<sup>167</sup> To the extent foreign companies relied on the transfer of money to, from, or through sanctioned Russian banks, they were likely to experience meaningful delays in accessing or transferring funds out of or into Russia, a hindrance to efficiency and flexible business decision-making.<sup>168</sup> Together with the private sector freezes discussed immediately above, these sanctions presented severe barriers to the continuation of luxury brands' business within Russia.<sup>169</sup>

Following deployment of the Luxury Controls, private sector ecosystems involved in the production and sale of luxury goods continued to move away from Russia. Enterprises affected by these measures that had not already expressed an intent to constrain their Russian activities, announced decisions to comply with such sanctions.<sup>170</sup> However, more significant for the purposes of the Internalization Paradigm, were the decisions of many affected enterprises to escalate previously announced limitations on their Russian activities. In the months following institution of the Luxury Controls, a number of businesses that had already suspended activities in Russia began to divest themselves of their Russian assets and investments. In doing so, they rendered withdrawal from the Russian market more permanent. Table 5 (below) highlights the ways in which key players across affected luxury sectors intensified previously announced withdrawal from Russia following deployment of the Luxury Controls.

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<sup>167</sup> *Joint Statement on Further Restrictive Economic Measures*, WHITE HOUSE: BRIEFING ROOM (Feb. 26, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/26/joint-statement-on-further-restrictive-economic-measures/> [https://perma.cc/L4DJ-ZR35].

<sup>168</sup> Christian Perez, *What Does Russia's Removal from SWIFT Mean for the Future of Global Commerce?*, FP (Mar. 8, 2022), <https://foreignpolicy.com/2022/03/08/swift-sanctions-ukraine-russia-nato-putin-war-global-finance/> [https://perma.cc/27PJ-LKRQ].

<sup>169</sup> Karina Mitchell, *Major Luxury Brands Walk Away from the Lucrative Russian Market*, YAHOO FIN. (Mar. 9, 2022), <https://finance.yahoo.com/news/these-are-the-luxury-brands-walking-away-from-the-lucrative-russian-market-152816525.html> [https://perma.cc/H8L2-CD3Q].

<sup>170</sup> Notable among these companies was Sotheby's, the famed U.S.-based multinational fine arts and antiques broker. See Riah Pryor, Sophia Kishkovsky & Anna Brady, *Sotheby's and Ketterer Kunst Among Auction Houses to Ban Some Russian Buyers*, ART NEWSPAPER (Mar. 29, 2022), <https://www.theartnewspaper.com/2022/03/29/sothebys-bans-russian-buyers> [https://perma.cc/W52H-9E89].

TABLE 5: ESCALATION OF WITHDRAWAL FROM RUSSIA BY “LUXURY GOODS” COMPANIES  
FOLLOWING INSTITUTION OF THE LUXURY CONTROLS

Sector	Company	Regional Affiliation	Heightened Action Announced	Date	Previously Announced Action	Date (2022)
Apparel	Nike	US	Permanently leaving Russia <sup>171</sup>	June 23, 2022	Temporarily closing all stores in Russia <sup>172</sup>	Mar. 2
Beauty	Sephora (LVMH)	EU	Selling Sephora’s Russian subsidiary to local general manager <sup>173</sup>	July 11, 2022	Temporarily closing all stores in Russia <sup>174</sup>	Mar. 4
Beverage	Beam Suntory	US	Selling Russian joint venture to local management team <sup>175</sup>	July 18, 2022	Suspending shipments to Russia <sup>176</sup>	Early March
Auto	Volkswagen Group	EU	Sale of Russian assembly plant and other Russian operations to local auto dealership <sup>177</sup>	May 19, 2023	<ul style="list-style-type: none"> <li>• Immediately suspending all vehicle exports to Russia</li> <li>• Immediately halting production of vehicles in Russia<sup>178</sup></li> </ul>	Mar. 3

Following deployment of the Luxury Controls, it is unclear what role (if any) legal internationalization triggered by these sanctions played in influencing luxury brands’ decisions to step back from their Russian operations. Though there was meaningful movement away from Russia within these private sector ecosystems following implementation of such measures, including movement that exceeded mere compliance with the

<sup>171</sup> Siladitya Ray, *Nike Is the Latest Global Brand to Exit Russia Completely*, FORBES (June 23, 2022, 11:31 AM), <https://www.forbes.com/sites/siladityaray/2022/06/23/nike-is-reportedly-the-latest-global-brand-to-exit-russia-completely/?sh=678e662f3ee0> [https://perma.cc/VT8H-RBFBK].

<sup>172</sup> Praveen Paramasivam, *Nike to Temporarily Close All Stores in Russia*, REUTERS (Mar. 3, 2022, 12:38 PM), <https://www.reuters.com/business/retail-consumer/nike-temporarily-close-all-stores-russia-2022-03-03/> [https://perma.cc/H6Z4-XX5A].

<sup>173</sup> Reuters, *LVMH’s Sephora to Sell Its Russian Subsidiary*, BUS. & HUM. RTS. RES. CTR. (July 11, 2022), <http://www.business-humanrights.org/en/latest-news/russia-lvmhs-sephora-to-sell-its-subsidiary/> [https://perma.cc/8X24-DJ7M].

<sup>174</sup> Maheshwari, *supra* note 144.

<sup>175</sup> *Beam Suntory Russia Statement*, *supra* note 151.

<sup>176</sup> *Id.*

<sup>177</sup> See Press Release, Andreas Meurer, Spokesperson Integrity & Legal, Volkswagen Grp., Volkswagen Group Has Sold Its Shares in Volkswagen Group Rus to a Local Investor (May 19, 2023), <https://www.volkswagen-group.com/en/press-releases/volkswagen-group-has-sold-its-shares-in-volkswagen-group-rus-to-a-local-investor-17195> [https://perma.cc/X4QX-SFNG]; Melissa Eddy, *Volkswagen Sells Its Russia Operations, Including an Assembly Plant*, N.Y. TIMES (May 19, 2023), <https://www.nyt.com/2023/05/19/business/volkswagen-russia-factory.html> [https://perma.cc/MNW6-UYX3].

<sup>178</sup> *Statement on the Volkswagen Group’s Business Activities in Russia*, *supra* note 153.



terms of these sanctions, the same factors that drove the initial exodus persisted following deployment of the Luxury Controls. The material nature of these factors indicates it is likely they continued to seriously impact the decision-making calculus of private sector actors affected by the Luxury Controls. Moreover, new factors emerged following imposition of these sanctions that are also likely to have influenced such calculus, including the imposition of additional sanctions that further fettered the conduct of business in Russia.<sup>179</sup>

Based on the foregoing, assessing the Luxury Controls under the Internalization Paradigm yields unclear results at this time. It cannot be conclusively asserted the movement of such actors away from Russia was catalyzed by legal internalization of norms triggered by the Luxury Controls. Rather, the contemporaneous presence of several influential factors leaves it unclear whether such sanctions independently catalyzed internalization of a norm against conducting business within states unrepentantly engaged in unlawful uses of force.

#### *D. Success as Impacting Relative Balance of Power*

Sanctions can be used to impact the relative balance of power between sender and target (the Power Paradigm). Subsection IV.D.1 introduces the Power Paradigm. Next, Subsection IV.D.2 explores how success can be assessed under this paradigm. Finally, Subsection IV.D.3 applies the Power Paradigm to evaluate success of the Luxury Controls.

##### *1. Introducing the Power Paradigm*

Sanctions can be used to impact the relative balance of power between states. Under the Power Paradigm, the objective of sanctions is primarily to limit a target's ability to access or harness resources that imbue states with global power. In doing so, such economic measures can be used to preserve or shift the global balance of power in a manner favorable to a sender. Notably, the Power Paradigm pushes a long-overshadowed conception of sanctions' success to the forefront of discussions regarding sanctions' utility

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<sup>179</sup> For instance, on April 6, 2022, President Biden promulgated Executive Order 14,071, prohibiting U.S. persons from new investment in Russia. Exec. Order No. 14,071, 87 Fed. Reg. 20999 (Apr. 8, 2022). As such, while U.S. enterprises could legally maintain preexisting investments in Russia, their ability to expand or augment these investments was severely limited and their ability to pursue new investments therein was almost completely foreclosed. *Russian Harmful Foreign Activities Sanctions FAQ 1049*, OFF. FOREIGN ASSETS CONTROL (June 6, 2022), <https://ofac.treasury.gov/faqs/1049> [<https://perma.cc/VE2A-CLCQ>] (detailing limitations on new investments arising from E.O. 14,071); *Russian Harmful Foreign Activities Sanctions FAQ 1050*, OFF. FOREIGN ASSETS CONTROL (June 6, 2022), <https://ofac.treasury.gov/faqs/1050> [<https://perma.cc/R463-QHMQ>] (detailing maintenance of preexisting investments untouched by E.O. 14,071). This capped the success of certain companies in the state and dashed the preexisting plans of others.

by addressing those historic sanctions employed to preserve a sender's strategic advantage.<sup>180</sup>

The Power Paradigm is rooted in the international relations theory of realism, particularly offensive realism. Realists assume states' interactions with one another are informed by a consistent and overarching desire to gain or maintain power relative to other states.<sup>181</sup> While various sects of realism explain the basis of this desire differently, "offensive realism" rests this perception upon five assumptions. First, "the international system is anarchic."<sup>182</sup> Because all states are equal in their sovereignty, no entity or person can hold any state to account. Second, states can cultivate offensive capabilities to use against one another.<sup>183</sup> Third, no state can be certain about another's intentions, including intentions to wield their offensive capabilities.<sup>184</sup> Fourth, each state is primarily motivated by a desire to survive—a state must first withstand or avoid conquest to pursue secondary interests.<sup>185</sup> Fifth, states consider the environment in which they exist strategically.<sup>186</sup> Against this backdrop, "the best way to ensure their survival is to be the most powerful state in the system."<sup>187</sup> As a result, states act to "maximize their share of world power . . . [and thus seek out] opportunities to alter the balance of power by acquiring additional increments of power at the expense of potential rivals."<sup>188</sup>

Offensive realists ground conceptions of power in tangible assets controlled by states. To theorists in this school, there are two types of power: military power and "latent power."<sup>189</sup> Latent power encompasses socioeconomic factors needed to establish military power—wealth and population.<sup>190</sup> Offensive realism asserts that, in their endeavors to achieve hegemony, states will seek to establish not only a top-notch military but strong latent power, including through maximizing the proportion of global wealth they control.<sup>191</sup>

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<sup>180</sup> See *supra* Part II.

<sup>181</sup> JOHN J. MEARSHEIMER, *THE TRAGEDY OF GREAT POWER POLITICS* 76–77 (2001).

<sup>182</sup> *Id.* at 30.

<sup>183</sup> *Id.* at 30–31.

<sup>184</sup> *Id.* at 31.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.* States "consider the preferences of other states and how their own behavior is likely to affect the behavior of those other states, and how the behavior of those other states is likely to affect their own strategy for survival." Moreover, states consider both the immediate and long-term consequences of their actions. *Id.*

<sup>187</sup> *Id.* at 33.

<sup>188</sup> *Id.* at 34.

<sup>189</sup> *Id.* at 55.

<sup>190</sup> *Id.* at 60–61.

<sup>191</sup> *Id.* at 349, 357.

Against this theoretical backdrop, sanctions can be used to impact the relative balance of power between sender and target in four ways. First, such measures can preserve the preexisting balance of power between the two states. Where this power differential already favors the sender, this function locks in an advantage. Where this power differential disfavors a sender, this function prevents exacerbation of this differential. Second, sanctions can improve a power differential already advantageous to the sender, shifting the relative balance of power to further favor the sender. Third, sanctions can minimize a power differential disadvantageous to the sender, shifting the relative balance of power to favor the target less. That is, the sender minimizes the strategic advantage a target already has. Fourth, sanctions can invert a power differential, shifting the relative balance of power between the two states dramatically such that sender suddenly overcomes the target in power.

## 2. *Generally Assessing Success Under the Power Paradigm*

Under the Power Paradigm, sanctions are considered successful where they impact a target's access to one or more sources of power. Here, the term "sources of power" not only encompasses military might and latent power but also their proxies, such as arms or valuable minerals. Similarly, "access" does not only mean ability to acquire sources of power but also the ability to leverage them. For instance, the existence of natural resources within a state's territory does not translate into "access" to sources of power where these resources cannot be harvested.

Success under this paradigm differs based on whether a sender desires to preserve or shift the relative balance of power between itself and a target. Where a sender intends to preserve the preexisting balance, sanctions are deemed successful where they hold a target's access to sources of power static.<sup>192</sup> Where a sender intends to shift the balance of power between itself and a target, sanctions should be considered successful where they materially constrain a target's access to one or more sources of power.

Success under the Power Paradigm is generally unlikely unless a sender has a key point of leverage against their desired target. Often, this will necessitate a material trading relationship between the two states. Much like the Behavioral Modification Paradigm, export controls and import controls are unlikely to be successful under the Power Paradigm where there is

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<sup>192</sup> For instance, consider a fact pattern in which the State of Greenacre, a rival of the State of Blackacre, discovers a more efficient way to harvest natural oil reserves within its territory: using a newly invented widget reliant on greenium, an element that only naturally appears within Blackacre. To the extent Blackacre seeks to preserve the balance of power between itself and Greenacre, it may limit exportation of greenium to Greenacre in an effort to hamper the latter's ability to more efficiently harvest oil.

only a minimal exchange of goods between target and sender. However, nontrading relationships between the two states can also be wielded to impact a target's access to sources of power. Consider a fact pattern in which State X relies on railroads in State Y to access a broad international market for its goods. It is possible for State Y to materially impact State X's access to wealth by prohibiting the transportation of goods from State X via State Y's railroads.<sup>193</sup>

### 3. *Assessing the Luxury Controls Under the Power Paradigm Does Not Yield Success*

Regardless of their effectiveness in constraining the flow of luxury goods into Russia, the Luxury Controls are not successful under the Power Paradigm as they are unable to materially constrain Russia's access to a key source of power. In contrast, the Power Paradigm recognizes other sanctions deployed by the United States and the EU in connection with the Russo–Ukraine War as successful notwithstanding their lackluster performance under the Behavioral Modification Paradigm. As such, the Power Paradigm finds value in sanctions that would otherwise be considered ineffective under predominant perceptions of sanctions' success.

To properly assess the Luxury Controls under the Power Paradigm, this Article must first establish how these measures were intended to impact the global balance of power. Based on the circumstances prevailing at the time of their imposition, it appears the senders implemented these sanctions in an effort to shift the relative balance of power rather than preserve it. The sanctions were issued in direct response to Russian aggression against Ukraine, which each characterized as a blatant violation of international law. They were deployed in the third week after Russia began its offensive, when it was clear it intended to continue to engage in violent derogations from international law. In light of these facts and the proximity of the conflict to the North Atlantic Treaty Organization (NATO) border, it is reasonable to conclude that the United States and EU levied these measures in an effort to diminish Russia's relative power in the event that the conflict spilled into NATO territory.

The Luxury Controls targeted Russia's access to wealth. Many of the goods affected by the Luxury Controls are investment commodities that

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<sup>193</sup> Indeed, in connection with the instigation of the Russo–Ukraine War, Russia chose to hinder the movement of Ukrainian goods on their way to Central Asia by imposing bans and restrictions on the traffic in transit of such goods via Russian roads and rail. See Panel Report, *Russia—Measures Concerning Traffic in Transit*, WTO Doc. WT/DS512/R (adopted May 4, 2019).

function as a proxy for wealth.<sup>194</sup> Indeed, in the past decades, handbags, art, luxury vehicles, and even whiskey have produced high returns for investors, sometimes outperforming the S&P 500<sup>195</sup> or defying rampant inflation.<sup>196</sup> In the early days following Russia's invasion of Ukraine, Russian consumers "flocked to luxury stores to exchange Russian rubles for luxury items to try and amass some kind of value as the currency in the country collapse[d]."<sup>197</sup> Through pouring money into these goods, Russian elites sought to preserve their wealth by converting their ailing currency into goods with recognized and stable—even appreciating—value in the international marketplace. Through the Luxury Controls, the United States and the EU attempted to foil these efforts at wealth preservation.

The U.S. Controls are not successful under the Power Paradigm. Success under this paradigm would require such measures to materially impact Russia's access to wealth. As discussed in Section IV.C, the United States has a limited trading relationship with Russia with respect to luxury goods. Thus, it is unlikely the U.S. Controls materially hamper the Russian elite's attempts to preserve their wealth through investment in such items.

The EU Controls are also unsuccessful under the Power Paradigm. As with the U.S. Controls, success under this paradigm would require these sanctions to materially impact Russia's access to wealth. As discussed in Section IV.C, EU members provide a meaningful portion of the luxury goods consumed by Russia. However, the scope of the EU Controls limits the EU's ability to effectively constrain the Russian elite's access to luxury goods. Thus, it is unlikely the EU Controls materially hamper the Russian elite's attempts to preserve their wealth through investment in such items.

Beyond the factors that undercut the success of the Luxury Controls, it is unlikely impeding access to luxury goods could impact the relative balance of power between Russia and the senders. Though such items *are* a proxy for wealth, they are neither the only proxy for this source of power nor a major proxy employed by Russians for this source of power. Thus, even if Russia imported all its luxury goods from the senders and the sanctions completely severed these ties, it is unlikely such measures would materially constrain Russia's access to wealth.

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<sup>194</sup> Shivansh Mehendiratta, *Luxurious Commodities as Alternative Investment Strategy: How the Rich Make Money Looking Richer?*, LINKEDIN (Feb. 19, 2021), <https://www.linkedin.com/pulse/luxurious-commodities-alternative-investment-strategy-mehendiratta/> [<https://perma.cc/9SMQ-YC46>].

<sup>195</sup> *Id.*

<sup>196</sup> Katharina Buchholz, *The Investments That Defied Inflation in 2022*, STATISTA (Mar. 10, 2023), <https://www.statista.com/chart/21065/top-investments-in-the-last-year/> [<https://perma.cc/Z8J7-DFT3>].

<sup>197</sup> Mitchell, *supra* note 169.

Other sanctions employed by the United States and the EU are much more successful under the Power Paradigm relative to the Luxury Controls. For example, joint action to remove Russian banks from the SWIFT system meaningfully impacted the ability of Russia and Russian elites to leverage preexisting wealth by limiting access and ability to move capital stored in non-Russian banks.<sup>198</sup> Thus, these “de-SWIFTing” efforts are likely to have—at least temporarily—materially impeded access to wealth as a source of power. Similarly, the freezing of oligarchs’ assets by the United States and the EU also meaningfully impacted the ability of Russian elites to leverage preexisting wealth, thereby materially impeding access to wealth as a source of power.<sup>199</sup> Notably, under the Behavioral Modification Paradigm these measures are considered, at worst, unsuccessful and, at best, inconclusive. Thus, the Power Paradigm finds value in sanctions that would generally seem to produce mediocre results under predominant notions of sanctions’ success.

#### CONCLUSION

Prevailing notions of sanctions’ utility are misguided and one-dimensional. Scholars and pundits overwhelmingly tie the success of this foreign policy instrument to a single metric—the ability of this tool to change the behavior of the sanctioned. Yet, there is general consensus that sanctions are not successful when measured by this criterion.

Despite this purported lack of success, states are deploying sanctions at an increasing rate. Assuming rational action, this prolific use of the economic weapon betrays value that is not accounted for by the Behavioral Modification Paradigm. Indeed, through examining the Luxury Controls, Part IV demonstrated that the deployment of sanctions may not be motivated by a desire to alter target behavior at all.

This Article seeks to explain continued deployment of sanctions by asserting these measures offer senders a wide range of material value, much of which is not accounted for by the Behavioral Modification Paradigm. Drawing from theories of international relations, Part IV offered four new paradigms by which to assess sanctions’ success, reconceptualizing

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<sup>198</sup> Xu Wenhong, *How Much Have the West’s SWIFT Sanctions Affected Russia?*, GLOB. TIMES (May 16, 2022, 2:44 PM), <https://www.globaltimes.cn/page/202205/1265735.shtml> [<https://perma.cc/2BVG-CCSJ>] (discussing the myriad ways in which de-SWIFTing impacted Russia in the weeks following deployment of de-SWIFTing sanctions).

<sup>199</sup> Indeed, such asset freezes have immobilized an estimated \$30 billion of assets belonging to Russian oligarchs—a significant sum. John Cusack, *Where Are the Sanctioned Russian Assets Frozen in the West and How Much Is Actually Frozen?*, FIN. CRIME NEWS (Feb. 23, 2023), <https://thefinancialcrimenews.com/where-are-the-sanctioned-russian-assets-frozen-in-the-west-and-how-much-is-actually-frozen/> [<https://perma.cc/CQ96-RPQC>].

sanctions' utility in the process. First, it presented the Contribution Paradigm, under which such measures can be used to contribute to the development of international law by preserving preexisting CIL in the face of derogation, elaborating upon or operationalizing preexisting CIL, or assisting in the crystallization of new CIL. Second, it presented the Signaling Paradigm, under which sanctions can be used to signal important information to an audience of critical actors, including targets, victims, allies, domestic constituents, and the broader international community. Third, it presented the Internalization Paradigm, under which such measures can be used to catalyze internalization of international norms (including those reflected in international law) within the value sets of domestic constituencies, ultimately leading to internal support for sender action against states that derogate from such norms. Fourth, it presented the Power Paradigm, under which sanctions can be used to impact the geopolitical balance of power in a manner favorable to the sender by constraining the target's access to sources of power.

The descriptive examination offered by this Article presents a starting point for a paradigm shift in conceptions of sanctions' utility. Through overwhelming reliance on the Behavioral Modification Paradigm, discourse regarding sanctions has become mired in an erroneous loop that expects unrealistic results while ignoring the value such measures can deliver under alternative paradigms of success. Adopting a multi-dimensional approach to sanctions' utility that accounts for the varied benefits offered by such measures, including those discussed here, would not only explain continued deployment of sanctions but would allow scholars and pundits to transform their engagement with this foreign policy tool in three key ways.

First, it would push such actors to engage in a more nuanced analysis of states' decisions to deploy sanctions. A multi-dimensional perspective would discourage scholars and pundits from reliance on the hidebound assumption states deploy sanctions solely in an effort to change target behavior. Instead, they would be pushed to examine states' other motivations in levying such measures. The resulting insight could meaningfully develop broader understandings of state conduct on the international plane.

Second, a multi-dimensional approach to sanctions' utility would enable scholars and pundits to more appropriately assess sanctions' success. Generally, these actors attempt to ascertain the effectiveness of such measures through reliance on the Behavioral Modification Paradigm. Yet, as this Article has established, sanctions may serve objectives other than changing target behavior. Adopting a multi-dimensional perspective will enable these actors to holistically evaluate sanctions, including by more appropriately tying assessment to particularized sender objectives. The

resulting insights will more accurately establish whether sanctions have achieved their intended objectives.

Third, a multi-dimensional approach would enable scholars and pundits to meaningfully assist in the theorization and creation of effective sanctions. While policymakers and statesmen appear to understand that sanctions offer a wide range of benefits, scholars and pundits overwhelmingly focus on behavioral modification. As a result, the latter group has shut itself off from meaningful contributions to conceiving and crafting such measures when they are intended to achieve alternative goals. By shifting their perspective, scholars and pundits open the door to dialogue and exchange with policymakers and statesmen that will shape the sanctions a state ultimately deploys.



ONLINE APPENDIX

The Online Appendix is hosted on Digital Commons and can be accessed at <https://scholarlycommons.law.northwestern.edu/nulr/vol119/iss4/2/>.

