

SANCTIONS AS THE NEW FCPA: THE EVOLUTION OF
SANCTIONS ENFORCEMENT IN THE WAKE OF THE
RUSSIA-UKRAINE WAR AND ITS IMPLICATIONS

BERKE GURSOY

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I: INTRODUCTION

In the 21st century, economic sanctions have become the first resort U.S. policymakers have turned to in responding to crises and managing ongoing threats. From responding to territorial aggression to nuclear anti-proliferation and the war on terror, the United States uses sanctions to further its foreign policy priorities.¹ The U.S. government’s response to Russia’s invasion of Ukraine reflects this reality.² In the wake of the invasion, the United States and its global allies implemented a broad assortment of sanctions, which, taken together, represent the most sweeping and devastating combination of sanctions ever imposed on a major economic power.³ The focus of these sanctions have been the overseas wealth and assets of Russia’s political and economic elite.⁴ In enforcing these policies, the United States has expanded beyond its traditional administrative enforcement mechanisms,

1. See Elizabeth Rosenberg et al., *The New Tools of Economic Warfare*, CENTER FOR A NEW AMERICAN SECURITY 9-10 (Apr. 2016), <https://s3.us-east-1.amazonaws.com/files.cnas.org/hero/documents/CNASReport-EconomicWarfare-160408v02.pdf?mtime=20161010171125&focal=none>.

2. See Christopher Sabatini, *America’s Love of Sanctions Will Be Its Downfall*, FOREIGN POLICY (July 24, 2023), https://foreignpolicy.com/2023/07/24/united-states-sanctions-debt-china-venezuela/#cookie_message_anchor (describing sanctions as the “go-to” foreign policy tool of the United States in punishing Russia for its invasion of Ukraine).

3. See REBECCA M. NELSON, CONG. RSCH. SERV., IF12092, THE ECONOMIC IMPACT OF RUSSIA SANCTIONS (Dec. 13, 2012), <https://crsreports.congress.gov/product/pdf/IF/IF12092>.

4. *Id.*

notably the Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Instead, it has turned to a "whole of government approach."⁵ Specifically, criminal enforcement has been prioritized through the Department of Justice ("DOJ").⁶

Sanctions enforcement within the United States has historically been concentrated within OFAC, whose policy, since the Obama Administration, has focused on deterrence through "whale-hunting," i.e., pursuing a small number of cases but leveling massive fines.⁷ An increased focus on criminal enforcement would only serve to bolster these efforts. Indeed, within the DOJ, since 2022, there has been a significant reformulation of its prosecutorial focus toward sanctions enforcement, with a correspondingly vast increase in resources devoted to those efforts.⁸ The defense bar has already noticed these policy shifts as companies scramble to bolster their compliance efforts.⁹ Furthermore, the implemented changes are directly comparable to the investments the DOJ has made in enforcing the Foreign Corrupt Practices Act ("FCPA") over the past 15 years and represent a radical and much-needed step by the government in ensuring the effectiveness of sanctions regimes.¹⁰ This annotation will survey the sanctions enforcement landscape, with Part II providing an overview of the legal framework

5. See David Mortlock et al., *U.S. Sanctions Enforcement by OFAC and the DOJ*, GLOBAL INVESTIGATIONS REVIEW (July 8, 2022), <https://globalinvestigationsreview.com/guide/the-guide-sanctions/third-edition/article/us-sanctions-enforcement-ofac-and-the-doj> (describing the role of OFAC and discussing how sanctions enforcement has evolved).

6. See *id.* (describing the DOJ's increased role in sanctions enforcement post-Ukraine).

7. See Bryan R. Early & Keith A. Preble, *Enforcing US Economic Sanctions: Why Whale Hunting Works*, 43 WASHINGTON Q. 159 (2020), <https://heinonline-org.proxy.library.nyu.edu/HOL/Page?handle=hein.journals/wingtqurl43&div=12> (articulating what "whale-hunting" is and how and when OFAC adopted it as its strategy).

8. See Michael S. Casey et al., *Sanctions Are the New FCPA: The Familiar Evolution of Sanctions Enforcement*, WILSON SONSINI (Mar. 30, 2023), <https://www.wsgr.com/en/insights/sanctions-are-the-new-fcpa-the-familiar-evolution-of-sanctions-enforcement.html>.

9. See generally Neil Chitrao et al., *2022 Year in Review: Economic Sanctions and Anti-Money Laundering Developments*, PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP (March 2, 2023), https://www.paulweiss.com/media/3983111/economic_sanctions_and_anti_money_laundering_developments_2022_year_in_review.pdf; U.S. *Sanctions Enforcement: 2022 Trends and Lessons Learned*, MORRISON AND FOERSTER (March 6, 2023), <https://www.mofo.com/resources/insights/230306-us-sanctions-enforcement-2022>; Brian J. Egan et al., *Why Directors and Executives Need To Pay Attention to Sanctions, Money Laundering and Export Rules*, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP (2022), <https://www.skadden.com/insights/publications/2022/12/the-informed-board/why-directors-and-executives-need-to-pay-attention>.

10. Casey, *supra* note 8.

for the imposition of sanctions, Part III and Part IV expanding on the changing landscape of sanctions enforcement, and Part V briefly touching on the implications of these changes for corporations.

PART II: CURRENT LEGAL FRAMEWORK FOR SANCTIONS ENFORCEMENT

The sanctions regime is a creature of both statutes and the legislature. In the same manner as any other congressional delegation authority, Congress, through legislation, grants the President the power to enact sanctions via executive order.¹¹ The constitutional authority for this congressional delegation and the subsequent presidential enactment comes from “Article II, Section 3 (that the Executive shall ‘take care that the Laws be faithfully executed’) and Article I, Section 8 (Congress’ legislative power in respect of foreign commerce).”¹²

The essential authorizing statutes for the U.S. sanctions regime are the “Trading with the Enemy Act (“TWEA”), the International Emergency Economic Powers Act (“IEEPA”), and the United Nations Participation Act (“UNPA”).”¹³ Congress passed TWEA in 1917 following the United States’ entry into World War One in order to define, regulate, and punish the act of trading with the enemy.¹⁴ The statute vastly expanded the reach of executive power by granting the President an array of powers to control the flow of trade between the United States and both foreign nationals and foreign powers.¹⁵ TWEA is the oldest piece of sanction legislation in the United States and remains on the books to this day, serving as the basis for the current sanctions regime placed on Cuba.¹⁶ Finally, UNPA allows the President to issue economic sanctions when authorized by a United Nations Security Council resolution.¹⁷

11. John D. Buretta & Megan Y. Lew, *US Sanctions*, GLOBAL INVESTIGATIONS REVIEW (July 8, 2022), <https://globalinvestigationsreview.com/guide/the-guide-sanctions/third-edition/article/us-sanctions>.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. See Micheal P. Malloy, *Trading With The Enemy Act (1917)*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/trading-enemy-act-1917>; Morgan Lewis, *Legal Basis for Iran Sanctions, Cuba Sanctions, and NAFTA*, MORGAN LEWIS (Jan. 4, 2017), <https://www.morganlewis.com/pubs/2017/01/legal-bases-for-iran-sanctions-cuba-sanctions-and-nafta>.

17. Buretta & Lew, *supra* note 11.

The IEEPA serves as the primary authorizing device for issuing sanctions today.¹⁸ Congress passed the IEEPA in 1977 to define the extent of Presidential emergency powers.¹⁹ Under IEEPA, sanctions no longer came under the umbrella of wartime powers. Instead, their applicability was increased to a broader tool of national security designed to address “any unusual and extraordinary threat to U.S. national security, foreign policy, or economic stability.”²⁰ The statute authorizes the President to regulate commerce after declaring a national emergency in response to an “extraordinary threat” to the United States from a foreign source.²¹

The enforcement of sanctions falls under both criminal and civil law. The U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) is the agency charged with civilly enforcing U.S. sanctions.²² This enforcement is done on a strict liability basis, so no fault determination is necessary.²³ These regulations are focused on furthering U.S. foreign policy goals against “targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.”²⁴

Criminal liability flows from the IEEPA, which makes it a crime “to willfully violate, or attempt to violate, any regulation issued under the act.”²⁵ The Department of Justice is given the authority to prosecute violations.²⁶ For example, one prosecution under this statute occurred in 2014 when the French bank, BNP Paribas, pled guilty to conspiracy to violate sanctions laws by “processing billions of dollars of

18. Barbara I. Keller, *Enforcement Actions for U.S. Sanctions Violations Offer Lessons for Compliance*, ALACRA COMPLIANCE SOLUTIONS 3 (Sept. 14, 2014), <https://www.alacra.com/alacra/help/alacracomplianceprimer3.pdf>.

19. CHRISTOPHER A. CASEY ET AL., CONG. RSCH. SERV. R45618, THE INTERNATIONAL EMERGENCY ECONOMIC POWERS, ACT: ORIGINS, EVOLUTION, AND USE 1, 2 (Mar. 25, 2022), <https://crsreports.congress.gov/product/pdf/R/R45618>.

20. Buretta & Lew, *supra* note 11.

21. Keller, *supra* note 18, at 3.

22. See Mortlock, *supra* note 5.

23. *Id.*

24. *Office of Foreign Assets Control - Sanctions Programs and Information*, OFFICE OF FOREIGN ASSET CONTROL, <https://ofac.treasury.gov/office-of-foreign-assets-control-sanctions-programs-and-information>.

25. 50 U.S.C. § 1705.

26. Keller, *supra* note 18, at 3.

transactions through U.S. banks on behalf of sanctioned entities.”²⁷ BNP paid nearly \$9 billion in penalties and fines as part of this plea.²⁸

PART III: RUSSIAN SANCTIONS AND ENFORCEMENT

The pivotal elements of U.S. foreign policy in 2022 were the government’s imposition of sanctions, anti-money laundering programs, and export control mechanisms in response to Russia’s invasion of Ukraine in February 2022.²⁹ In the aftermath of the invasion, the United States, European Union, Japan, and other assorted states responded to Russia’s invasion with sanctions unprecedented in “terms of scope, coordination, and speed.”³⁰ These sanctions ranged from “‘targeted’ to ‘comprehensive,’ from asset freezes and travel bans placed upon individual representatives of Russia’s regime to wholesale restrictions on trade with Russia calculated to affect the entire state’s economy.”³¹

For the United States specifically, in the wake of Russia’s invasion of Ukraine, President Biden issued Executive Order (“EO”) 14065 prohibiting “new investment, trade in goods and services, and financing by U.S. persons with respect to the DNR and LNR regions of Ukraine.”³² In the ensuing months of 2022, this order was followed by EO 14066, which prohibited new investment by U.S. persons in the Russian energy sector and the importation of Russian oil, EO 14068, which prohibited new investment in any sector of the Russian economy, and EO 14071, which imposed export restrictions on U.S. companies to Russia.³³ These sanctions were all implemented based on the authority of the President under IEEPA, and they expanded the scope of the original declaration of national emergency in EO 13660, issued

27. Jeremy B. Zucker et al., *Sanctions are “the New FCPA”: A Heightened Focus for DOJ Enforcement*, DECHERT LLP (May 6, 2022), <https://www.dechert.com/knowledge/onpoint/2022/5/sanctions-are—the-new-fcpa—a-heightened-focus-for-doj-enforce.html>.

28. *Id.*

29. See Chitrao et al., *supra* note 9, at 4 (describing the U.S. government response to the Russia’s invasion of Ukraine).

30. Nelson, *supra* note 3.

31. Anton Moiseienko, *Trading with A Friend’s Enemy*, 116 Am. J. Int’l L. 720 (2022), <https://doi.org/10.1017/ajil.2022.51>.

32. Exec. Order No. 14,065, 87 Fed. Reg. 36 (Feb. 23, 2022), https://home.treasury.gov/system/files/126/20220221_eo_ukraine.pdf.

33. *Russia-Related Sanctions*, SIDLEY AUSTIN LLP, <https://web.archive.org/web/20230315092355/https://www.sidley.com/en/ap/sidley-pages/russia-related-sanctions-us/> (last visited Jan. 4, 2024).

on March 6, 2024.³⁴ The Biden Administration emphasized that enforcement of the sanctions was its highest priority.³⁵ This focus can be seen through the U.S. government's employment of a "whole-of-government approach to harness the unique expertise and punitive powers of each relevant U.S. government agency to restrict sanctions evasions activity benefiting Moscow."³⁶ This includes, for our purposes, an increased emphasis on criminal enforcement and, as discussed above, a vastly increased role for the DOJ in sanctions enforcement.³⁷

Indeed, in March 2022, Attorney General Merrick Garland revealed the formation of an interagency task force headed by the DOJ, Task Force KleptoCapture.³⁸ This task force was charged with ensuring the effectiveness of the sanctions regime by "investigating and prosecuting" all sanctions violations imposed following Russia's invasion of Ukraine. Additionally, the Task Force was given the responsibility of "combating evasion of sanctions against Russian financial institutions," a mission which includes prosecuting those who try to evade "know-your-customer and anti-money laundering measures," as well as using "asset forfeiture authorities to seize assets belonging to sanctioned individuals and entities."³⁹ The creation of this task force, with its expansive responsibilities, exemplifies the new status quo, a DOJ with a greatly expanded role in foreign policy.

PART IV: CRIMINAL SANCTIONS ENFORCEMENT IN 2022 - 2023

Task Force KleptoCapture was meant to serve as the tip of the spear in terms of sanctions enforcement.⁴⁰ It is the coordination point

34. Exec. Order No. 14,065, 87 Fed. Reg. 36 (Feb. 23, 2022), https://home.treasury.gov/system/files/126/20220221_co_ukraine.pdf

35. *Id.*

36. Emily Kilcrease et al., *Sanctions by the Numbers: Economic Measures against Russia Following Its 2022 Invasion of Ukraine*, CNAS (June 16, 2022), <https://www.cnas.org/publications/reports/sanctions-by-the-numbers-economic-measures-against-russia-following-its-2021-invasion-of-ukraine>.

37. See Mortlock, *supra* note 5 (discussing DOJ's increased role in sanctions enforcement).

38. Attorney General Merrick B. Garland Announces Launch of Task Force KleptoCapture, U.S. DEP'T. OF JUST. (Mar. 2, 2022), <https://www.justice.gov/opa/pr/attorney-general-merrick-b-garland-announces-launch-task-force-kleptocapture>.

39. John E. Smith et al., *U.S. Sanctions Enforcement: 2022 Trends and Lessons Learned*, MORRISON AND FOERSTER LLP (March 6, 2023), <https://www.mofo.com/resources/insights/230306-us-sanctions-enforcement-2022>.

40. See Andrew Denney, *New York Attorney Pleads Guilty to Conspiring to Launder Money for Sanctioned Russian Oligarch*, LAW.COM (Apr. 25, 2023), <https://www.law.com/newyorklawjournal/2023/04/25/new-york-attorney-pleads->

for the resources of the federal government. It reflects inter-agency cooperation to investigate and prosecute sanctions violations, “using civil and criminal asset forfeiture authorities to seize and forfeit assets, and leveraging existing criminal statutes to target sanctioned individuals and others closely tied to Russian officials.”⁴¹ To this end, the task force was granted near-unprecedented resources and is led by a range of prosecutors, agents, and analysts from across the DOJ, each of whom has expertise in “sanctions, export control, anticorruption, asset forfeiture, AML, tax enforcement, and national security investigations.”⁴² KleptoCapture also includes personnel from “other departments and agencies, including the Department of Homeland Security and the IRS.”⁴³ The task force itself is housed in the Deputy AG’s office, reflecting its importance within the current administration.⁴⁴

A similar shift in DOJ policy and priorities has accompanied this structural change. On March 2, 2023, the DOJ, Commerce Department, and Treasury Department took the unprecedented step of issuing a Joint Compliance Note (JCN), which made clear to all private entities that the government was “cracking down” on the use of “third-party intermediaries and transshipment points” to avoid Russia related sanctions.⁴⁵ Moreover, the note stated that the government is aggressively pursuing sanctions and export controls evasion, warning of potential future prosecution.⁴⁶ The release of this note came on the same day as DAG Monaco’s announcement of the DOJ’s restructuring and reinforcement of its National Security Division (“NSD”), the section primarily charged with sanctions prosecutions.⁴⁷ As part of this effort, she stated that NSD would hire twenty-five dedicated prosecutors to

guilty-to-conspiring-to-laundry-money-for-sanctioned-russian-oligarch/ (describing the role of the Task Force).

41. Sarah Krissoff & John Vukelj, *DOJ Seeks to Seize the Day with the Kleptocapture Taskforce*, N.Y.L.J. (June 24, 2022), <https://www.law.com/newyorklawjournal/2022/06/24/doj-seeks-to-seize-the-day-with-the-kleptocapture-taskforce/>.

42. U.S. Dep’t. of Just., *supra* note 38.

43. Chitrao et al., *supra* note 9, at 17.

44. U.S. Dep’t. of Just., *supra* note 38.

45. *Department of Commerce, Department of the Treasury, and Department of Justice Tri-Seal Compliance Note: Cracking Down on Third-Party Intermediaries Used to Evade Russia-Related Sanctions and Export Controls*, U.S. DEP’T OF TREASURY, (Mar. 2, 2023), <https://ofac.treasury.gov/media/932036/download?inline>.

46. *Id.*

47. Lisa Monaco, Deputy Att’y Gen., U.S. Dep’t of Just., Remarks at American Bar Association National Institute on White Collar Crime (Mar. 2, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national> (describing the expansion of DOJ sanctions enforcement efforts).

“expand its capacity to investigate and prosecute sanctions evasions, export controls violations, and similar economic crimes,” and form joint advisors with Commerce and Treasury to provide best practices to private entities.⁴⁸ This would more than double the size of the NSD team focused on these violations, increasing resources that would inevitably result in increased investigations and prosecutions.⁴⁹

In sum, there is a “new level of intensity and commitment to sanctions enforcement” at DOJ.⁵⁰ This commitment has been reflected in an explosion in enforcement actions by KleptoCapture within the past year and in addresses made by DOJ leadership.⁵¹ Indeed, DOJ officials have for the past year constantly reiterated that sanctions are the “new FCPA,” a statement which sent “shockwaves” into the corporate compliance world.⁵²

For context, the FCPA was passed in 1977. Its purpose was to make it illegal for American corporations and businesspeople to offer payments to foreign government officials to assist in obtaining or retaining business.⁵³ However, this statute was effectively unenforced until 2007.⁵⁴ According to Stanford Law School FCPA Statistics, from 1977–2007, the annual average of FCPA enforcement actions was typically in the single digits, and the total sanctions imposed rarely passed \$50 million.⁵⁵ However, in 2007, the U.S. government shifted focus,

48. *Id.*

49. See Kevin McCart & Rebecca Worthington, *Department of Justice Initiatives Prioritize Economic Sanctions Enforcement*, GLOBAL INVESTIGATIONS & COMPLIANCE REVIEW (Mar. 6, 2023), <https://www.globalinvestigations.blog/department-of-justice/department-of-justice-initiatives-prioritize-economic-sanctions-enforcement/>.

50. Deborah Meshulam et al., *DOJ plans to make U.S. sanctions enforcement “the new FCPA”: watch these key areas*, DLA PIPER LLP (July 21, 2022), <https://www.dlapiper.com/en/insights/publications/2022/07/doj-plans-to-make-us-sanctions-enforcement-the-new-fcpa>.

51. See *Fact Sheet: Justice Department Efforts in Response to Russia’s February 2022 Invasion of Ukraine*, U.S. DEP’T OF JUST. (2023), <https://www.justice.gov/opa/press-release/file/1569781/download> (tracking DOJ enforcement actions since Russia’s invasion).

52. Amanda J. Raines & Daniel Bernstein, *Sanctions and Export Controls as the New FCPA: The Increasing Overlap of Anticorruption, Export Controls, and Economic Sanctions*, ARNOLD AND PORTER LLP (Nov. 30, 2022), <https://www.arnoldporter.com/en/perspectives/blogs/enforcement-edge/2022/11/sanctions-and-export-controls-as-the-new-fcpa>.

53. Stanford Law School & Sullivan & Cromwell LLP, *Foreign Corrupt Practices Act Clearinghouse: Key Statistic*, STAND L. SCHOOL, <https://fcpa.stanford.edu/statistics-heat-maps.html> (last visited Oct. 27, 2023) (tracking statistics in regarding to FCPA enforcement).

54. See Meshulam, *supra* note 50 (noting that the FCPA was dormant until 2007).

55. See Stanford Law School, *supra* note 53 (logging the statistics in regard to FCPA enforcement).

emphasized the FCPA and anticorruption in its foreign policy, and devoted significant resources to its enforcement.⁵⁶ Since 2007, enforcement actions have skyrocketed, with the yearly average of enforcement actions going to thirty-eight per year, the total sanctions per year never dropping below 200 million, and quite frequently surpassing \$1 billion in damages.⁵⁷ Since 2016 alone, prosecutors have settled for almost \$22 billion in total sanctions.⁵⁸ For example, Goldman Sachs settled for \$2.9 billion in a 2020 FCPA case.⁵⁹ The French company Airbus also settled for over \$3.9 billion that same year.⁶⁰

Deputy Attorney General Lisa Monaco discussed this new role for the DOJ in various speeches in 2022, in which she reiterated that economic sanctions are the “new FCPA” and that their enforcement will be prioritized within the DOJ’s corporate enforcement efforts.⁶¹ That is, the DOJ is now emphasizing sanctions enforcement like how it, since 2007, has prioritized enforcement of the FCPA.⁶² The past year has put truth to those words, as shown by the fact that the number of penalties and asset seizures imposed by authorities for sanctions violations in 2022 was six times larger than in 2021.⁶³ This is not mere rhetoric either. Within the past year, Task Force KleptoCapture’s

56. *Expect Exponential Growth in DOJ Sanctions Enforcement*, PHELPS LLP (Mar. 2, 2023), <https://www.phelps.com/insights/expect-exponential-growth-in-doj-sanctions-enforcement.html>.

57. Stanford Law School, *supra* note 53; see Travis Albea, *The Foreign Corrupt Practices Act: The Evolution of Enforcement*, CAMPBELL LAW OBSERVER (Jan. 15, 2015), <http://campbelllawobserver.com/the-foreign-corrupt-practices-act-the-evolution-of-enforcement/> (articulating the scale of the rise in FCPA sanctions by the DOJ).

58. See Stanford Law School, *supra* note 53 (logging the statistics in regard to FCPA enforcement).

59. *Goldman Sachs Charged in Foreign Bribery Case and Agrees to Pay Over \$2.9 Billion*, U.S. DEP’T OF JUST (Oct. 22, 2020), <https://www.justice.gov/opa/pr/goldman-sachs-charged-foreign-bribery-case-and-agrees-pay-over-29-billion>.

60. *Airbus Agrees to Pay over \$3.9 Billion in Global Penalties to Resolve Foreign Bribery and ITAR Case*, U.S. DEP’T OF JUST (Jan. 31, 2020), <https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case>.

61. Amanda J. Raines & Daniel Bernstein, *Sanctions and Export Controls as the New FCPA: The Increasing Overlap of Anticorruption, Export Controls, and Economic Sanctions*, ARNOLD AND PORTER (Nov. 30, 2022) <https://www.arnoldporter.com/en/perspectives/blogs/enforcement-edge/2022/11/sanctions-and-export-controls-as-the-new-fcpa>.

62. Lisa Monaco, Deputy Att’y Gen., U.S. Dep’t of Just., Remarks at American Bar Association National Institute on White Collar Crime (Mar. 2, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national> (describing the expansion of DOJ sanctions enforcement efforts).

63. See Chitrao et al., *supra* note 9, at 4.

enforcement efforts have been conducted at breakneck speed, both in terms of seizures of property and prosecutions.

In terms of asset seizures, the DOJ has proceeded on pace since the imposition of sanctions. For example, in April 2022, the DOJ announced that Spain, pursuant to a DOJ request, seized the \$90 million yacht of Viktor Vekselberg, a sanctioned Russian oligarch.⁶⁴ In May 2022, KleptoCapture, working with the government of Fiji, seized a \$300 million yacht of another Russian oligarch.⁶⁵ On June 6, 2022, KleptoCapture announced that it had been granted a warrant to seize two airplanes valued together at over \$400 million owned by Roman Abramovich pursuant to the probable cause of sanctions violations.⁶⁶ On August 8, 2022, KleptoCapture revealed that it would seize an airplane owned by a different Russian oligarch worth \$90 million.⁶⁷ All in all, since its formation, KleptoCapture has seized or frozen Russian assets worth north of \$30 billion.⁶⁸

A similar trend is visible in criminal prosecutions. On September 29, 2022, less than six months after the task force's formation, the DOJ indicted Russian oligarch and Putin ally Oleg Deripaska, along with several associates and a U.S. citizen, for facilitating sanctions evasion.⁶⁹ On October 19, 2022, the U.S. Attorney's Office for the Eastern District of New York, working with KleptoCapture, announced the indictment of eleven individuals and several corporations for participation in

64. *\$90 Million Yacht of Sanctioned Russian Oligarch Viktor Vekselberg Seized by Spain at Request of United States*, U.S. DEP'T OF JUST. (Apr. 4, 2022), <https://www.justice.gov/opa/pr/90-million-yacht-sanctioned-russian-oligarch-viktor-vekselberg-seized-spain-request-united>.

65. *\$300 Million Yacht of Sanctioned Russian Oligarch Suleiman Kerimov Seized by Fiji at Request of United States*, U.S. DEP'T OF JUST. (May 5, 2022), <https://www.justice.gov/opa/pr/300-million-yacht-sanctioned-russian-oligarch-suleiman-kerimov-seized-fiji-request-united>.

66. *United States Obtains Warrant For Seizure Of Two Airplanes Of Russian Oligarch Roman Abramovich Worth Over \$400 Million*, U.S. DEP'T OF JUST. (June 6, 2022), <https://www.justice.gov/usao-sdny/pr/united-states-obtains-warrant-seizure-two-airplanes-russian-oligarch-roman-abramovich>.

67. *United States Obtains Warrant for Seizure of Airplane of Sanctioned Russian Oligarch Andrei Skoch, Worth Over \$90 Million*, U.S. DEP'T OF JUST. (Aug. 8, 2022), <https://www.justice.gov/opa/pr/united-states-obtains-warrant-seizure-airplane-sanctioned-russian-oligarch-andrei-skoch-worth>.

68. See Barak Cohen et al., *US May Soon Have New Weapons In Sanctions Enforcement*, LAW 360 (Jan. 3, 2023), <https://www.law360.com/articles/1560307/us-may-soon-have-new-weapons-in-sanctions-enforcement>.

69. *Russian Oligarch Oleg Vladimirovich Deripaska and Associates Indicted for Sanctions Evasion and Obstruction of Justice*, U.S. DEP'T OF JUST. (Sept. 29, 2022), <https://www.justice.gov/opa/pr/russian-oligarch-oleg-vladimirovich-deripaska-and-associates-indicted-sanctions-evasion-and>.

schemes to evade sanctions and export controls in regard to Russia.⁷⁰ Per the DOJ, the Defendants had illegally transferred military technology from U.S. corporations and transferred it to Russia.⁷¹ Finally, in January 2023, the DOJ announced the indictment of two businessmen on the charge of facilitation of sanctions evasion relating to the ownership and operation of Vekselberg's yacht.⁷²

The upshot is that companies can expect that sanctions violations and export control violations will be increasingly pursued with the same level of resources and vigor that we have come to expect from the DOJ with regard to FCPA enforcement. In effect, the DOJ is repeating itself—emphasizing criminal enforcement for sanctions as suddenly and with the same force as it did with the FCPA. This shift will have significant global consequences. This will be observed in the coming years; instructively, when the U.S. government decided to stress criminal enforcement of the FCPA, European nations followed suit by either enhancing or implementing their anticorruption laws and, as a result of those massive settlements, anticorruption compliance became a priority for financial institutions and corporations, where just twenty years ago, it was an afterthought.⁷³

PART V: CORPORATE IMPLICATIONS

Sanctions enforcement within the United States has historically been focused on civil enforcement actions through OFAC. Since the Obama administration, OFAC's primary enforcement strategy has been "whale-hunting". These huge fines resulting "caused many firms to begin taking sanctions violations seriously and were an effective deterrent."⁷⁴ The new focus on criminal enforcement, and the expansive

70. *Justice Department Announces Charges and Arrests in Two Cases Involving Export Violation Schemes to Aid Russian Military*, U.S. DEP'T OF JUST. (Oct. 19, 2022), <https://www.justice.gov/opa/pr/justice-department-announces-charges-and-arrests-two-cases-involving-export-violation-schemes>.

71. *Id.*

72. *Arrest and Criminal Charges Announced Against British and Russian Businessmen for Facilitating Sanctions Evasion of Russian Oligarch's \$90 Million Yacht*, U.S. DEP'T OF JUST. (Jan. 20, 2023), <https://www.justice.gov/opa/pr/arrest-and-criminal-charges-announced-against-british-and-russian-businessmen-facilitating>.

73. See Micheal S. Casey et al., "Sanctions Are the New FCPA": *The Familiar Evolution of Sanctions Enforcement*, WILSON SONSINI LLP (Mar. 30, 2023), <https://www.wsgr.com/en/insights/sanctions-are-the-new-fcpa-the-familiar-evolution-of-sanctions-enforcement.html> (articulating the European response to the increased enforcement of the FCPA by the DOJ).

74. See Early & Preble, *supra* note 7, at 40 (stating that "[f]or example, when OFAC penalized CSE Global Limited and its subsidiary, CSE TransTel Pte. Ltd. (based in

breadth of the current sanctions on Russia have greatly expanded the scope of these efforts.⁷⁵ As a result, and if this past year is any reflection, sanctions enforcement is poised to increase exponentially. Indeed, DAG Monaco has noted that the DOJ is currently handling corporate investigations involving sanctions across “industries as varied as transportation, fintech, banking, defense, and agriculture.”⁷⁶ In effect, sanctions compliance has gone from a “technical area of concern for select businesses” to where they need to be “at the top of every company’s risk compliance chart.”⁷⁷

IV. CONCLUSION

The U.S. government increasingly turns to sanctions as its principal tool to counter perceived threats and further its national security interests. In light of this, the Biden administration has expanded its sanctions enforcement efforts beyond the historical focus on administrative efforts through OFAC. Specifically, since the invasion of Ukraine, criminal enforcement has been emphasized, and the DOJ has made “sanctions evasion and export-control violations a central focus of its white-collar enforcement.”⁷⁸ Rhetorically, this shift in policy has been reflected by references to sanctions as the new “FCPA,” a statement of intent reflected in the vastly increased pace of asset seizures and criminal prosecutions in the past year. Overall, an increasingly activity DOJ will likely cause sanctions to be more tightly enforced, furthering U.S. policy goals.

Singapore), there was a flurry of activity on a number of compliance blogs urging companies to be mindful of their transactions and to employ appropriate compliance and internal monitoring). *See also* Adriaen M. Morse Jr. et al., *Mini-Roundtable: OFAC Enforcement and Compliance Mini-Roundtable in Risk and Compliance*, RISK AND COMPLIANCE (Jan.-Mar. 2015), [https://www.gtlaw.com/-/media/files/insights/published-articles/022515_rc_greenberg_ofac-enforcement—compliance_reprintfeb14-\(2\).pdf](https://www.gtlaw.com/-/media/files/insights/published-articles/022515_rc_greenberg_ofac-enforcement—compliance_reprintfeb14-(2).pdf) (noting that an increase in corporate compliance programs that appeared to coincide with an uptick in U.S. penalties for sanctions violations).

75. Nelson, *supra* note 3.

76. Lisa Monaco, Deputy Att’y Gen., U.S. Dep’t of Just., Remarks at American Bar Association National Institute on White Collar Crime (Mar. 2, 2023), <https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national> (describing the expansion of DOJ sanctions enforcement efforts).

77. *Id.*

78. *See* Meshulam, *supra* note 50.