

CORPORATE FOREIGN POLICY IN WAR

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KISHANTHI PARELLA*

Abstract: On February 24, 2022, Russian troops invaded Ukraine. Over a year later, the war has claimed tens of thousands of lives and led to the displacement of millions. In Spring 2023, both Ukrainian and Russian forces prepared new offensives, while the United States committed to providing Ukraine with military tanks—a move that Russian officials had previously warned would constitute direct involvement in the war. While countries debated how to respond, we also witnessed the privatization of foreign policy as hundreds of companies around the world similarly sought to assist Ukraine or punish Russia using the tools of national foreign policy—humanitarian aid and economic sanctions. Companies assisted Ukraine by donating millions of dollars to relief organizations or offering aid directly to those fleeing the war. Other companies punished Russia by closing stores, postponing investments, and exiting the country altogether.

This Article explains that these individual business decisions illustrate a broader phenomenon of *corporate foreign policy*, which refers to business policies that use the traditional tools of national foreign policy to influence a government's conduct towards another government or international organization. It develops a market framework to explain that corporate foreign policies result from the interaction of two sets of factors: *demand factors*, such as the preferences of governments, consumers, and investors; and *supply factors*, which refer to organizational, contractual, and regulatory factors that enable or inhibit the capacity of companies to meet those preferences. Supply factors would include: the business model used for Russian operations; contract provisions that enable suspension of performance obligations; availability of political risk insurance and international investment dispute resolution to absorb losses; and organizational preparedness for crisis response.

This Article makes three primary contributions to the study of foreign policy and international business transactions. First, it provides an analytical framework for understanding, evaluating, and even predicting whether companies will use a

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particular foreign policy in a crisis. Second, it uses this framework to analyze whether companies may similarly exit from China because of fears of conflict in the region. Third, the framework offers practical guidance to both policymakers and business executives on using foreign policy effectively in future crises. For policymakers, this framework explains that economic sanctions imposed by governments can encourage a second wave of private sanctions imposed by companies that magnify the economic, social, and political consequences of the former. This Article's framework helps policymakers to predict the nature, breadth, and strength of these private sanctions so that they can better evaluate if and how to use sanctions. For executives, this Article explains the relevance of business models, contract design, and strategic partnerships for preparing for the next crisis. Many of these decisions are made decades before a crisis arises but can inhibit a company's ability to respond when it does. It is therefore important to evaluate these decisions now in order to respond effectively in the future.

INTRODUCTION

On February 24, 2022, Russian forces launched a full-scale invasion of Ukraine.¹ Two days later, Ukrainian Minister, Mykhailo Fedorov, challenged the Chief Executive Office (CEO) of Space X, Elon Musk, with the following post on X (formerly known as and hereinafter Twitter): “@elonmusk, while you try to colonize Mars—Russia try to occupy Ukraine! While your rockets successfully land from space—Russian rockets attack Ukrainian civil people! We ask you to provide Ukraine with Starlink stations”² Musk tweeted back on the same day: “Starlink service is now active in Ukraine. More terminals en route.”³ In this interaction between Musk and Fedorov, a sovereign nation—facing invasion—turned to a corporation for assistance, illustrating the importance of corporate foreign policies.

This Article argues that these individual corporate responses illustrate a broader phenomenon of corporate foreign policy,⁴ a concept referring to busi-

¹ *Remarks by President Biden on Russia's Unprovoked and Unjustified Attack on Ukraine*, THE WHITE HOUSE (Feb. 24, 2022), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/24/remarks-by-president-biden-on-russias-unprovoked-and-unjustified-attack-on-ukraine/#:~:text=THE%20PRESIDENT%3A%20Sorry%20to%20keep,This%20is%20a%20premeditated%20attack> [<https://perma.cc/TK38-2WNJ>].

² Mykhailo Fedorov (@FedorovMykhailo), TWITTER (Feb. 26, 2022, 7:06 AM), <https://twitter.com/FedorovMykhailo/status/1497543633293266944> [<https://perma.cc/4NQ2-CD5F>]. Although Twitter now operates under the name X, this Article continues to refer to it as Twitter.

³ Eamon Barrett, *Elon Musk's Starlink Satellite Dishes Arrive in Ukraine, a Day After the SpaceX CEO Tweeted the Tech Was on the Way*, FORTUNE (Mar. 1, 2022), <https://fortune.com/2022/03/01/starlink-elon-musk-ukraine-terminals-arrive-kyiv/> [<https://perma.cc/8QJL-D9BJ>].

⁴ See *infra* notes 101–239. This Article is not the first to use the term “corporate foreign policy” to describe company interactions with governments over foreign policy. See, e.g., Josh Chipman, *Why Your Company Needs a Foreign Policy*, HARV. BUS. REV. (Sept. 2016), <https://hbr.org/2016/09/why-your-company-needs-a-foreign-policy> [<https://perma.cc/2PSN-KQ2L>] (arguing that a corporate for-

ness policies and practices directed towards a national government that are intended to influence or change that government's conduct towards another government or international organization.⁵ The distinguishing characteristic of corporate foreign policy is the use of traditional tools of *national* foreign policy—such as humanitarian assistance and economic sanctions—to achieve a corporation's objectives.⁶

Corporate foreign policies were abundantly displayed following the Russian invasion of Ukraine. Dozens of companies sent monetary donations, supplies, and other forms of humanitarian relief to Ukrainians affected by the war.⁷ Adidas, Chanel, Microsoft, Clorox, Abbott, Bank of America, Hilton, Bacardi, FedEx, Canada Goose, Nike, Mastercard, Visa, Amazon, and many other companies pledged millions of dollars to humanitarian aid organizations, providing aid to Ukrainians affected by the war like the Red Cross, World Central Kitchen, and Save the Children.⁸ Other companies provided aid directly by

eign policy has two goals, including “improv[ing] a company’s ability to operate in foreign environments through effective corporate diplomacy, and . . . ensur[ing] its success wherever it is engaged through careful geopolitical due diligence”). This Article, however, contributes to the study of corporate foreign policy by developing a market framework for such policymaking. *See infra* notes 101–239.

⁵ *See, e.g.*, Jay Butler, *The Corporate Keepers of International Law*, 114 AM. J. INT’L L. 189, 208 (2020) (describing Google’s refusal to assist with the U.S. Department of Defense’s drone targeting program); Melissa J. Durkee, *Interpretive Entrepreneurs*, 107 VA. L. REV. 431, 467–70, 475–77 (2021) (describing corporate influence over the United States’ interpretation of international treaties); Dennis M. Ray, *Corporations and American Foreign Relations*, 403 ANNALS AM. ACAD. POL. & SOC. SCI. 80, 84–85 (1972) (describing the different channels of corporate influence over U.S. foreign policy). Other scholars have identified growing tension, not coordination, between interests of businesses and governments. *See* Tom C.W. Lin, *Business Warfare*, 63 B.C. L. REV. 1, 9 (2022) (stating that “[b]y engaging in business warfare, enemies that could not otherwise win traditional wars of soldiers and arms with the United States, given its superpower strengths, now seek to attack American business interests directly to inflict harm on American national security and economic welfare”).

⁶ Chipman, *supra* note 4 (noting that “[t]o navigate the geopolitical complexities of the modern world, companies have to, in effect, ‘privatize’ foreign policy—that is, they must internalize many of the elements traditionally employed in statecraft”).

⁷ *See, e.g.*, *Factbox: European and U.S. Companies Mobilise to Help Ukrainians Fleeing War*, REUTERS (Mar. 9, 2022), [https://www.reuters.com/business/european-us-companies-mobilise-help-ukrainians-fleeing-war-2022-03-01/#:~:text=March%209%20\(Reuters\)%20%2D%20Companies,Poland%20and%20other%20neighbouring%20countries](https://www.reuters.com/business/european-us-companies-mobilise-help-ukrainians-fleeing-war-2022-03-01/#:~:text=March%209%20(Reuters)%20%2D%20Companies,Poland%20and%20other%20neighbouring%20countries) [<https://perma.cc/Z6ZB-44AC>] (describing aid provided by Airbnb, Lego, Ryanair, Merck, and IKEA, among other companies).

⁸ *Statement by Michael Miebach, CEO of Mastercard*, MASTERCARD (Feb. 28, 2022), <https://www.mastercard.com/news/press/2022/february/mastercard-statement/> [<https://perma.cc/SL2F-63DN>]; *A Message from Visa*, VISA (Feb. 28, 2022), <https://usa.visa.com/visa-everywhere/blog/bdp/2022/02/28/a-message-from-1646083498219.html> [<https://perma.cc/QC6G-6TD6>]; Katherine V. Smith, *How Companies Are Responding to the War in Ukraine: A Roundup*, BOS. COLL. CTR. FOR CORP. CITIZENSHIP: BLOG (May 20, 2022), <https://ccc.bc.edu/content/ccc/blog-home/2022/03/companies-respond-to-war-in-ukraine.html> [<https://perma.cc/R2P2-NPPJ>]; *Humanitarian Crisis in Ukraine*, U.S. CHAMBER COM. FOUND., <https://www.uschamberfoundation.org/aid-event/humanitarian-crisis-ukraine> [<https://perma.cc/2TX9-AAZG>].

offering their goods and services free of charge. T-Mobile, AT&T, and Verizon waived international roaming charges for calls, texts, and data in Ukraine and neighboring countries for several weeks following the Russian invasion.⁹ Uber provided free rides across the Ukraine-Polish border and into Poland.¹⁰ Through #HospitalityHelps, Hilton, American Express, and other companies helped to provide displaced Ukrainian refugees with free housing across Europe.¹¹

In addition to aiding Ukraine, companies also took stances against Russia's attacks by closing their stores in Russia, suspending services or shipments, postponing new investments, and even exiting Russia in a wave of "corporate sanctions."¹² Netflix, Dell, Etsy, Heineken, Nike, Bose, IKEA, Krispy Kreme, Nokia, Starbucks, Hertz, IBM, and HP are among the hundreds of companies that stopped all shipments and services to Russia, divested holdings, or otherwise exited the Russian market since the February 2022 invasion.¹³ Some companies were early movers and disengaged from Russia in the weeks immediately following the invasion.¹⁴ These companies made interna-

⁹ Caroline Vakil, *Cell Phone Carriers Waive Charges, Allow Free Long-distance Calling to Ukraine*, THE HILL (Feb. 25, 2022), <https://thehill.com/policy/technology/595924-cell-phone-carriers-waive-charges-allow-long-distance-calling-to-ukraine/#:~:text=%E2%80%9CThis%20includes%20calls%20made%20within,calls%20to%20and%20from%20Ukraine> [<https://perma.cc/GD4H-UJM7>].

¹⁰ Matthew Loh, *Uber Is Offering Free Rides Worth Up to \$70 for Refugees Fleeing Ukraine and Heading to 2 Major Polish cities*, BUS. INSIDER (Mar. 3, 2022), <https://www.businessinsider.com/uber-free-rides-ukraine-refugees-poland-border-russia-2022-3#:~:text=Uber%20says%20it's%20providing%20%22unlimited,Poland%2C%20the%20United%20Nations%20said> [<https://perma.cc/53LR-H9BR>]; see *Supporting Ukraine*, UBER (Mar. 3, 2022), <https://www.uber.com/newsroom/supporting-ukraine/> [<https://perma.cc/NCY2-L7TG>] (announcing that Uber will be "providing unlimited free trips between the Ukrainian border and Polish cities to support refugees and their families, as well as free transportation for staff at Migrant Welcome Centers and for the delivery of goods to NGO warehouses in Poland").

¹¹ *Hilton, American Express to Provide Up to 1 Million Rooms to Support Ukrainian Refugees*, HILTON (Mar. 9, 2022), <https://stories.hilton.com/releases/hilton-american-express-to-provide-rooms-to-support-ukrainian-refugees> [<https://perma.cc/XP2R-N7BH>]; Miles Socha, *How Fashion and Footwear Brands Are Supporting Ukraine Amid Russian Conflict*, FOOTWEAR NEWS (Apr. 29, 2022), <https://footwearnews.com/business/retail/ukraine-russia-war-fashion-footwear-brands-aid-1203252759/> [<https://perma.cc/Q3FK-D3MJ>].

¹² *Over 1,000 Companies Have Curtailed Operations in Russia—But Some Remain*, YALE SCH. MGMT. (Oct. 19, 2023), <https://som.yale.edu/story/2022/over-1000-companies-have-curtailed-operations-russia-some-remain> [<https://perma.cc/2BFF-URWF>].

¹³ *Id.*

¹⁴ Hannah Towey, Sarah Al-Arshani, Bethany Biron & Mary Hanbury, *Here Are the Major US and European Companies Pulling Out of Russia Following the Invasion of Ukraine*, BUS. INSIDER (Mar. 10, 2022), <https://www.businessinsider.com/list-all-the-companies-pulling-out-of-russia-ukraine-war-2022-3> [<https://perma.cc/67KE-4BYJ>].

tional news by voluntarily withdrawing from Russia, even when not required to do so.¹⁵

These examples of corporate foreign policy raise important questions for scholars, business executives, and policymakers: why did some companies leave Russia while others remained? McDonald's and Starbucks exited Russia, but Papa Johns kept its stores open.¹⁶ What factors led companies to stay or go? How do these corporate responses affect the success or failure of U.S. foreign policy towards Russia or Ukraine? Lastly, can we expect corporations to exercise similar foreign policies in other conflicts around the world?

This Article answers these questions by providing a market framework for understanding the frequency, nature, and success of corporate foreign policies.¹⁷ It explains that these policies result from the interaction of two sets of factors. *Demand* factors refer to stakeholder pressure for a business to adopt a particular corporate foreign policy. For example, consumers boycott a business

¹⁵ See, e.g., Emmanuel Breen, *Corporations and US Economic Sanctions: The Dangers of Over-compliance*, in RESEARCH HANDBOOK ON UNILATERAL AND EXTRATERRITORIAL SANCTIONS 256, 256 (Charlotte Beaucillon ed., 2021) (defining overcompliance as “an individual conduct or a corporate process that adopts a stricter stance and goes beyond what is strictly required to comply with the laws and regulations”); Jacob Atkins, *Banks ‘Self-sanction’ Amid Russia Risk Contagion*, GLOB. TRADE REV. (Mar. 9, 2022), <https://www.gtreview.com/news/global/banks-self-sanction-amid-russia-risk-contagion/> [<https://perma.cc/9WQN-FQLW>] (stating that “[b]anks and trading companies are increasingly engaging in ‘self-sanctioning’ against Russian entities in the shipping and commodities sector to avoid trouble with regulators and public displeasure”); Christopher Helman, *Will Big Oil’s Attempts to ‘Self-sanction’ Russia Be Enough to Tame Putin Without Oil-Mageddon?*, FORBES (Mar. 4, 2022), <https://www.forbes.com/sites/christopherhelman/2022/03/04/will-attempts-to-self-sanction-russia-be-enough-to-tame-putin-without-oil-mageddon/?sh=d2d95c0669b2> [<https://perma.cc/PG2P-CTXR>] (“[O]il traders have enacted a de facto embargo on cargoes from Russia. Analysts report that 70% of Russian crude exports are effectively blocked, amounting to 2.5 million barrels per day (bpd), because counterparties refuse to trade.”); Richard L. Kilpatrick, Jr., *Self-sanctioning Russia*, EJIL: TALK! (May 11, 2022), <https://www.ejiltalk.org/self-sanctioning-russia/> [<https://perma.cc/6G8Y-AKUUA>] (remarking that “parallel to these compliance initiatives, businesses have also voluntarily distanced themselves from the Russian economy, even in sectors outside the scope of the sanctions”); Alan Murray & David Meyer, *These Companies Exiting Russia Have Been Going Well Beyond What’s Required by Sanctions*, FORTUNE (Mar. 7, 2022), <https://fortune.com/2022/03/07/these-companies-exiting-russia-have-been-going-well-beyond-whats-required-by-sanctions-ceo-daily/> [<https://perma.cc/UF35-6RTH>] (listing companies that have gone beyond what is legally required by sanctions, including Exxon, BP, Shell, Apple, FedEx, Visa, Boeing, H&M, and Nike); Ben Walsh, *The Unprecedented American Sanctions on Russia, Explained*, VOX (Mar. 9, 2022), <https://www.vox.com/22968949/russia-sanctions-swift-economy-mcdonalds> [<https://perma.cc/6V3J-SJHS>] (“A host of large global corporations have also voluntarily severed business ties with Russia in recent days in a fit of what sanctions watchers call ‘overcompliance’: There is no legal necessity for them to cut out their Russian counterparts, but executives have calculated that continuing to do business in the country is not worth the reputational damage or operational hassle.”).

¹⁶ Julie Creswell, *He’s American, He Oversees Papa John’s in Russia and He’s Staying*, N.Y. TIMES (Mar. 14, 2022), <https://www.nytimes.com/2022/03/14/business/papa-johns-russia.html> [<https://perma.cc/Q9HR-DAP2>].

¹⁷ See *infra* notes 101–239.

that does not exit from Russia. Investors similarly insist that a business divest from Russia. Governments pressure businesses—publicly on social media and privately through backchannels—to withdraw from Russia. The media and civil society groups publicly shame businesses that still operate in Russia. All of these groups—individually and collectively—create important incentives for a business to leave Russia, even at significant financial cost to itself.

But corporate foreign policies do not result from demand factors alone. McDonald's did not leave because its consumers cared more about the Russian invasion than those of Papa Johns. Instead, these differences are explained by *supply* factors that facilitate or inhibit a business's ability to comply with its stakeholders' values and preferences. Such supply factors include the business model used for Russian operations; contract provisions that enable or restrict suspension of performance obligations; availability of political risk insurance and international investment dispute resolution to absorb losses, and organizational preparedness for crisis response. Examining supply factors reveals important differences between Papa Johns and McDonald's, and can explain differences in sanctioning behavior. McDonald's business model involved owning the majority of its restaurants, allowing it to shut down its stores in response to the invasion.¹⁸ In contrast, Papa Johns did not own its stores in Russia but operated through licensing deals, leaving it dependent on the decisions of its licensed partners.¹⁹ The combination of these demand and supply factors helped business executives decide: *should we stay or go?*

This Article's framework makes a number of significant contributions to both academic and policy debates concerning the responsibilities of businesses in armed conflict and the effectiveness of foreign policy in crises.²⁰ First, its market framework allows us to understand and predict when companies may or may not sanction a country or when they can be relied upon to provide aid. This Article applies its framework of corporate foreign policy to consider whether companies will similarly exit China due to concerns over the Chinese

¹⁸ Mary Hanbury & Mary Meisenzahl, *Why McDonald's, Burger King, and Papa John's Can't Just Close All Their Stores in Russia*, BUS. INSIDER (Mar. 19, 2022), <https://www.businessinsider.com/why-mcdonalds-burger-king-papa-johns-cant-close-russia-restaurants-2022-3> [<https://perma.cc/EP3Q-ELL8>] ("Rather than owning and operating their own stores in Russia, many fast-food chains franchise out their brand to other third-party operators. This means that they enter into a long-term agreement that permits a third party to use their brand. While they will give franchisees guidance and support to ensure the quality meets their own criteria, once they enter into this agreement, they won't have full control over these locations.").

¹⁹ *Id.*

²⁰ See generally, e.g., GERALD PACHOUD & SINIŠA MILATOVIĆ, U.N. DEV. PROGRAM, HEIGHTENED HUMAN RIGHTS DUE DILIGENCE FOR BUSINESS IN CONFLICT-AFFECTED CONTEXTS: A GUIDE (2022), <https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide> [<https://perma.cc/CLH4-M7YX>] (offering guidance to companies on their responsibilities in conflict-affected areas).

government's human rights abuses in Xianjiang and the prospect of its invasion of Taiwan.²¹ Furthermore, this Article argues that, in contrast to Russia, many companies find it difficult to exit China because of weaker demand factors and much stronger supply factors, thereby making it less likely that we will witness the same kind of exit from China as we witnessed from Russia.²²

Second, this Article's framework enables policymakers to evaluate better the effectiveness of U.S. foreign policy. The U.S. relied on financial and economic sanctions to deter Russia, but sanctions remain controversial because of their debatable effectiveness in changing the policies of the targeted regime while imposing significant humanitarian costs on civilian populations.²³ Due to these concerns, the United States opted for targeted sanctions, intended to punish specific Russian individuals and entities, while avoiding the humanitarian losses associated with country-wide comprehensive sanctions.²⁴ This Article's framework, however, challenges the bright line between comprehensive and targeted sanctions.²⁵ If economic sanctions imposed by *governments* are supplemented by private sanctions imposed by *businesses*, then the aggregate economic effects may be much greater than policymakers expect or intend, leading these targeted sanctions to more closely resemble comprehensive sanctions. This risk requires policymakers to consider whether they can measure and calibrate sanctions with any precision, given that their sanctions may be supplemented by corporate sanctions, which they do not control.²⁶ This Article's framework provides both advocates and skeptics of targeted sanctions

²¹ See, e.g., Demetri Sevastopulo, *US Navy Chief Warns China Could Invade Taiwan Before 2024*, FIN. TIMES (Oct. 20, 2022), <https://www.ft.com/content/1740a320-5dcb-4424-bfea-c1f22ecb87f7> [<https://perma.cc/8GBN-N2PC>] (explaining that Admiral Mike Gilday, Chief of Naval Operations, "has warned that the American military must be prepared for the possibility of a Chinese invasion of Taiwan before 2024, as Washington grows increasingly alarmed about the threat to the island"); *China: 83 Major Brands Implicated in Report on Forced Labour of Ethnic Minorities from Xinjiang Assigned to Factories Across Provinces; Includes Company Responses*, BUS. & HUM. RTS. RES. CTR. (Mar. 1, 2020), <https://www.business-humanrights.org/en/latest-news/china-83-major-brands-implicated-in-report-on-forced-labour-of-ethnic-minorities-from-xinjiang-assigned-to-factories-across-provinces-includes-company-responses/> [<https://perma.cc/MBN4-QCSG>].

²² See *infra* notes 240–313 and accompanying text.

²³ See *infra* notes 321–344 and accompanying text.

²⁴ *Remarks by President Biden on Russia's Unprovoked and Unjustified Attack on Ukraine*, *supra* note 1. The United States did impose comprehensive sanctions on certain regions of Ukraine. See *Ukraine-/Russia-Related Sanctions*, U.S. DEP'T TREASURY, <https://ofac.treasury.gov/faqs/1009> [<https://perma.cc/H2BD-6RDB>] (explaining that Executive Order [E.O.] 14065 targets the so-called Donetsk People's Republic and Luhansk People's Republic regions of Ukraine).

²⁵ See *infra* notes 321–344 and accompanying text.

²⁶ See, e.g., Robert Cooter & Ariel Porat, *Should Courts Deduct Nonlegal Sanctions from Damages?*, 30 J. LEGAL STUD. 401, 402 (2001) ("We will argue that courts should award compensatory damages minus the benefits of the nonlegal sanction.").

with guidance on when we might expect businesses to act this way, which can guide policymakers on when and how to use economic sanctions.

Third, this framework guides executives on how they can prepare to use corporate foreign policies in the next humanitarian crisis. According to the Council on Foreign Relations, there are over two dozen current global conflicts.²⁷ In addition to armed conflict, climate change may also increase the frequency and intensity of humanitarian crises caused by flooding, wildfires, cyclones, and drought.²⁸ These crises will challenge businesses and their leaders to respond. Businesses' ability to do so will depend on their investment in supply factors. In order to use corporate foreign policies effectively, executives need to understand the contractual, organizational, and regulatory factors that facilitate or impede their ability to meet the expectations of their stakeholders in a humanitarian crisis. Without this knowledge, executives may neglect important choices on organizational structure, contract design, strategic partnerships, and other decisions that can expose them to legal and reputational risks in a crisis.

Part I provides an overview of the Russian invasion of Ukraine, while Part II identifies the motivations, objectives, and mechanisms of corporate foreign policy.²⁹ Part III explains the market for corporate foreign policies by examining the demand factors that incentivize a business to adopt a particular foreign policy (such as pressure from governments, consumers, and investors) and the supply factors that enable or restrict a business's ability to meet these expectations (such as business model, contract design, international investment law, political risk insurance, and organizational structure).³⁰ Part IV applies this Article's framework to the question of whether companies will similarly exit China because of concerns about the Chinese government's human rights abuses and the risk of military aggression towards Taiwan.³¹ Part V concludes with lessons for both policymakers and business executives.³² For policymakers, this Article explains how the phenomenon of corporate sanctioning can

²⁷ *Global Conflict Tracker*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/global-conflict-tracker> [<https://perma.cc/8BX5-PMFU>].

²⁸ See, e.g., Matthew Cappucci, *Fires, Floods, and Drought: Scenes of Extreme Weather from Space*, WASH. POST (July 27, 2022), <https://www.washingtonpost.com/climate-environment/2022/07/27/extreme-weather-space-fires-floods/> [<https://perma.cc/MB7H-8ZWN>] (summarizing climate change's impact on natural disasters and the subsequent crises in their wake); Gloria Dickie, *Climate Change Is Driving 2022 Extreme Heat and Flooding*, REUTERS (June 28, 2022), <https://www.reuters.com/world/climate-change-is-driving-2022-extreme-heat-flooding-2022-06-28/> [<https://perma.cc/R36Y-FW4G>] (explaining that heatwaves, drought, wildfire, cyclones, and flooding are all intensified by climate change and will continue to intensify).

²⁹ See *infra* notes 35–100 and accompanying text.

³⁰ See *infra* notes 101–238 and accompanying text.

³¹ See *infra* notes 239–314 and accompanying text.

³² See *infra* notes 315–423 and accompanying text.

make it challenging for government actors to predict or calibrate the effects of economic sanctions.³³ For business executives, this Article provides guidance on how to better prepare for the next crisis, such as evaluating (i) a business model's flexibility for centralized or decentralized decision-making, (ii) contract design that enables or restricts adaptation, and (iii) whether a company can offer humanitarian assistance early, in-kind, and in partnership with non-governmental organizations (NGOs).³⁴

I. THE 2022 RUSSIAN INVASION OF UKRAINE

On February 24, 2022, Russian troops launched a full-scale military invasion of Ukraine:

The invasion started with about 100 missiles fired from both land- and sea-based platforms, and then with ground incursions on three main axes of assault: in the north, from Belarus down towards Kyiv; in the east, from western Russia down towards Kharkiv; and in the south, from Crimea up to Kherson.³⁵

Almost a year after the war began, the Office of the United Nations High Commissioner for Human Rights recorded 18,483 civilian casualties in Ukraine, which included 7,068 killed and 11,415 injured.³⁶ The United Nations Office for the Coordination of Humanitarian Affairs reported that, as of August 2023, there were 5.09 million internally displaced persons in Ukraine.³⁷

This invasion was immediately condemned by global bodies and national governments.³⁸ On March 2, 2022, the United Nations General Assembly adopted a resolution that, among other things, reaffirmed the “sovereignty, independence, unity and territorial integrity of Ukraine”; deplored “the aggression by the Russian Federation against Ukraine in violation of Article 2(4) of the Charter”; and demanded “that the Russian Federation immediately, completely and unconditionally withdraw all of its military forces from the territo-

³³ See *infra* notes 319–356 and accompanying text.

³⁴ See *infra* notes 357–423 and accompanying text.

³⁵ Eleanor Watson, *100 Days of War in Ukraine: A Timeline*, CBS NEWS (June 3, 2022), <https://www.cbsnews.com/news/ukraine-russia-war-timeline-100-days/> [<https://perma.cc/YD2H-FXMY>].

³⁶ *Ukraine: Civilian Casualty Update 23 January 2023*, U.N. OFF. HIGH COMM’R HUM. RTS. (Jan. 23, 2023), <https://www.ohchr.org/en/news/2023/01/ukraine-civilian-casualty-update-23-january-2023> [<https://perma.cc/UEU6-UNTK>].

³⁷ *Ukraine Humanitarian Response 2023: Situation Report*, U.N. OFF. FOR COORDINATION HUMANITARIAN AFFS. (Aug. 3, 2023), <https://reports.unocha.org/en/country/ukraine/> [<https://perma.cc/26SL-ZU8V>].

³⁸ See, e.g., G.A. Res. ES-11/1, at 3 (Mar. 2, 2022), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/293/36/PDF/N2229336.pdf?OpenElement> [<https://perma.cc/6PRY-ELTL>] (condemning the Russian invasion of Ukraine).

ry of Ukraine within its internationally recognized borders.”³⁹ The United Nations Human Rights Council established an independent international commission of inquiry, and the International Court of Justice ordered Russia “to immediately suspend its military operations in Ukraine.”⁴⁰ Governments from around the world also pressured Russia to end its attack by issuing economic sanctions.⁴¹ Beginning on February 22, 2022, the United States announced a series of sanctions against Russian banks, defense companies, the technology sector, state-owned enterprises, and individuals.⁴² The European Union and foreign governments also issued their own sanctions.⁴³

In January 2023, the U.S., Germany, and other countries pledged to send military tanks to Ukraine to help with its defenses.⁴⁴ The U.S. had already provided over \$46 billion in military aid to Ukraine,⁴⁵ but on January 25, 2023, President Biden announced that the U.S. would now send “a battalion of 31 M1 Abrams tanks, the Army’s premier main battle tank.”⁴⁶ It took months, however, before Ukraine could use the tanks because of the need to train

³⁹ *Id.*

⁴⁰ *The UN and the War in Ukraine: Key Information*, U.N. REG’L INFO. CTR. FOR W. EUR., <https://unic.org/en/the-un-and-the-war-in-ukraine-key-information/#:~:text=Aggression%20against%20Ukraine,Charter%20of%20the%20United%20Nations> [https://perma.cc/FDC7-9855] (Aug. 24, 2023).

⁴¹ See, e.g., *Fact Sheet: United States Imposes First Tranche of Swift and Severe Costs on Russia*, THE WHITE HOUSE (Feb. 22, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/22/fact-sheet-united-states-imposes-first-tranche-of-swift-and-severe-costs-on-russia/> [https://perma.cc/3JAB-BCN9]; *Russia—Country Commercial Guide*, U.S. DEP’T COM., (July 21, 2022), <https://www.trade.gov/country-commercial-guides/russia-sanctions-framework> [https://perma.cc/5237-2836] (announcing the United States’ sanctions against Russia for its invasion of Ukraine).

⁴² *Supra* note 41.

⁴³ *Timeline—EU Restrictive Measures Against Russia over Ukraine*, EUR. COUNCIL, <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/history-restrictive-measures-against-russia-over-ukraine/> [https://perma.cc/7ZL9-EJJ3].

⁴⁴ Michael R. Gordon & Gordon Lubold, *U.S., Germany Approve Sending Tanks to Ukraine*, WALL ST. J. (Jan. 25, 2023), <https://www.wsj.com/articles/germany-agrees-to-send-tanks-to-ukraine-11674643787> [https://perma.cc/NT97-LWEP]; see also Brendan Cole, *Full List of NATO Countries Sending Tanks to Ukraine*, NEWSWEEK (Jan. 25, 2023), <https://www.newsweek.com/russia-ukraine-leopard-tanks-germany-nato-scholz-putin-zelensky-1776426> [https://perma.cc/8HCA-R4JP] (reporting that “[a] senior Ukrainian official told ABC News that a coalition of 12 countries had pledged [main battle tanks] to Ukraine at last Friday’s summit at Ramstein US Air Force Base in Germany of allied nations”).

⁴⁵ See Jonathan Masters & Will Merrow, *How Much Aid Has the U.S. Sent Ukraine? Here Are Six Charts*, COUNCIL ON FOREIGN RELS. (July 10, 2023), <https://www.cfr.org/article/how-much-aid-has-us-sent-ukraine-here-are-six-charts> [https://perma.cc/94QT-7TE4] (illustrating that American aid to Ukraine includes \$8.9 billion in security assistance, \$12.7 billion in weapons and equipment, and \$1.37 billion in grants and loans for military equipment).

⁴⁶ Lara Seligman, *U.S. to Send 31 Abrams Tanks to Ukraine, in Major Reversal*, POLITICO (Jan. 25, 2023), <https://www.politico.com/news/2023/01/25/u-s-to-send-31-abrams-tanks-to-ukraine-in-major-reversal-00079437#:~:text=President%20Joe%20Biden%20announced%20on,in%20its%20fight%20against%20Russia> [https://perma.cc/EPK3-SG82].

Ukrainian forces, establish supply lines for the tanks, and procure the tanks from the defense sector because they did not come from current U.S. stocks.⁴⁷ These commitments came as Ukraine mounted a “spring offensive,” while Russian forces also prepared new military strategies.⁴⁸ On January 26, 2023, Russian forces launched a new wave of missiles at Ukraine “as officials in Moscow warned of consequences for Western pledges to send dozens of battle tanks to Ukraine.”⁴⁹ According to the *Wall Street Journal*, Kremlin spokesman Dmitry Peskov said “that Moscow perceives the deliveries of Western weapons systems, including tanks, as direct involvement in the conflict.”⁵⁰

It was not only governments that took action in response to Russia’s invasion. Hundreds of companies—including Nike, Apple, Netflix, IKEA, HP, and IBM, among others—suspended their operations or left Russia, thereby imposing their own costs on the Russian economy.⁵¹ These companies, as well as many others, also offered aid to Ukrainians affected by the war through cash donations to relief organizations or the provision of in-kind goods and services.⁵² The following Part provides a framework to understand these corporate responses by identifying the motivations, objectives, and mechanisms that characterize the exercise of corporate foreign policy.⁵³

⁴⁷ *Id.*

⁴⁸ Ben Hall, Christopher Miller & Laura Pitel, *Will Tanks Set Up Ukraine for a Spring Offensive?*, FIN. TIMES (Jan. 27, 2023), <https://www.ft.com/content/959c4a23-676e-49d7-b25e-409fa85c397e> [https://perma.cc/UY79-8REE]; David E. Sanger & Eric Schmitt, *The NATO Alliance Is Holding Strong on Ukraine. But Fractures Are Emerging*, N.Y. TIMES (Jan. 21, 2023), <https://www.nytimes.com/2023/01/20/us/politics/nato-alliance-ukraine.html> [https://perma.cc/VE4M-K4KU]; Lara Seligman, *‘This Is Not a Moment to Slow Down’: U.S. Says Ukraine Making New Gains*, POLITICO (Jan. 23, 2023), <https://www.politico.com/news/2023/01/23/u-s-ukraine-russia-military-gains-00079041> [https://perma.cc/Y75N-PMUU].

⁴⁹ Matthew Luxmoore & Georgi Kantchev, *Ukraine Under New Missile Barrage as Russia Warns West About Tank Pledges*, WALL ST. J. (Jan. 26, 2023), <https://www.wsj.com/articles/ukraine-under-new-missile-barrage-as-russia-warns-west-about-tank-pledges-11674727074> [https://perma.cc/PG3S-ZASJ].

⁵⁰ *Id.*; see also Léonie Chao-Fong, Martin Belam & Samantha Lock, *Russia-Ukraine War Live: Kremlin Warns West That Sending More Weapons to Kyiv Will Lead to ‘Significant Escalation’—As It Happened*, THE GUARDIAN (Jan. 30, 2023), <https://www.theguardian.com/world/live/2023/jan/30/russia-ukraine-war-zelenskiy-faster-weapons-supplies-fighting-donetsk-tough-live> [https://perma.cc/4AXL-CGG7] (creating a live timeline of events in the Ukraine war).

⁵¹ See *infra* notes 89–92 and accompanying text (listing the major companies which pulled out of Russia, going beyond the requirements of the international sanctions).

⁵² See *infra* notes 89–92 and accompanying text.

⁵³ See Part II.

II. WHAT IS CORPORATE FOREIGN POLICY? MOTIVATIONS, OBJECTIVES, AND MECHANISMS

Corporate foreign policy addresses one primary audience—a national government—with the objective of influencing or altering that government’s foreign policy towards another government or international organization. We saw corporate foreign policy at work as companies imposed private sanctions on Russia by closing stores, postponing investments or leaving altogether.⁵⁴ Companies also exhibited corporate foreign policy by offering humanitarian assistance to those in Ukraine affected by the war.⁵⁵

Section A of this Part discusses the drivers that lead corporate leaders to adopt corporate foreign policies, such as *ethical considerations*, *reputational risks*, and managing the *legal environment*.⁵⁶ Section B identifies key characteristics of corporate foreign policies concerning *objectives*, *targets*, and *mechanisms*.⁵⁷

A. Motivations: Ethical Considerations, Reputational Risks, and Legal Sanctions

First, *ethical considerations* motivated company leaders to exit Russia in order to punish wrongful behavior.⁵⁸ Many CEOs justified their decisions to scale back operations or exit completely by citing the horrific humanitarian crisis the Russian invasion caused.⁵⁹

Second, there is no denying the significant *reputational consequences* that threatened businesses perceived as contributing to the war.⁶⁰ Consider the example of Shell, who had to apologize for receiving a shipment of Russian

⁵⁴ See *supra* notes 12–15 (detailing the responses of companies in the wake of the Russian invasion).

⁵⁵ See *supra* notes 7–11 (discussing the humanitarian response of companies after the Russian invasion).

⁵⁶ See *infra* notes 58–75 and accompanying text.

⁵⁷ See *infra* notes 76–100 and accompanying text.

⁵⁸ Kilpatrick, *supra* note 15.

⁵⁹ See, e.g., *Message from CEO Linda Rendle on Ukraine and Business in Russia*, CLOROX CO. (Mar. 9, 2022), <https://www.thecloroxcompany.com/blog/message-from-ceo-on-ukraine-and-business-in-russia/#:~:text=As%20you%20may%20be%20aware,all%20business%20activity%20in%20Russia> [https://perma.cc/P299-E64N] (announcing that “[b]ased on Russia’s continued war with Ukraine,” Clorox “decided to suspend all business activity in Russia,” because the “decision is aligned with [Clorox’s] purpose and values to do the right thing and put people at the center of everything we do”).

⁶⁰ See, e.g., *Shell Announces Intent to Withdraw from Russian Oil and Gas*, SHELL (Mar. 8, 2022), [https://www.shell.com/media/news-and-media-releases/2022/shell-announces-intent-to-withdraw-from-russian-oil-and-gas.html#:~:text=Shell%20plc%20\(Shell\)%20today%20announced,aligned%20with%20new%20government%20guidance](https://www.shell.com/media/news-and-media-releases/2022/shell-announces-intent-to-withdraw-from-russian-oil-and-gas.html#:~:text=Shell%20plc%20(Shell)%20today%20announced,aligned%20with%20new%20government%20guidance) [https://perma.cc/PU8K-YYFY] (apologizing to consumers for continuing business with Russia after the invasion of Ukraine).

crude oil one week after the invasion began.⁶¹ This purchase caused a public outcry, exacerbated by criticism from Ukrainian Minister for Foreign Affairs, Dmytro Kuleba, on Twitter.⁶² In response, Shell Chief Executive Officer, Ben van Beurden, explained, “[w]e are acutely aware that our decision last week to purchase a cargo of Russian crude oil . . . was not the right one and we are sorry.”⁶³ Shell apologized, despite its controversial purchase being legal at the time.⁶⁴ Shell’s decision to quit Russia cost it five billion dollars, demonstrating the significant financial costs of corporate sanctioning.⁶⁵ Companies also offer humanitarian assistance in order to reap reputational benefits, such as “increas[ing] employee motivation and portray[ing] a company as an attractive employer.”⁶⁶ Additionally, “through engagement in disaster relief efforts, the brand value of a company and customer attraction might increase, which could lead to higher market shares.”⁶⁷

Third, many companies exited Russia because of the *legal environment* created by the multiple waves of sanctions the United States and other gov-

⁶¹ *Id.*

⁶² Archie Hunter & Laura Hurst, *Shell Says It Bought Russian Oil After Government Talks*, BLOOMBERG (Mar. 5, 2022), <https://www.bloomberg.com/news/articles/2022-03-05/shell-says-russian-oil-buying-was-made-after-government-talks> [<https://perma.cc/PJ2G-MN7P>]; Dmytro Kuleba (@DmytroKuleba), TWITTER (Mar. 5, 2022, 7:45 AM), <https://twitter.com/DmytroKuleba/status/150009002387746692?s=20&t=MbzG6NNsUAWfVlaHUSa3Mg> [<https://perma.cc/Q37H-PG62>].

⁶³ *Shell Announces Intent to Withdraw from Russian Oil and Gas*, *supra* note 60.

⁶⁴ Hunter & Hurst, *supra* note 62; see also Factbox: *Who Is Buying Russian Crude Oil and Who Has Stopped*, REUTERS (May 31, 2022), <https://www.reuters.com/business/energy/who-is-still-buying-russian-crude-oil-2022-03-21/> [<https://perma.cc/4FSJ-2HC3>] (explaining that “[e]ven before the adoption of the ban, at least 26 major European refiners and trading companies have voluntarily suspended spot purchases or announced plans to phase out a combined 2.1 million barrels per day (bpd) of Russian imports”); Hannah Towey, *Experts Say the Shipping Industry’s ‘Moral Sanctions’ Against Russian Trade Are Unlike Anything ‘In the History of Mankind,’* BUS. INSIDER (Apr. 7, 2022), <https://www.businessinsider.in/thelife/news/experts-say-the-shipping-industrys-moral-sanctions-against-russian-trade-are-unlike-anything-in-the-history-of-mankind/articleshow/90713845.cms> [<https://perma.cc/6YXA-HR5S>] (explaining that corporate self-sanctioning in the wake of the Russian invasion of Ukraine is without historical precedent).

⁶⁵ See Marie Solis & Jason Karaian, *Shell Says It Expects to Lose up to \$5 Billion for Pulling Out of Russia*, N.Y. TIMES (Apr. 7, 2022), <https://www.nytimes.com/2022/04/07/business/shell-russia.html#:~:text=In%20an%20update%20to%20investors,from%20its%20exposure%20to%20Russia.&text=The%20British%20oil%20giant%20Shell,%244%20billion%20to%20%245%20billion> [<https://perma.cc/A5B4-X2HG>] (explaining that Shell’s estimated losses are “among the largest publicly announced financial hits by any of the hundreds of companies that have curtailed their operations in Russia or withdrawn entirely since its invasion of Ukraine” but that Shell may still have a profitable year because of higher energy prices).

⁶⁶ Lothar Rieth, *Humanitarian Assistance and Corporate Social Responsibility*, in HUMANITARIAN ASSISTANCE: IMPROVING U.S.-EUROPEAN COOPERATION 293, 303 (Julia Steets & Daniel S. Hamilton eds., 2009).

⁶⁷ *Id.*

ernments introduced.⁶⁸ Some of these exit decisions were direct consequences of the sanctions: companies had to end their ties with Russian entities and sectors or face the consequences.⁶⁹ Other decisions were based on the indirect effects of the sanctions.⁷⁰ For example, some company leaders acknowledged that their companies left Russia because of the worsening economic environment, exacerbated by U.S. sanctions.⁷¹ Other companies feared that it was only a matter of time before economic sanctions affected their operations after the U.S. acknowledged that it, in cooperation with foreign leaders, introduced “unprecedented” economic sanctions to deter Russia’s attacks.⁷² The U.S. government’s commitment to using, and escalating, economic sanctions may have encouraged some businesses to scale back or terminate their operations out of a fear of future sanctions.⁷³ For example, some businesses restricted or terminated their operations in Russia even before they were legally required to do

⁶⁸ See Ama A. Adams, Brendan C. Hanifin & Emerson Siegle, *Russia/Ukraine Crisis: U.S. Sanctions and Export Controls Escalation Continues*, ROPES & GRAY LLP (May 9, 2022), <https://www.ropesgray.com/en/insights/alerts/2022/05/russia-ukraine-crisis-us-sanctions-escalation-continues> [<https://perma.cc/XW8K-KGGD>] (announcing the government’s requirement that companies sever their business relations in Russia).

⁶⁹ *Id.*

⁷⁰ See, e.g., John Simons, *Is Wall Street Doing Enough to Ostracize Russia? “That’s Not Our Job,” Says Goldman Sachs CEO*, TIME (Mar. 13, 2022), <https://time.com/6157107/david-solomon-goldman-sachs-ceo-interview/> [<https://perma.cc/Y8MU-8KFG>] (discussing the business world’s view of the Russian invasion of Ukraine).

⁷¹ See *id.* (stating that “[i]n his memo, Solomon said the 153-year-old banking giant is ‘winding down its business in Russia’ in compliance with U.S. sanctions, and committing \$2 million to organizations offering food, clothing, medical care, and other forms of emergency assistance to Ukrainian families”).

⁷² See *Fact Sheet: United States and G7 Partners Impose Severe Costs for Putin’s War Against Ukraine*, THE WHITE HOUSE (May 8, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/08/fact-sheet-united-states-and-g7-partners-impose-severe-costs-for-putins-war-against-ukraine/#:~:text=The%20United%20States%20has%20already,needs%20to%20fund%20his%20war> [<https://perma.cc/2AS4-M3NG>] (describing that the United States’ “sanctions are already exacting an immense toll on Russia’s economy and our export controls have strangled Russia’s access to critical technology and the supply chains it needs to sustain its military ambitions”); see also *U.S. Treasury Announces Unprecedented & Expansive Sanctions Against Russia, Imposing Swift and Severe Economic Costs*, U.S. DEP’T TREASURY (Feb. 24, 2022), <https://home.treasury.gov/news/press-releases/jy0608> [<https://perma.cc/BNM4-SHRQ>] (noting that “[t]he United States took significant and unprecedented action to respond to Russia’s further invasion of Ukraine by imposing severe economic costs that will have both immediate and long-term effects on the Russian economy and financial system”).

⁷³ See Michelle Price & Sumeet Chatterjee, *Focus: Global Banks Eschew Risk As They Navigate Russia Sanctions Quagmire*, REUTERS (Mar. 2, 2022), <https://www.reuters.com/business/finance/global-banks-eschew-risk-they-navigate-russia-sanctions-quagmire-2022-03-02/#:~:text=WASHINGTON%20FONG%20KONG%2C%20March%202,country%2C%20said%20bankers%20and%20lawyers> [<https://perma.cc/C6DN-NV2H>] (describing that with regard to the sanctions chill on future deals, “[i]t’s not just managing risk from the existing sanctions, but also thinking about what more could possibly happen on that front . . . [n]o one would like to sign a billion dollar trade finance deal only to be told a week later that the entity in Russia has also been added to the sanction list”).

so.⁷⁴ Other companies chose to do the same, even when the scope of government sanctions never covered their operations.⁷⁵

B. Features: Objectives and Mechanisms

As used in this Article, corporate foreign policy refers to the relationship between a business and a national government. Specifically, concerning the former's response to the latter's policies towards another national government or international organization. Its objective is to influence the national foreign policy of one government towards another. Because corporate foreign policy is directed towards government actors, it requires that companies use mechanisms that are more likely to change government behavior. It is therefore unsurprising that companies adopt mechanisms that governments deploy in their own national foreign policies: economic sanctions and humanitarian assistance.

1. Objectives

The objective of corporate foreign policy is to influence the national foreign policy of one government towards another. Following the Russian invasion of Ukraine, companies had to develop a foreign policy towards both countries. Regarding Russia, companies had to decide if they were going to deter Russia's attack on Ukraine by choosing to suspend or exit operations. Businesses used the leverage they possessed—to stay or go—to take a position on Russia's actions concerning the territorial integrity of Ukraine.⁷⁶ Businesses

⁷⁴ See Kilpatrick, *supra* note 15 (indicating that “[c]ommercial actors around the world are reacting to Russia’s invasion of Ukraine by voluntarily reducing their exposure to Russia-connected trades”); see also John E. Katsos, Jason Miklian & John J. Forer, *In Light of Russia Sanctions, Consider Your Conditions for Doing Business in Other Countries*, HARV. BUS. REV. (Mar. 15, 2022), <https://hbr.org/2022/03/in-light-of-russia-sanctions-consider-your-conditions-for-doing-business-in-other-countries> [<https://perma.cc/7XDA-4EE7>] (“[M]any firms have self-imposed sanctions, restrictions and withdrawals far beyond what government sanctions required. . . . [T]hese responses illustrate a new operational approach for companies doing business in other countries with reprehensible human rights violations.”); Sarah Gonzalez, *Russia Lowers Its Oil Prices After Buyers Self-sanction*, NPR (Mar. 4, 2022), <https://www.npr.org/2022/03/04/1084448619/russia-lowers-its-oil-prices-after-buyers-self-sanction#:~:text=Russia%20lowers%20its%20oil%20prices%20after%20buyers%20self%20sanction%20%3A%20NPR&text=Russia%20lowers%20its%20oil%20prices%20after%20buyers%20self%20sanction%20Sanctions,are%20self%20imposing%20sanctions%20anyway> [<https://perma.cc/369L-SENK>] (stating that “[s]anctions against Russia have so far steered clear of Russian oil. But some companies are self[-]imposing sanctions anyway”).

⁷⁵ Kilpatrick, *supra* note 15; Gonzalez, *supra* note 74; Katsos et al., *supra* note 74.

⁷⁶ See Factbox: *Companies Count the Cost of Ditching Russia*, REUTERS (Jan. 18, 2023), [https://www.reuters.com/markets/europe/companies-count-cost-ditching-russia-2022-11-03/#:~:text=Nov%203%20\(Reuters\)%20%2D%20Hundreds,24%20have%20reported%20associated%20losses.&text=The%20German%20sportswear%20company%20warned,\(%24498%20million\)%20in%202022](https://www.reuters.com/markets/europe/companies-count-cost-ditching-russia-2022-11-03/#:~:text=Nov%203%20(Reuters)%20%2D%20Hundreds,24%20have%20reported%20associated%20losses.&text=The%20German%20sportswear%20company%20warned,(%24498%20million)%20in%202022) [<https://perma.cc/XMD4-DDRW>] (reporting the financial impact on companies that decided to exit Russia, categorized by industry); *Here’s How Much It Is Costing Companies to Leave Russia*, N.Y.

closed their stores, sold their assets, and unwound their operations—sometimes at significant financial loss.⁷⁷ These business decisions collectively increased the costs the Russian economy suffered in response to the Russian government's aggression towards Ukraine.⁷⁸

Businesses also developed a foreign policy towards Ukraine in order to aid its government and citizens following the Russian forces' attacks.⁷⁹ Companies acted upon their foreign policy through the provision of donations in kind, humanitarian assistance, or monetary payments to the Ukrainian government and population.⁸⁰ Such assistance is also evidence of corporate foreign policy because it affects the ability of Ukraine to defend itself and ameliorate the suffering of its population in the wake of the attacks.

2. Mechanisms of Corporate Foreign Policy: Sanctions and Humanitarian Assistance

Corporate foreign policy uses the traditional tools of government foreign policy, albeit in a way that is adapted to private actors.⁸¹ For example, economic sanctions refer to the “withdrawal of customary trade and financial relations for foreign- and security-policy purposes” and include “travel bans, asset freezes, arms embargoes, capital restraints, foreign aid reductions, and trade restrictions.”⁸² Sanctions are a staple of United States foreign policy, and the U.S. deployed sanctions in full in response to the Russian invasion of Ukraine.⁸³

Early in the war, the United States introduced an initial tranche of economic sanctions against Russian financial institutions and Russian elites.⁸⁴ In subsequent months, the United States expanded its targets to include a variety

TIMES (Apr. 11, 2022), <https://www.nytimes.com/2022/04/11/business/costs-companies-leaving-russia.html> [<https://perma.cc/3UGD-UW73>] (summarizing the pros and cons of a company's decision to exit Russia).

⁷⁷ *Factbox: Companies Count the Cost of Ditching Russia*, *supra* note 76; *Here's How Much It Is Costing Companies to Leave Russia*, *supra* note 76.

⁷⁸ *See infra* notes 321–344.

⁷⁹ *See infra* notes 81–100 and accompanying text.

⁸⁰ *See infra* notes 384–423 and accompanying text.

⁸¹ *See infra* notes 82–100.

⁸² Jonathan Masters, *What Are Economic Sanctions?*, COUNCIL ON FOREIGN RELS. (Aug. 12, 2019), <https://www.cfr.org/background/what-are-economic-sanctions> [<https://perma.cc/FV69-N6WF>].

⁸³ *See e.g.*, Ashley Deeks & Andrew Hayashi, *Tax Law as Foreign Policy*, 170 U. PA. L. REV. 275, 286 (2022) (explaining that sanctions have “become a preferred policy tool because they allow states to respond to a national security threat or foreign policy challenges without necessarily resorting to military force”); Lin, *supra* note 5, at 21 (explaining that the United States is a leading force in the use of economic sanctions, anti-money laundering prohibitions, and banking restrictions).

⁸⁴ *Fact Sheet: United States Imposes First Tranche of Swift and Severe Costs on Russia*, *supra* note 41.

of Russian sectors, entities, and individuals.⁸⁵ The European Union and other foreign governments also introduced their own sanctions against Russian targets.⁸⁶ By April 2022, the White House announced that “[t]he United States and more than 30 allies and partners across the world have levied the most impactful, coordinated, and wide-ranging economic restrictions in history,”⁸⁷ leading to predictions of a fifteen percent contraction of the Russian GDP—equivalent to the combined gains of the previous fifteen years.⁸⁸

But governments were not the only entities pressuring Russia to end its attack on Ukraine.⁸⁹ Following the invasion, dozens of businesses suspended operations, postponed new investments, or completely exited Russia.⁹⁰ Amazon, Marriott, Hugo Boss, 3M, Philip Morris International, PepsiCo, Coca-Cola, IBM, Adidas, Nissan, Volkswagen, Oracle, Boeing, and hundreds of others chose to postpone new investments or suspend their Russian operations.⁹¹ Disney, Warner Bros., and Sony Pictures Entertainment all announced plans to halt film releases in Russia for the indefinite future.⁹²

⁸⁵ See, e.g., *Fact Sheet: United States Takes Further Actions to Counter Sanctions Evasion by Russia*, THE WHITE HOUSE (June 2, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/02/fact-sheet-united-states-takes-further-actions-to-counter-sanctions-evasion-by-russia/> [<https://perma.cc/Q3MS-3TD2>] (discussing new sanctions on Russian oligarchs, elites, government officials, and business leaders, among other steps).

⁸⁶ See *Fact Sheet: United States and G7 Partners Impose Severe Costs for Putin’s War Against Ukraine*, *supra* note 72 (“[T]he United States, the European Union and G7 committed to ratchet up these costs by collectively taking further measures, consistent with each partner’s respective legal authorities and processes.”).

⁸⁷ *Fact Sheet: United States, G7 and EU Impose Severe and Immediate Costs on Russia*, THE WHITE HOUSE (Apr. 6, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/06/fact-sheet-united-states-g7-and-eu-impose-severe-and-immediate-costs-on-russia/#:~:text=April%2006%2C%202022-,FACT%20SHEET%3A%20United%20States%2C%20G7%20and%20EU%20Impose%20Severe,and%20Immediate%20Costs%20on%20Russia&text=Today%2C%20the%20United%20States%2C%20with,in%20Ukraine%2C%20including%20in%20Bucha> [<https://perma.cc/2XBK-BLWJ>].

⁸⁸ *Id.*

⁸⁹ Marissa Dellatto & Mason Bissada, *Spotify, Nestle, S&P Global Ratings—Here Are the Companies Cutting Ties with Russia Over Ukraine Invasion*, FORBES (Mar. 25, 2022), <https://www.forbes.com/sites/marisadellatto/2022/03/16/verizon-pfizer-deutsche-bank-here-are-the-companies-cutting-ties-with-russia-over-ukraine-invasion/?sh=7d7d9d9041af> [<https://perma.cc/HNT3-RHY7>] (reporting the responses of various businesses in the wake of the Russian invasion of Ukraine).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Dawn Chmielewski, *Disney, Warner Bros., Sony Pausing Film Releases in Russia Over Ukraine Invasion*, REUTERS (Mar. 1, 2022), [https://www.reuters.com/lifestyle/disney-pausing-film-releases-russia-over-ukraine-invasion-2022-03-01/#:~:text=Ukraine%20invasion%20%7C%20Reuters-,Disney%2C%20Warner%20Bros.%2C%20Sony%20pausing%20film%20releases,in%20Russia%20over%20Ukraine%20invasion&text=Feb%2028%20\(Reuters\)%20%2D%20Hollywood,and%20the%20unfolding%20humanitarian%20crisis](https://www.reuters.com/lifestyle/disney-pausing-film-releases-russia-over-ukraine-invasion-2022-03-01/#:~:text=Ukraine%20invasion%20%7C%20Reuters-,Disney%2C%20Warner%20Bros.%2C%20Sony%20pausing%20film%20releases,in%20Russia%20over%20Ukraine%20invasion&text=Feb%2028%20(Reuters)%20%2D%20Hollywood,and%20the%20unfolding%20humanitarian%20crisis) [<https://perma.cc/8L3P-6RJU>].

Governments also rely on humanitarian assistance in their foreign policy.⁹³ The United States provides the most aid globally on an annual basis, giving almost \$13 billion in 2021 alone.⁹⁴ The United States donated, and continues to donate, the most humanitarian aid to Ukraine. The United States Agency for International Development (USAID) has administered approximately \$1.4 billion of the \$1.9 billion in humanitarian assistance that the United States government has provided since the start of the war.⁹⁵ USAID uses these funds to support the efforts of its partners, such as the UN Children's Fund, the UN World Food Program, and the UN World Health Organization.⁹⁶ According to USAID, humanitarian assistance supports the United States' foreign policy objectives in Europe: "Ukraine is the proving ground for numerous tools—including cyberattacks, disinformation, and targeted assassinations—in the arsenal of a key American adversary that could be used to threaten the United States and our allies."⁹⁷

Companies have similarly provided humanitarian assistance to Ukraine, its civilians, and international aid organizations.⁹⁸ For example, American Express and Hilton partnered "to donate one million room nights across Europe to refugees impacted by the crisis in Ukraine and to the first responders who are helping them."⁹⁹ Microsoft provided technology support, free of charge, to support Ukraine's "digital infrastructure," assisting the Ukrainian government and citizens alike.¹⁰⁰

Collectively, companies employed mechanisms associated with national foreign policy—sanctions and humanitarian assistance—in an attempt to influence or otherwise change the behavior of the Russian government. But why did they do it? Will they do it again in the face of other conflicts? The subsequent Parts explore these questions by examining the factors that led companies to use one or more of these mechanisms.

⁹³ *Refugee and Humanitarian Assistance*, U.S. DEP'T STATE, <https://www.state.gov/policy-issues/refugee-and-humanitarian-assistance/> [<https://perma.cc/D9DC-GRZC>] (discussing the United States' global role providing humanitarian aid).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See USAID, UKRAINE: COUNTRY DEVELOPMENT COOPERATION STRATEGY 2019–2024, at 2–3, https://www.usaid.gov/sites/default/files/2022-05/Ukraine_USAID_CDSCS_2019-2024_Public_EN_12.pdf [<https://perma.cc/UG4V-SJ7X>] (referencing the 2017 U.S. National Security Strategy and 2018 U.S. National Defense Strategy).

⁹⁸ *Hilton, American Express to Provide Up to 1 Million Rooms to Support Ukrainian Refugees*, *supra* note 11.

⁹⁹ *Id.*

¹⁰⁰ Brad Smith, *Extending Our Vital Technology Support for Ukraine*, MICROSOFT (Nov. 3, 2022), <https://blogs.microsoft.com/on-the-issues/2022/11/03/our-tech-support-ukraine/> [<https://perma.cc/5PAZ-M6MB>].

III. WHEN WILL A COMPANY ADOPT A FOREIGN POLICY? A MARKET FRAMEWORK

Why did some businesses leave while others did not? Did Apple leave Russia because it wanted to take a stance on the invasion, because of criticism from Ukrainian Minister Fedorov, or because it was more difficult for it to transfer cash from its Russian sales out of the country?¹⁰¹ The reality is that we may not know for certain—regarding Apple or the hundreds of companies that similarly left. What we do know is that there was significant corporate flight from Russia as companies suspended, terminated, or exited Russia even when not required to do so by sanctions.¹⁰² We also know that many of these decisions cost companies billions of dollars, but they still made the decisions nonetheless.¹⁰³ Why?

This Part introduces a market framework to help understand these decisions.¹⁰⁴ It explains that companies' decisions result from the interaction of two sets of factors: *demand factors* and *supply factors*. Section A of this Part discusses how demand factors are driven by the values and opinions of investors, consumers, and governments on the Russian invasion.¹⁰⁵ Section B, on the other hand, discusses *supply factors*, which enable or restrict a business's ability to make decisions that align with the values and opinions of those groups, such as business model, contract provisions, political risk insurance, international investment dispute resolution, and organizational preparedness for crisis response.¹⁰⁶

This is not an exhaustive list; there are additional factors that could have motivated individual companies. Instead, this is an illustrative list of the types of factors that could play a role and, critically, the important *interaction* between demand and supply factors. None of these factors alone explains why some

¹⁰¹ Sam Shead, *Apple's Decision to Stop Selling Products in Russia Puts Pressure on Other Smartphone Makers*, CNBC (Mar. 3, 2022), <https://www.cnbc.com/2022/03/03/apples-decision-to-halt-russia-sales-puts-pressure-on-samsung-google.html#:~:text=Apple%20announced%20the%20decision%20Tuesday,Ben%20Wood%20told%20CNBC%20Wednesday> [<https://perma.cc/6MF6-KBEC>]; Cat Zakrzewski & Gerrit De Vynck, *The Ukrainian Leader Who Is Pushing Silicon Valley to Stand Up to Russia*, WASH. POST (Mar. 2, 2022), <https://www.washingtonpost.com/technology/2022/03/02/mykhailo-fedorov-ukraine-tech/> [<https://perma.cc/Q5YU-VGUF>].

¹⁰² See, e.g., Dellatto & Bissada, *supra* note 89 (listing the companies punishing Russia in the wake of the invasion).

¹⁰³ *Companies Are Getting Out of Russia, Sometimes at a Cost*, N.Y. TIMES (Oct. 14, 2022), <https://www.nytimes.com/article/russia-invasion-companies.html#:~:text=Under%20pressure%20from%20investors%20and,and%20pausing%20sales%20in%20Russia.&text=After%20the%20Russian%20president%2C%20Vladimir,invasion%20of%20Ukraine%20on%20Feb> [<https://perma.cc/REE2-SUKM>].

¹⁰⁴ See *infra* notes 109–238 and accompanying text.

¹⁰⁵ See *infra* notes 109–169 and accompanying text.

¹⁰⁶ See *infra* notes 170–230 and accompanying text.

companies left while others did not. Instead, it is the interaction of both demand and supply factors that helps to explain company responses. It is tempting to focus solely on demand factors when explaining these company decisions. For example, consumer boycotts are often very public because of their ability to draw media attention.¹⁰⁷ Therefore, it is easy to attribute a company's exit to its consumers' values. But this Section explains that less visible factors—supply factors—are also critical in understanding corporate responses in war because they influence whether a company can listen to the preferences of its consumers.¹⁰⁸

A. Demand Factors

The Russian invasion of Ukraine was condemned by the United States and other governments for violating international law and causing a humanitarian crisis.¹⁰⁹ In the face of such global condemnation, consumers and investors also raised concerns about continued business operations in Russia, with many demanding an immediate exit and punishing those companies that refused to do so.¹¹⁰

This Section provides examples of how each of these groups influenced corporate sanctioning in response to the Russian invasion of Ukraine.¹¹¹ Subsection 1 discusses the influence of government actors.¹¹² Subsection 2 moves on to consumers and their impact on corporate foreign policy.¹¹³ Finally, Subsection 3 details the influence of the final group in demand factors: investors.¹¹⁴

1. Government Actors

The United States, the EU, and many countries across the globe imposed economic sanctions on Russia that required businesses to avoid certain Russian sectors, entities, or individuals.¹¹⁵ Apple moved out of Russia early, but com-

¹⁰⁷ See, e.g., Trefor Moss, *Adidas Seeks Redemption in China*, WALL ST. J. (May 21, 2023), <https://www.wsj.com/articles/adidas-seeks-redemption-in-china-a872665a> [<https://perma.cc/PP4P-JY EJ>] (illustrating the very public reaction Adidas had in response to a Chinese consumer boycott).

¹⁰⁸ See *infra* notes 170–230 and accompanying text.

¹⁰⁹ See, e.g., *Fact Sheet: United States, G7 and EU Impose Severe and Immediate Costs on Russia*, *supra* note 87 (discussing the United States' punitive actions towards Russia).

¹¹⁰ See *infra* notes 140–169 and accompanying text.

¹¹¹ See *infra* notes 115–169 and accompanying text.

¹¹² See *infra* notes 115–138 and accompanying text.

¹¹³ See *infra* notes 139–151 and accompanying text.

¹¹⁴ See *infra* notes 152–169 and accompanying text.

¹¹⁵ *Fact Sheet: United States, G7 and EU Impose Severe and Immediate Costs on Russia*, *supra* note 87. But some governments have pressured their companies to remain in Russia because of national interests. See, e.g., Juntaro Arai, *Japan Seeks to Stay in Russia's Sakhalin-1 Energy Project After Exxon Exit*, NIKKEI ASIA (Oct. 31, 2022), <https://asia.nikkei.com/Business/Energy/Japan-seeks->

mentators noted that banking sanctions had already restricted the ability of Apple to move cash from Russian sales out of the country, thereby making it more difficult to do business there.¹¹⁶ Microsoft's President and Vice-Chair, Brad Smith, explained that Microsoft's removal of RT and Sputnik content from its platforms was aligned with EU policies on the same.¹¹⁷ In a statement, Twitter's Vice President (VP) of Global Public Policy, Sinead McSweeney, explained: "The recently announced European Union (EU) sanctions legally require us to withhold certain state-affiliated media content in EU member states, and we are complying with this requirement."¹¹⁸

Government actors also influenced the voluntary sanctioning behavior of businesses.¹¹⁹ For example, some companies claimed that they were uncertain about the scope and application of government sanctions, and therefore choose to exit and avoid risk.¹²⁰ Others chose to scale back operations or exit Russia in anticipation of future sanctions.¹²¹ For example, in mid-March 2022, the EU imposed new sanctions on Russia that prohibited investments in the Russian energy sector and impacted major Russian energy companies Rosneft, Transneft, and Gazprom Neft.¹²² Yet, it still allowed EU members to purchase oil from these companies.¹²³ Two weeks earlier, companies announced plans to

to-stay-in-Russia-s-Sakhalin-1-energy-project-after-Exxon-exit#:~:text=TOKYO%20%2D%2D%20The%20Japanese%20government,over%20its%20invasion%20of%20Ukraine. [https://perma.cc/C9RG-F37K] ("As Japan relies on the Middle East for 95% of its crude imports, it sees ownership in Russian projects as essential to ensuring a stable supply of energy.").

¹¹⁶ Shead, *supra* note 101 (quoting tech analysts).

¹¹⁷ Brad Smith, *Digital Technology and the War in Ukraine*, MICROSOFT: MICROSOFT ON THE ISSUES (Feb. 28, 2022), <https://blogs.microsoft.com/on-the-issues/2022/02/28/ukraine-russia-digital-war-cyberattacks/> [https://perma.cc/DF5R-E23D].

¹¹⁸ Sinéad McSweeney (@smcs), TWITTER: BLOG (Mar. 16, 2022), https://blog.twitter.com/en_us/topics/company/2022/our-ongoing-approach-to-the-war-in-ukraine [https://perma.cc/9MDZ-3M6M].

¹¹⁹ See, e.g., Anete Pajuste & Anna Toniolo, *Corporate Response to the War in Ukraine: Stakeholder Governance or Stakeholder Pressure?* 1, 21 (Eur. Corp. Governance Inst.- Fin. Working Paper No. 839/2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4183604 [https://perma.cc/RZ6L-F2KA] ("After the imposition of sanctions, most Western corporations—aside from those whose business directly relates to sanctioned activities such as military production—have remained free to conduct business in Russia. Most of the companies that left Russia were not directly affected by the measures. Nonetheless, the array of sanctions has created an environment of legal and financial hostility that has made compliance complicated and has often impaired the ability of firms to continue their Russian operations as before.").

¹²⁰ See Kilpatrick, *supra* note 15 (explaining why some companies exited Russia); Breen, *supra* note 15 at 262 (explaining that more nuanced compliance programs are more difficult to automate and therefore more expensive, leading companies to "overcomply" to manage both risks and costs).

¹²¹ *Supra* note 120.

¹²² Reuters, *EU Bans Investment in Russian Energy in New Sanctions Barrage*, CNN: BUS. (Mar. 15, 2022), <https://www.cnn.com/2022/03/15/business/russia-europe-sanctions-energy/index.html> [https://perma.cc/85VB-2RQE].

¹²³ *Id.*

divest their equity stakes in these same businesses.¹²⁴ By March 1, Shell announced its intent to sell its equity stake in the Russian state-owned energy company Gazprom,¹²⁵ which followed BP's similar announcement to sell its 19.75% stake in Russian state-company Rosneft.¹²⁶ According to media reports, "[t]he British government pressured both firms to cut ties with Russia."¹²⁷

Ukrainian government officials used Twitter to shame businesses publicly for operating in Russia and to praise other businesses for assisting with humanitarian relief.¹²⁸ In addition to Ukrainian Minister Mykhailo Fedorov's exchange with Elon Musk,¹²⁹ Ukrainian Prime Minister Denys Shmyhal criticized Mark Schneider, CEO of Nestlé, for contributing to the loss of civilian life by allowing Nestlé to continue to operate in Russia.¹³⁰ Social media responded to Shmyhal's criticisms of Nestlé by spreading information informing other users which "brands belong to Nestlé in order to inform consumers what products to avoid during their next trip to the grocery store."¹³¹ A few weeks later, the company decided to pull out of Russia except for the sale of essential

¹²⁴ See Gonzalez, *supra* note 74 (quoting Rachel Ziemba: "We are seeing this buyer's strike, what in the marketplace we've been calling self-sanctioning—this reluctance to take on Russian barrels of oil."); Belinda Luscombe, *Hundreds of CEOs Came Out Against Russia. Their Involvement Could Change War Forever*, TIME (Mar. 11, 2022), <https://time.com/6155725/corporations-war-russia-ukraine/> [<https://perma.cc/WBY6-QBW5>] (quoting Juan Zarate, a senior adviser at the Center for Strategic and International Studies: "[e]ven before sanctions really took full hold or before the full suite of sanctions were unrolled, you had the private sector making decisions to divest, to withdraw investments, to minimize exposure to Russia").

¹²⁵ See *Shell Intends to Exit Equity Partnerships Held with Gazprom Entities*, SHELL (Feb. 28, 2022), <https://www.shell.com/media/news-and-media-releases/2022/shell-intends-to-exit-equity-partnerships-held-with-gazprom-entities.html#:~:text=The%20Board%20of%20Shell%20plc,and%20the%20Gydan%20energy%20venture> [<https://perma.cc/7TC3-J7QH>] ("The Board of Shell plc ("Shell") today announced its intention to exit its joint ventures with Gazprom and related entities, including its 27.5 percent stake in the Sakhalin-II liquefied natural gas facility, its 50 percent stake in the Salym Petroleum Development and the Gydan energy venture. Shell also intends to end its involvement in the Nord Stream 2 pipeline project.").

¹²⁶ See *BP to Exit Rosneft Shareholding*, BP (Feb. 27, 2022), <https://www.bp.com/en/global/corporate/news-and-insights/press-releases/bp-to-exit-rosneft-shareholding.html> [<https://perma.cc/4E4U-JTYG>] (announcing that "bp will exit its 19.75% shareholding in Rosneft" and that "[b]oth bp-nominated directors to resign from Rosneft board with immediate effect").

¹²⁷ Peter Granitz, *Major Oil Companies Pull Out of Once Promising Russia*, NPR (Mar. 1, 2022), <https://www.npr.org/2022/03/01/1083659975/oil-majors-pull-out-of-once-promising-russia> [<https://perma.cc/K32V-64PA>].

¹²⁸ Fedorov, *supra* note 2.

¹²⁹ *Id.*

¹³⁰ Christian Hetzner, *Nestlé CEO Accused of Aiding the Killing of 'Defenseless Children and Mothers' by Refusing to Stop Doing Business in Russia*, FORTUNE (Mar. 18, 2022), <https://fortune.com/2022/03/18/nestle-russia-boycott-denys-shmyhal-tweet-mark-schneider/> [<https://perma.cc/4SZN-7FN8>].

¹³¹ *Id.*

foods.¹³² Similarly, Ukrainian Minister Mykhailo Fedorov used Twitter to appeal to Apple “to stop supplying Apple services and products to the Russian Federation, including blocking access to App Store!”¹³³ A few days later, Apple stopped product sales in Russia.¹³⁴

The Russian government also influenced corporate conduct by threatening to nationalize the assets of exiting companies or arrest business leaders who spoke critically of the government.¹³⁵ Russian government officials publicly threatened to externally manage any departing businesses in which foreign control exceeded twenty-five percent.¹³⁶ According to the Russian economy ministry, they:

[W]ould target any companies that have exited Russia since February 24 when Putin sent tanks across the border into Ukraine.

External administrators would keep the company running, form a register of creditors’ claims and conduct an inventory of assets. . . . The original owner would have six months to either sell their share or restart the business and request in court that external management be removed.¹³⁷

¹³² *Nestle Pulls KitKat and Nesquik Out of Russia*, BBC NEWS (Mar. 23, 2022), <https://www.bbc.com/news/business-60850209> [<https://perma.cc/GZ5B-7PPG>] (“The firm stopped investment in the country earlier this month but has now suspended sales of brands such as KitKat and Nesquik. It follows fierce criticism of the firm by Ukrainian politicians.”).

¹³³ Russell Brandon, *Ukrainian Leader Calls on Tim Cook to Block Russian Users from the App Store*, THE VERGE (Feb. 25, 2022), <https://www.theverge.com/2022/2/25/22951413/ukraine-russia-apple-app-store-block-fedorov> [<https://perma.cc/46AU-QRP3>]; Mykhailo Fedorov (@FedorovMykhailo), TWITTER (Feb. 25, 2022, 4:48 PM), <https://twitter.com/FedorovMykhailo/status/1497327555690610689> [<https://perma.cc/9J5H-U59S>].

¹³⁴ Tim Higgins, *Apple Says It Has Stopped All Product Sales in Russia*, WALL ST. J. (Mar. 1, 2022), <https://www.wsj.com/articles/apple-says-it-has-stopped-all-product-sales-in-russia-11646169327> [<https://perma.cc/5E2R-H8KP>].

¹³⁵ Jonathan Maze, *Restaurant Chains’ Russia Problems May Only Be Starting*, REST. BUS. (Mar. 14, 2022), <https://www.restaurantbusinessonline.com/financing/restaurant-chains-russia-problems-may-only-be-starting> [<https://perma.cc/RL2Y-6FYT>].

¹³⁶ Anton Troianovski, *Facing Economic Calamity, Putin Talks of Nationalizing Western Businesses*, N.Y. TIMES (Mar. 10, 2022), <https://www.nytimes.com/2022/03/10/world/europe/russia-economy-ukraine.html> [<https://perma.cc/F2EA-56PD>] (explaining that “Dmitri A. Medvedev, the vice chairman of Mr. Putin’s security council, said the Kremlin could respond to Western companies leaving the Russian market with the seizure of their assets ‘and their possible nationalization’”).

¹³⁷ Polina Ivanova, *Putin Seeks ‘Legal Solutions’ to Seize Assets of Companies Exiting Russia*, FIN. TIMES (Mar. 10, 2022), <https://www.ft.com/content/0284a4e6-c005-46e7-992a-9e1bdd5ad0d5> [<https://perma.cc/MUL9-RGFG>]. According to media reports, the Russian government made good on its threat against a number of companies. See Annabelle Liang, *Russia Seizes Control of Danone and Carlsberg Operations*, BBC NEWS (July 17, 2023), <https://www.bbc.com/news/business-66218999> [<https://perma.cc/GVZ7-2JKX>] (reporting that “Sunday’s order places the shares of Danone Russia and the Carlsberg-owned Baltika Breweries under the control of Russian property agency Rosimushchestvo” and that these two companies “were in the process of selling their Russian operations”); see

Russia's Parliament also passed a censorship law that fined or imprisoned individuals, potentially up to fifteen years, for sharing alleged "false information" regarding Russia's military invasion of Ukraine.¹³⁸

2. Consumers

Consumer pressure can also explain some business decisions to withdraw from Russia.¹³⁹ A survey by Morning Consult revealed that seventy-five percent of Americans supported business decisions to cut ties with Russia and to stop sales of products and services.¹⁴⁰ Only four percent of respondents supported businesses maintaining their operations in Russia and not taking any action in response to the invasion.¹⁴¹ Consumers were critical of businesses that continued to operate in Russia and only issued a statement condemning the invasion.¹⁴² The public pressure for exit grew with the creation of Yale School of Management's public list identifying the businesses that operate in Russia and the ones that stopped new investments, suspended operations, or exited entirely.¹⁴³ The list enables consumers to differentiate between compa-

also id. (reporting that in April 2023, "it was announced that the Russian units of two energy companies - Germany's Uniper and Fortum of Finland, had been brought under state control"); Anastasia Stognei et al., *Russia Seizes Subsidiaries of Finland's Fortum and Germany's Uniper*, FIN. TIMES (Apr. 26, 2023), <https://www.ft.com/content/aa7ffb41-bcb9-4983-a312-1473fa0513b8> [<https://perma.cc/9UXE-U5N5>] ("Companies from 'unfriendly' countries can only sell their Russian assets for a maximum of half their value and must make a 'voluntary contribution' to Russia's war chest of 5–10 percent of the sale price. Deals require the approval of the government and, in the energy and financial sectors, Putin himself. While the Kremlin insists ownership of the assets remains unaffected, the decree allows Russian authorities to impose 'temporary external control' over both the property and shares of companies from 'unfriendly' jurisdictions.").

¹³⁸ K.J. Yossman, *Russia Passes Censorship Law Threatening Imprisonment, Forced Labor Over 'Fake News'*, VARIETY (Mar. 4, 2022), <https://variety.com/2022/politics/news/russia-censorship-law-fake-news-1235196208/> [<https://perma.cc/XA43-4N7K>].

¹³⁹ See Lila MacLellan, *The Response to Ukraine Will Change the Way Companies React to Conflicts*, YAHOO! QUARTZ (Mar. 14, 2022), <https://www.yahoo.com/video/response-ukraine-change-way-companies-143724078.html?guccounter=1> [<https://perma.cc/XT3P-H24E>] (reporting an interview with Johnny Taylor, CEO of the Society for Human Resource Management, who explained that these withdrawal decisions were influenced by consumer activism but also employee concerns); see also James R. Bailey, *When Business Aligns with Activism*, THE HILL (Mar. 12, 2022), <https://thehill.com/opinion/finance/597810-when-business-aligns-with-activism/> [<https://perma.cc/QXX3-B67U>] (recognizing that "Russia's invasion of Ukraine has given the business community a rare opportunity to align its interests with the concerns of most Americans, particularly younger, more socially active consumers—a prized demographic for youth-conscious corporations").

¹⁴⁰ Wesley Case, *Americans Overwhelmingly Want Companies to Take Action Against Russia Over Ukraine Invasion*, MORNING CONSULT (Feb. 28, 2022), <https://pro.morningconsult.com/instant-intel/russia-ukraine-invasion-companies-take-action> [<https://perma.cc/3TLT-YY58>].

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Over 1,000 Companies Have Curtailed Operations in Russia—But Some Remain*, *supra* note 12.

nies based on their actions—rather than their statements—and, consequently, shames companies based on those responses.¹⁴⁴

A classic weapon of consumer activism is the boycott of goods and services.¹⁴⁵ A number of businesses experienced this threat following their decisions to continue operating in Russia.¹⁴⁶ According to one study, “Twitter-based virality measures reveal a strong association between boycott campaigns against businesses and their decision to withdraw from Russia, highlighting the important role that boycott campaigns played in pressuring companies to exit Russia.”¹⁴⁷

It is not only the decision to stay in Russia that invites scrutiny. The same Morning Consult survey found that U.S. consumers support business decisions other than exiting the country, particularly “[p]roviding financial assistance to Americans looking to return from Ukraine and to employees affected by the invasion.”¹⁴⁸ Consumers also supported a wide variety of other company actions, such as supporting Ukrainian refugees through monetary donations and employing those who have fled.¹⁴⁹ Critically, these actions had broad, bipartisan support as consumers agreed on these responses irrespective of political party.¹⁵⁰ This can help explain the variety of humanitarian efforts that businesses supported, such as providing financial assistance to aid agencies, donating products and services, offering relocation assistance, and other means of assisting Ukrainians impacted by the war.¹⁵¹

¹⁴⁴ Tracy Jan, *How a Yale Professor's Viral List Pressured Companies to Pull Out of Russia*, WASH. POST (Mar. 11, 2022), <https://www.washingtonpost.com/business/2022/03/11/sonnenfeld-russia-ukraine-corporations/> [<https://perma.cc/KXU7-EEMQ>]; Juliette Michel, *Public Spotlight of Shame on Companies Sticking with Russia*, FORBES INDIA (Mar. 28, 2022), <https://www.forbesindia.com/article/news/public-spotlight-of-shame-on-companies-sticking-with-russia/74777/1> [<https://perma.cc/WQ58-L3ET>].

¹⁴⁵ Pajuste & Toniolo, *supra* note 119, at 24 (explaining that “[t]he boycott campaigns seemed to be effective, since some of the biggest brands—such as Coca-Cola, PepsiCo and McDonald’s—were not in the first exodus from Russia, but they left only after being targeted by internet activists”).

¹⁴⁶ See Annabelle Timsit & Maite Fernández Simon, *Russia Boycott: A List of Global Campaigns That Are Underway in Support of Ukraine*, WASH. POST (May 16, 2022), <https://www.washingtonpost.com/world/2022/03/02/boycotts-russia-invasion-ukraine/> [<https://perma.cc/29KU-KVZG>] (listing global boycotts against Russian made vodkas, Russian teams, athletes, artists, and media outlets, among others); see also *Companies Fear Consumer Boycotts*, THE ECONOMIST (Apr. 16, 2022), <https://www.economist.com/business/2022/04/16/companies-fear-consumer-boycotts> [<https://perma.cc/QLX7-PQBV>] (reporting that chocolate maker Ritter-Sport faced scrutiny when it continued sales in Russia, its second largest market).

¹⁴⁷ Pajuste & Toniolo, *supra* note 119, at 44–45 (stating that “[o]ur analysis supports the hypothesis that stakeholder pressure via social media campaigns can effectively signal people’s social preferences and affect managerial decision making through their potential harm to corporate reputation”).

¹⁴⁸ Case, *supra* note 140.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ See Smith, *supra* note 8.

3. Investors

A recent study of corporate exits from Russia found that another essential force driving corporate divestment is market pressure; this pressure was particularly acute for large, well-known firms.¹⁵² Some investors explicitly called for divestment from Russia.¹⁵³ In March 2022, New York State Comptroller Thomas DiNapoli, sole trustee of the New York State Common Retirement Fund, “announced that he has directed divestment from Russian companies and continued his prohibition of any further investments in them.”¹⁵⁴ In addition, DiNapoli said he had “written to several U.S. companies, including McDonald’s, PepsiCo, Estee Lauder, and Mondelez, urging them to examine their business in Russia and pause or end their business operations in the country[.]” and that “[m]any of these companies have since taken action to end or limit their operations in Russia.”¹⁵⁵ The boards of the San Francisco City and County Employees’ Retirement System and the Chicago Public School Teachers Pension and Retirement Fund also divested themselves of their Russian investments.¹⁵⁶

Other investors pressured businesses to comply with international guidelines on the responsibility of businesses to protect human rights in conflict situations.¹⁵⁷ Dozens of investors, with 1.7 trillion U.S. dollars in combined assets, issued a statement urging companies across all sectors with business activities or business relationships in Ukraine, Russia, and Belarus or other conflict-affected and high-risk areas (CAHRA) to conform their activities to UN Guiding Principles on Business and Human Rights (Guiding Principles) and OECD Guidelines for Multinational Enterprises (OECD Guidelines).¹⁵⁸ These

¹⁵² Tetyana Balyuk & Anastassia Fedyk, *Divesting Under Pressure: U.S. Firms’ Exit in Response to Russia’s War Against Ukraine*, J. COMPAR. ECON. (forthcoming) (manuscript at 21), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4097225 [<https://perma.cc/8HJX-8KEY>] (explaining that large, well-known firms faced pressure from investors to cease Russian operations).

¹⁵³ *DiNapoli Orders Divestment of Russia Holdings*, OFF. N.Y. STATE COMPTROLLER (Mar. 25, 2022), <https://www.osc.state.ny.us/press/releases/2022/03/dinapoli-orders-divestment-russia-holdings>, [<https://perma.cc/QML4-Q796>].

¹⁵⁴ *Id.*

¹⁵⁵ *See id.* (explaining that “DiNapoli’s investment staff have also contacted the Fund’s external investment managers, urging them to examine their exposure to Russian investments and mitigate this unacceptably high investment risk”).

¹⁵⁶ Rob Kozlowski, *San Francisco, Chicago Teachers Join in Russia Divestment March*, PENSIONS & INVS. (Mar. 11, 2022), <https://www.pionline.com/pension-funds/san-francisco-chicago-teachers-join-russia-divestment-march> [<https://perma.cc/3P2D-795X>].

¹⁵⁷ *See Investor Statement on the Crisis in Ukraine*, BUS. & HUM. RTS. RES. CTR. (May 16, 2022), https://media.business-humanrights.org/media/documents/Investor_Statement_on_the_Crisis_in_Ukraine_16_May_2022.pdf [<https://perma.cc/5G6W-GYCZ>] (declaring dozens of high-profile investors’ intent to divest themselves of any equity in companies not aligned with their moral duty to the people of Ukraine).

¹⁵⁸ *Id.*

steps include “[t]ak[ing] all possible measures to protect their workers and the communities in which their direct operations and those across their value chain take place in Ukraine” and “[p]ublicly affirm[ing] their support for the democracy, territorial integrity, and fundamental rights of the people of Ukraine with accompanying public support for the international rule of law.”¹⁵⁹

The Investor Alliance for Human Rights clarified that “compliance with the array of economic sanctions and export controls on Russian entities and individuals should not be interpreted as fulfillment of businesses’ and investors’ responsibilities under the UN Guiding Principles on Business and Human Rights (UNGPs).”¹⁶⁰ Instead, however, “the UNGPs require enhanced due diligence to identify business and investment ties to the Russian state, their affiliated companies, and other entities/individuals that are arming, financing, resourcing, or otherwise contributing to Russian violations of humanitarian and human rights laws.”¹⁶¹

Finally, businesses may have decided to exit or remain in Russia based on the expected financial consequences of those decisions.¹⁶² Jeffrey Sonnenfeld has argued that those businesses that exited Russia benefited financially while those who remained incurred the greatest costs.¹⁶³ In one example, Sonnenfeld relies on Societe Generale’s stock price increasing five percent in April after it announced its departure from Russia despite its three to four billion dollar write-down.¹⁶⁴ After examining six hundred publicly traded companies, Sonnenfeld claims that “companies that curtailed operations in Russia have dramatically outperformed companies that did not over the past two months.”¹⁶⁵

¹⁵⁹ *Id.*

¹⁶⁰ *Investor Alert: Human Rights Risks Related to the Russian Invasion of Ukraine*, INV. ALL. FOR HUM. RTS. (Mar. 3 2022), <https://investorsforhumanrights.org/news/investor-alert-human-rights-risks-related-russian-invasion-ukraine> [<https://perma.cc/S3G6-HRKT>].

¹⁶¹ *Id.*

¹⁶² See Jeffery A. Sonnenfeld, *It Pays for Companies to Leave Russia*, HARV. L. SCH. F. ON CORP. GOV. (June 24, 2022), <https://corpgov.law.harvard.edu/2022/06/24/it-pays-for-companies-to-leave-russia/> [<https://perma.cc/3ZMR-459T>] (arguing that announcements to exit Russia result in positive financial returns for the announcing business).

¹⁶³ *Id.*; see also Onur Kemal Tosun & Arman Eshraghi, *Corporate Decisions in Times of War: Evidence from the Russia-Ukraine Conflict*, 48 FIN. RSCH. LETTERS 1, 4–5 (2022) (“We find that a portfolio of Remainers underperforms the Leavers and the market benchmark We document a statistically and economically significant market penalty imposed by investors on the Remainers, which may be attributed to the negative sentiment related to firms that have kept their business ties with Russia following the invasion of February 2022. Additionally, the findings provide evidence of higher trading volume due to selling pressure on Remainers.”).

¹⁶⁴ Jeffery Sonnenfeld, Steven Tian & Steven Zaslavsky, *Businesses That Refuse to Leave Russia Are Experiencing the Greatest Costs*, WASH. POST (Apr. 26, 2022), <https://www.washingtonpost.com/opinions/2022/04/26/businesses-that-left-russia-not-hurting-better-off/> [<https://perma.cc/3GWP-ZZBY>].

¹⁶⁵ See *id.* (“As soon as our list appeared on CNBC two months ago, many of the companies we identified as remaining in Russia saw their stocks plummet 15 to 30 percent, even though key market indexes fell only about 2 to 3 percent.”).

Not all analysts concluded that exit was financially beneficial, which explains why some businesses chose to remain in Russia. Some claim that “there’s no indication that investors are sanctioning companies that are ‘digging in.’”¹⁶⁶ These dissenting opinions point out that “Alibaba, for example, saw its stock price dip 25% March 10–March 15, before surging back to 20% above its pre-invasion price” and that others that remained, such as “Acer, Asus, DiDi, and International Paper likewise have seen stock prices rebound to pre-invasion levels or higher.”¹⁶⁷ One study found that “firms that exit Russia experience large negative returns (on the order of -3.5% during a single week) before announcing their exit decisions.”¹⁶⁸ But the same study found that “[o]nce an exit decision is announced, the returns stabilize, with no further movements in the week following the exit announcement.”¹⁶⁹

B. Supply Factors

The decision to stay or leave Russia was not only influenced by government actors, consumers, and investors. Instead, the ability of a company to meet stakeholder demands depends on organizational, contractual, and regulatory factors, such as choice of business model, international investment dispute resolution, political risk insurance, and organizational crisis-preparedness.

Subsection 1 of this Section discusses the influence of a corporation’s business model on its foreign policy.¹⁷⁰ Subsection 2 then moves on to analyze the role of international investment law.¹⁷¹ Subsection 3 next discusses the impact of political risk insurance.¹⁷² Finally, Subsection 4 lays out the importance of organizational capacity for crisis response for any company trying to successfully respond to an emerging crisis.¹⁷³

1. Business Model

A business’s ability to engage in sanctioning depends on whether its business model allows for centralized or decentralized decision-making regarding business suspension, termination, and exit. Many global chains started and ex-

¹⁶⁶ Gerard O’Dwyer, *Shareholders Indifferent to Russia Exit*, GLOB. FIN. (Apr. 5, 2022), <https://www.gfmag.com/magazine/april-2022/shareholders-indifferent-russia-exit> [https://perma.cc/A6DL-4N5V].

¹⁶⁷ *Id.*

¹⁶⁸ Balyuk & Fedyk, *supra* note 152, at 26.

¹⁶⁹ *Id.*

¹⁷⁰ See *supra* notes 174–195 and accompanying text.

¹⁷¹ See *supra* notes 196–211 and accompanying text.

¹⁷² See *supra* notes 212–217 and accompanying text.

¹⁷³ See *supra* notes 218–232 and accompanying text.

panded their presence in the Russian market using the franchise model.¹⁷⁴ Under Russian law, in a franchise agreement, “the franchisor grants to the franchisee, for a fee, the right to use in its business a complex bundle of intellectual property rights that belong to the franchisor” and “provides for the use of the business reputation and commercial expertise of the franchisor within a specified scope.”¹⁷⁵ Under the agreement, the franchisor takes on obligations to provide the franchisee with “information required for the franchisee to exercise its rights under the franchise agreement” and “must also instruct the franchisee and its employees on the issues related to the exercise of such rights.”¹⁷⁶ The franchisee is required to comply with the franchise agreement regarding operations, IP usage, and other practices, as well as maintain confidentiality.¹⁷⁷

The Russian conflict highlighted the ways that a franchise model may enable or limit the ability of a business to suspend or terminate its operations in Russia.¹⁷⁸ Some businesses were able to do so because they directly owned the stores in Russia.¹⁷⁹ In other situations, their licensed partners cooperated with the decision to suspend or terminate.¹⁸⁰ For example, following a boycott threat, McDonald’s announced that it would temporarily close almost 850 stores in Russia while pledging to still pay its 62,500 Russian employees.¹⁸¹ The *New York Times* reported that store closures were easier to accomplish for chains like McDonald’s “since it owns 84 percent of the 847 McDonald’s locations in Russia.”¹⁸² Starbucks’s CEO, Kevin Johnson, announced that the com-

¹⁷⁴ Michelle Momdjian & Olga Rogozhina, *Franchising in Russia*, 35 FRANCHISE L.J. 381, 381 (2016).

¹⁷⁵ *Id.* at 381–82.

¹⁷⁶ *Id.* at 385.

¹⁷⁷ *Id.* at 385–86.

¹⁷⁸ See, e.g., Creswell, *supra* note 16 (showing the franchise model prevents companies from forcing franchisees to shut down, which is at odds with the corporate decision to exit Russia).

¹⁷⁹ Dee-Ann Durbin, *Once a Symbol of the Post-Cold War Era, McDonald’s Closes in Russia*, PBS (Mar. 14, 2022), <https://www.pbs.org/newshour/world/once-a-symbol-of-the-post-cold-war-era-mcdonalds-closes-in-russia> [<https://perma.cc/9PDB-KZ4Z>] (illustrating McDonald’s ability to shut down operations in Russia, unimpeded by franchise agreements).

¹⁸⁰ Letter to Partners from Kevin Johnson on Ukraine, STARBUCKS (Mar. 8, 2022), <https://stories.starbucks.com/press/2022/update-to-starbucks-partners-on-our-business-in-russia/> [<https://perma.cc/T99M-BM8L>] (declaring that Starbucks’ licensed partner in Russia agreed to halt business in the wake of the invasion).

¹⁸¹ Durbin, *supra* note 179.

¹⁸² See Creswell, *supra* note 16 (“[T]he reluctance among the Russian-based franchisees to close their doors has much to do with the fact that they, not the parent corporation, have invested money and taken on significant financial risks in operating the stores. While the parent company may provide advertising dollars and strategy, and other support, the franchise owner is responsible for rent and electricity, construction costs to meet corporate standards, franchise fees or royalties, employee wages, and the food. So while temporarily closing restaurants in Russia may have little impact on the overall revenues or profits of big companies like Papa Johns or Yum Brands, it could mean financial ruin for these smaller operators.”).

pany would “suspend all business activity in Russia, including shipment of all Starbucks products” and that “[o]ur licensed partner has agreed to immediately pause store operations and will provide support to the nearly 2,000 partners in Russia who depend on Starbucks for their livelihood.”¹⁸³ Yum! Brands announced that it is “suspending operations of KFC company-owned restaurants in Russia and finalizing an agreement to suspend all Pizza Hut restaurant operations in Russia, in partnership with its master franchisee.”¹⁸⁴

Papa Johns also suspended their operations in Russia.¹⁸⁵ One franchise owner, however, refused to close his nearly two hundred stores across Russia and even planned to open dozens more in the coming year.¹⁸⁶ This action had consequences for the Papa Johns chain, which confronted social media criticism and the threat of consumer boycotts in response to this franchise owner’s actions.¹⁸⁷ Burger King also faced scrutiny when it was unable to suspend business because of its master franchise agreement and joint venture agreement.¹⁸⁸ Brand recognition—usually a signifier of value and prestige—became a problem when licensed partners in Russia refused to close their stores, threatening the reputation of the broader chain.¹⁸⁹ In response, businesses at-

¹⁸³ *Letter to Partners from Kevin Johnson on Ukraine*, *supra* note 180.

¹⁸⁴ *Yum! Brands Is Suspending Operations of KFC Company-Owned Restaurants in Russia; Finalizing Agreement to Suspend All Pizza Hut Restaurant Operations in Russia*, YUM! (<https://www.yum.com/wps/portal/yumbrands/Yumbrands/news/press-releases/yum+brands+is+suspending+operations+of+kfc+company-owned+restaurants+in+ruusia+finalizing+agreement+to+suspend+all+pizza+hut+restaurant+operations+in+ruusia> [<https://perma.cc/SNH4-T66H>]).

¹⁸⁵ *See Papa John’s International Suspends All Corporate Operations in Russia; Brand Providing Aid to Ukrainian Refugees Through Nonprofit Partnership*, PAPA JOHNS (Mar. 9, 2022), <https://ir.papajohns.com/news-releases/news-release-details/papa-johns-international-suspends-all-corporate-operations> [<https://perma.cc/ZNX3-ATWY>] (“Papa John’s has suspended all corporate operations in Russia. It has ceased all operational, marketing and business support to, and engagement with, the Russian market, where all restaurants are owned by independent franchisees, and a master franchisee who controls operations and provides all supplies and ingredients for the restaurants through a supply chain that it owns and operates. Papa John’s International is not currently receiving any royalties from these franchised stores in Russia. Papa John’s International does not own or operate any restaurants in Russia.”).

¹⁸⁶ Creswell, *supra* note 16.

¹⁸⁷ Elisha Fieldstadt, *Papa John’s Faces Backlash After U.S. Franchisee Refuses to Close 190 Russia Stores*, NBC NEWS (Mar. 16, 2022), <https://www.nbcnews.com/news/world/papa-johns-faces-backlash-american-russia-franchisee-refuses-close-190-rcna20255> [<https://perma.cc/YV8G-Y95A>]; Patricia McKnight, *Papa John’s Sees Boycott Talk Over Russia 4 Years After Founder Crisis*, NEWSWEEK (Mar. 18, 2022), <https://www.newsweek.com/papa-johns-russia-stance-revives-boycott-talk-4-years-after-founder-crisis-1689699> [<https://perma.cc/DMG5-ZCAT>].

¹⁸⁸ *See Actions on Burger King Russia*, REST. BRANDS INT’L (Mar. 17, 2022), <https://www.rbi.com/English/news/news-details/2022/Actions-on-Burger-King-Russia/default.aspx> [<https://perma.cc/KH96-SXLS>] (stating that “[t]here are no legal clauses that allow us to unilaterally change the contract or allow any one of the partners to simply walk away or overturn the entire agreement”).

¹⁸⁹ *See, e.g.,* Creswell, *supra* note 16 (illustrating the franchisee’s ability to operate adversely to corporate desires, despite large amounts of public backlash).

tempted to distance themselves from their own brand.¹⁹⁰ Papa Johns explained that it “took swift action to cease any and all corporate operations in Russia including withdrawing any form of corporate support for the restaurants there” and that it did “not own any assets or have any employees in Russia” and “[is] not deriving any income from Russia at this point.”¹⁹¹

Hotel chains that use a franchise model, such as Marriott and Hilton, also encountered similar constraints as they faced significant reputational risk from the prospect of their franchise partners keeping the hotels open under their name.¹⁹² These same chains, however, faced legal risks if they breached their franchise agreements in an attempt to terminate the agreement.¹⁹³ Standard franchise agreements allow the franchisor to terminate the agreement because of reputational risks created by the actions of the franchisee.¹⁹⁴ As media and legal commentary note, however, franchisors may be unable to terminate franchise agreements with franchisees who refuse to shut down their operations in Russia because the franchisees are not the ones causing the reputational harm.¹⁹⁵

2. International Investment Law

A company’s decision to exit could cost it millions, or even billions, of dollars. Such a potential loss may even discourage the company from making the decision to exit. But international investment law may allow these companies to recoup some of these losses, thereby enabling companies to exit even when such exit involves significant costs.¹⁹⁶

¹⁹⁰ Hanbury & Meisenzahl, *supra* note 18.

¹⁹¹ *Id.*

¹⁹² See, e.g., *Marriott International Statement*, MARRIOTT INT’L (Mar. 10, 2022), <https://news.marriott.com/news/2022/03/10/marriott-international-statement>, [https://perma.cc/C3CW-X9ZW] (discussing the problem presented by third parties operating Marriott hotels in Russia and the corporation’s inability to close them immediately).

¹⁹³ See *id.* (informing the public that although they plan to close their corporate office in Moscow and “pause the opening of upcoming hotels and all future hotel development and investment in Russia,” their current hotels in Russia are owned by third parties and thus are able to remain open); see also Michael Race, *The Western Brands Unable to Leave Russia*, BBC NEWS (Mar. 16, 2022), <https://www.bbc.com/news/business-60733389> [https://perma.cc/K4FD-9WRK].

¹⁹⁴ See, e.g., Bloomberg Law, *Franchising, Sample Agreement—Franchising Agreement* (Franchising), art. 18(o) (sample franchise agreement) (on file with author) (defining a material breach that allows the franchisor to terminate the agreement as “[f]ranchisee engages in public conduct which reflects materially and unfavorably upon the operation of the Restaurant, the reputation of the Franchisor System, or the goodwill associated with the Franchisor trademarks”).

¹⁹⁵ Race, *supra* note 193; Hanbury & Meisenzahl, *supra* note 18.

¹⁹⁶ See *Political Risk Insurance May Cover Business Losses Resulting from Russia’s Invasion of Ukraine*, JONES DAY (Mar. 2022), <https://www.jonesday.com/en/insights/2022/03/political-risk-insurance-may-cover-business-losses-resulting-from-russias-invasion-of-ukraine#:~:text=Share,Political%20Risk%20Insurance%20May%20Cover%20Business%20Losses%20Resulting%20From%20Russia's,under%20traditional%20property%20insurance%20policies> [https://perma.cc/S3WM-

Investment agreements are legally binding international agreements between two or more countries that protect the investments of nationals in one country when they invest in another.¹⁹⁷ For example, a standard bilateral investment treaty between Country A and Country B provides a range of protections for the nationals of Country A when they invest in Country B and vice versa.¹⁹⁸ Should either country breach its obligations, then those investors can pursue a claim against that country before an international tribunal.¹⁹⁹

Many law firms have advised their corporate clients to consider potential investment claims against Russia for the actions that the government has taken against foreign companies following the Russian invasion of Ukraine, including currency transfer restrictions, non-enforcement of intellectual property rights, and threats of expropriation of assets of foreign investors.²⁰⁰ The Russian Federation made global news with a proposed bill under which “firms more than 25% owned by foreigners from ‘unfriendly states’ [would] be put into external administration.”²⁰¹ Businesses faced a choice: those that announced exit from Russia “could refuse to go into administration if within five days they resumed activities or sold shares, providing that the business and employees remained,”²⁰² or “a court would appoint a temporary administration

7BLF] (explaining the legal options open to companies suffering losses stemming from decisions to exit); see also *Companies with Investments and Businesses in Ukraine and Russia: The Importance of Investment Treaties*, JONES DAY (Mar. 2022), <https://www.jonesday.com/en/insights/2022/03/investment-treaties-in-ukraine-and-russia> [<https://perma.cc/BMA3-KAS9>] (“Investment treaties frequently provide that losses of foreign investors resulting from requisitioning or destruction during armed conflict shall be compensated promptly, adequately and effectively. The losses may include not only damages arising from the destruction of physical property but also lost profits from disrupted business operations.”).

¹⁹⁷ 2012 U.S. Model Bilateral Investment Treaty, OFF. U.S. TRADE REPRESENTATIVE (2012), at 1, <https://ustr.gov/sites/default/files/BIT%20text%20for%20ACIEP%20Meeting.pdf> [<https://perma.cc/ZPR2-GLLZ>].

¹⁹⁸ *Id.* at 7–8.

¹⁹⁹ *Id.* at 26–28.

²⁰⁰ *Companies with Investments and Businesses in Ukraine and Russia: The Importance of Investment Treaties*, *supra* note 196; Raja Bose, Ian Meredith, Robert L. Houston & Hena Sial, *Between a Rock and a Hard Place: The Sanctions Climate for Foreign Investment in Russia—Part II of II*, K&L GATES (Apr. 20, 2022), <https://www.klgates.com/Between-a-Rock-and-a-Hard-Place-Claims-Against-Russia-in-Investment-Treaty-Arbitration-Part-II-of-II-4-20-2022> [<https://perma.cc/4F57-XDQQ>]; *Protection of Business Assets in Russia and Ukraine Under International Investment Law*, VAN BAEL & BELLIS (Mar. 25, 2022), <https://www.vbb.com/insights/protection-of-business-assets-in-russia-and-ukraine-under-international-investment-law> [<https://perma.cc/A97W-ELXV>].

²⁰¹ *Russia Moves Towards Nationalising Assets of Firms That Leave—Ruling Party*, REUTERS (Mar. 9, 2022), <https://www.reuters.com/business/russia-approves-first-step-towards-nationalising-assets-firms-that-leave-ruling-2022-03-09/> [<https://perma.cc/J2FR-6NN2>].

²⁰² *Id.*

for three months, after which the shares of the new organization would be put up for auction and the old one would be liquidated.”²⁰³

In response to these threats, legal advisors highlighted the dozens of bilateral investment treaties that Russia has with countries around world.²⁰⁴ K&L Gates explains that these treaties include investor protections, such as a *prohibition on unlawful expropriation*, protecting investors from “uncompensated direct or indirect taking of foreign investors’ assets, whether by nationalization or other total devaluation of such assets”; *fair and equitable treatment*, which protects investors against “the loss or devaluation of equity investments that foreign investors have been forestalled or prevented from divesting by Russian economic measures”; and *national treatment*, which protects foreign investors against preferential treatment provided to domestic competitors.²⁰⁵ These agreements also provide for dispute resolution mechanisms that investors could use if a country breached those protections.²⁰⁶ Therefore, if Russia violated one or more of these investor protections, those companies could file claims using the dispute resolution mechanism prescribed in the investment treaty and obtain a damages award against Russia.²⁰⁷ Critically, they can then seek to enforce that damages award in jurisdictions in which Russia has assets.²⁰⁸

International investment law may facilitate corporate sanctioning when some of the costs associated with such sanctions—such as Russian expropriation of assets—are partially offset through dispute resolution under investment treaties. But such dispute resolution is costly and may prove challenging to enforce, even if successful.²⁰⁹ For example, foreign investors brought international investment claims against Russia following its invasion of Crimea in 2014 and secured billions of dollars in damages awards.²¹⁰ Still, Russia refused to pay out these awards, and investors had to pursue enforcement of the damages awards in third party states in which Russia has assets.²¹¹

²⁰³ *Id.*; *Russian Lawmakers Propose Giving VEB Control in Firms That Leave Russia*, REUTERS (Apr. 12, 2022), <https://www.reuters.com/business/russian-lawmakers-propose-giving-veb-control-firms-that-leave-russia-2022-04-12/> [<https://perma.cc/C9LN-DZEY>].

²⁰⁴ See Bose et al., *supra* note 200, at 2 (identifying sixty-two bilateral investment treaties between Russia and other countries).

²⁰⁵ *Id.*

²⁰⁶ *Companies with Investments and Businesses in Ukraine and Russia: The Importance of Investment Treaties*, *supra* note 196.

²⁰⁷ *Id.*; Bose et al., *supra* note 200, at 2; *Protection of Business Assets in Russia and Ukraine Under International Investment Law*, *supra* note 200, at 3.

²⁰⁸ See, e.g., Bose et al., *supra* note 200, at 2 (noting that enforcement could take place in the courts of the over 160 countries that are members of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards).

²⁰⁹ *Companies with Investments and Businesses in Ukraine and Russia: The Importance of Investment Treaties*, *supra* note 196.

²¹⁰ *Id.*

²¹¹ *Id.*

3. Political Risk Insurance

Some companies may also protect themselves against losses in the Russian conflict because of political risk insurance (PRI) policies, thereby enabling them to suspend or exit Russia. PRI policies “provide coverage to corporate policyholders for losses resulting from certain types of political events,” ranging from “significant changes in governmental policies, laws, or regulations” to “government unrest, instability, revolution, coups, and war.”²¹² The types of losses covered include payment for assets or investments lost in the war, as well as lost profits for any interruptions in operations.²¹³

PRI policies may protect foreign companies against some of the Russian government’s threatened or realized actions. Depending on the terms and conditions of their policies, insured companies could file claims for losses arising from physical damage or destruction of their assets in Ukraine or their forced abandonment of the same; expropriation or seizure of property or assets by Russian or Ukrainian government; forced divestiture of property in Russia or Ukraine, and for contract frustration caused by sanctions.²¹⁴

Following the Russian invasion of Crimea, however, insurance providers changed their policies to limit the ability of businesses to protect against these losses.²¹⁵ Such policy changes included stopping underwriting political risk policies in Russia or Ukraine, introducing premium rate increases for policy renewals, and restricting or terminating coverage for new businesses in Russia or Ukraine.²¹⁶ Further restrictions followed in the wake of the 2022 Russian attack on Ukraine.²¹⁷

²¹² *Political Risk Insurance May Cover Business Losses Resulting from Russia’s Invasion of Ukraine*, *supra* note 196.

²¹³ *Id.*

²¹⁴ Sam Wilkin, Stuart Ashworth & Paul L. Davidson, *Political Risk Insurance and Ukraine—Pouring Oil on Troubled Waters*, WTW, <https://www.wtwco.com/en-gb/insights/2022/04/political-risk-insurance-and-ukraine-pouring-oil-on-troubled-waters> [<https://perma.cc/QK7Z-2FKW>]; Carolyn H. Rosenberg et al., *Policyholder Considerations: Russia—Ukraine Conflict and Sanctions*, REED SMITH (Mar. 31, 2022), <https://www.reedsmith.com/en/perspectives/2022/03/policyholder-considerations-russia-ukraine-conflict-and-sanctions> [<https://perma.cc/78YP-XKTX>].

²¹⁵ MARSH, POLITICAL RISK INSURANCE: IMPLICATIONS OF INSTABILITY IN UKRAINE AND RUSSIA, MARSH RISK MGMT. RSCH. (Mar. 2014), <https://www.marsh.com/content/dam/marsh/Documents/PDF/US-en/Political%20Risk%20Implications%20of%20Instability%20in%20Ukraine%20Russia-03-2014.pdf> [<https://perma.cc/ZR9H-M3TH>]; Rosenberg et al., *supra* note 214.

²¹⁶ *Supra* note 215.

²¹⁷ Noor Zainab Hussain & Carolyn Cohn, *Exclusive: AIG Looks at Cutting Insurance for Russia, Ukraine*, REUTERS (Apr. 11, 2022), [https://www.reuters.com/business/finance/exclusive-aig-looks-cutting-insurance-russia-ukraine-sources-2022-04-08/#:~:text=LONDON%2C%20April%208%20\(Reuters\),familiar%20with%20the%20matter%20said.](https://www.reuters.com/business/finance/exclusive-aig-looks-cutting-insurance-russia-ukraine-sources-2022-04-08/#:~:text=LONDON%2C%20April%208%20(Reuters),familiar%20with%20the%20matter%20said.) [<https://perma.cc/UQK4-JRPC>]; Rosenberg et al., *supra* note 214.

4. Organizational Capacity for Crisis Response

Sanctioning is not the only option for corporate foreign policy. Instead, many businesses responded to the invasion by offering aid in lieu of, or in addition to, sanctioning.²¹⁸ But there are also important supply factors that enable or prevent companies from offering aid effectively.

For example, Airbnb announced that “Airbnb.org will offer free, short-term housing to up to [one hundred thousand] refugees fleeing Ukraine” and that “[t]hese stays will be funded by Airbnb, Inc., donors to the Airbnb.org Refugee Fund, and the generosity of Hosts through Airbnb.org.”²¹⁹ By mid-March 2022, approximately thirty thousand hosts had signed up to assist with free housing.²²⁰ Airbnb’s goal to assist one hundred thousand refugees is equivalent to the total number of people helped by Airbnb.org in crises between 2017 and 2021 combined.²²¹

Airbnb’s capacity to help Ukrainian refugees was something the company had been working towards for quite some time based on an idea the company had originated years ago.²²² Airbnb was able to commit to house one hundred thousand refugees amidst the Russian invasion because of organizational changes it had made prior to the invasion and in response to earlier crises.²²³ For example, “[t]he company’s nonprofit arm has been slowly building the infrastructure to support more people escaping natural disasters, war and other crises over the past decade.”²²⁴ Following Hurricane Sandy in 2012, Airbnb

²¹⁸ See, e.g., *Update on Support for Ukraine*, COCA-COLA CO. (Apr. 7, 2022), <https://www.coca-colacompany.com/media-center/support-for-ukraine> [<https://perma.cc/66MT-S8TW>] (offering assistance for Ukraine-based employees and broader humanitarian efforts); see also Kalea Hall, *GM to Donate Thousands to Help Ukrainians*, DETROIT NEWS (Mar. 4, 2022), <https://www.detroitnews.com/story/business/autos/general-motors/2022/03/04/gm-donate-thousands-help-ukrainians/9377251002/> [<https://perma.cc/2NGH-BFBU>] (announcing that “General Motors Co. is donating \$250,000 to the International Rescue Committee, a U.S. nonprofit that responds to humanitarian crises, to help Ukrainians impacted by the Russian invasion”); Brad Smith, *Microsoft Suspends New Sales in Russia*, MICROSOFT: MICROSOFT ON THE ISSUES (Mar. 4, 2022), <https://blogs.microsoft.com/on-the-issues/2022/03/04/microsoft-suspends-russia-sales-ukraine-conflict/> [<https://perma.cc/JX8L-PCKD>] (“Microsoft has now committed over \$35 million to support humanitarian assistance and relief efforts for Ukraine.”).

²¹⁹ *Support for Refugees Fleeing Ukraine*, AIRBNB (Feb. 28, 2022), <https://news.airbnb.com/help-ukraine/> [<https://perma.cc/S6MW-NCU3>]; *Offering Housing to Refugees Fleeing Ukraine, from All Communities*, AIRBNB (Apr. 20, 2022), <https://news.airbnb.com/offering-housing-to-all-refugees-fleeing-ukraine/> [<https://perma.cc/RF75-8PZ7>].

²²⁰ Sarah Roach, *Airbnb Enabled a Movement to Help Ukraine. Free Housing Is Only Part of It*, PROTOCOL (Mar. 14, 2022), <https://www.protocol.com/policy/airbnb-ukraine-relief> [<https://perma.cc/F5EE-AG56>].

²²¹ *Id.*

²²² See, e.g., Roach, *supra* note 220 (laying out Airbnb’s steps towards building the necessary capacity to assist Ukrainian refugees, all of which started years before the invasion).

²²³ *Support for Refugees Fleeing Ukraine*, *supra* note 219.

²²⁴ Roach, *supra* note 220.

made it possible for their hosts to provide housing for displaced persons in the wake of natural disasters through a new tool the company added to their platform.²²⁵ Subsequently, Airbnb expanded their disaster relief program by providing “free or discounted housing” to refugees from Syria and other nations experiencing conflict, as well as those people left unhoused by natural disasters such as hurricanes and earthquakes.”²²⁶ Eventually, Airbnb.org became a new branch of the company dedicated to Airbnb’s philanthropic goals, focused on tasks such as securing donations for Airbnb to use to offer free housing in future crises.²²⁷ These donations help to compensate hosts who allow individuals to stay in their places for free, as well as provide other forms of insurance coverage to the properties rented.²²⁸ These organizational changes allowed Airbnb to develop a strategy to assist in a crisis—through free housing—and provide incentives so that Airbnb’s stakeholders—its hosts—would participate in the strategy.

In other crises, companies are more likely to make a positive impact when they prepare in advance by putting in place organizational changes and strategic partnerships. For example, following the 2004 tsunami in South Asia, Coca-Cola was able to respond because it had worked alongside aid organizations like the Red Cross for many years, across the globe.²²⁹ Thus, by “[w]orking with local subsidiaries, Coca-Cola converted its soft-drink production lines to bottle huge quantities of drinking water and used its own distribution network to deliver it to relief sites.”²³⁰

C. Summary

This Section provides a framework for explaining the corporate foreign policies that companies adopted towards Russia or Ukraine.²³¹ The decisions to offer aid or withdraw from Russia are influenced by the interaction of two different sets of factors. The first set of factors concerns the values and opinions of a company’s stakeholders.²³² A company’s consumers, for example, may boycott if the company does not leave Russia, or a company’s employees may pressure the company to offer aid to Ukrainians fleeing the war.²³³ Govern-

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ Anisya Thomas & Lynn Fritz, *Disaster Relief, Inc.*, HARV. BUS. REV. (2006), <https://hbr.org/2006/11/disaster-relief-inc> [<https://perma.cc/L3LJ-PKQK>].

²³⁰ *Id.*

²³¹ See *supra* notes 101–230 and accompanying text.

²³² See *supra* notes 109–169 and accompanying text.

²³³ See, e.g., Pajuste & Toniolo, *supra* note 119, at 24 (discussing how a number of large corporations did not take action against Russia until consumers began movements against them).

ments may also pressure a company to exit by imposing sanctions on particular entities and individuals—thereby preventing future business with them—or by creating an economic or legal environment too risky for a company to operate.²³⁴ But these factors alone cannot explain the reactions we witnessed over the past year. Instead, a company's ability to listen to its consumers, investors, or government also depends on its supply factors, such as whether its business model allows it to unilaterally decide to exit or whether its contracts allow it to suspend performance without legal liability.²³⁵ Its decision to leave may also cost it millions or billions of dollars; therefore, its ability to leave may depend on the availability of investment law and political risk insurance to recoup some of those costs.²³⁶ Finally, a company's ability to offer aid may depend on its crisis preparation, including forging partnerships with NGOs and changing its organizational structure.²³⁷ In total, the combination of these demand and supply factors can help to explain company reactions.

The armed conflict in Ukraine, however, is not the only current or potential conflict in the world. Accordingly, it is worth exploring whether companies will similarly exit China over concerns about its potential military aggression towards Taiwan and the international response. As argued below, and in contrast to Russia, such exit appears unlikely because of weaker demand factors and stronger supply factors.²³⁸

IV. APPLYING THE MARKET FRAMEWORK TO OTHER POTENTIAL CONFLICTS: WILL COMPANIES EXIT CHINA?

Following corporate exit from Russia, executives, policymakers, and pundits all began to ponder an inevitable follow-up question: *will companies also exit China?*²³⁹ Like Russia, China is criticized by the international community for its significant human rights abuses.²⁴⁰ Companies operating in China also confront the risk of a potential armed conflict over Taiwan.²⁴¹ Accord-

²³⁴ See *supra* notes 115–138 and accompanying text.

²³⁵ See *supra* notes 109–169 and accompanying text.

²³⁶ See *supra* notes 196–217 and accompanying text.

²³⁷ See *supra* notes 218–230 and accompanying text.

²³⁸ See *infra* notes 239–313 and accompanying text.

²³⁹ See, e.g., Ryushiro Kodaira, *China Exit? Russia Crisis Has Businesses Thinking the Unthinkable*, NIKKEI ASIA (Mar. 22, 2022), <https://asia.nikkei.com/Politics/International-relations/Indo-Pacific/China-exit-Russia-crisis-has-businesses-thinking-the-unthinkable> [<https://perma.cc/9PMY-R6UP>] (discussing that the possibility of companies exiting the Chinese market may come to fruition if China invades Taiwan).

²⁴⁰ See *infra* notes 252–265 and accompanying text (summarizing the human rights violations in China which affect businesses' supply chains).

²⁴¹ See *Who Would Win a War Over Taiwan?*, WALL ST. J. (Jan. 19, 2023), <https://www.wsj.com/articles/who-would-win-a-war-over-taiwan-war-game-exercise-center-for-strategic-and-international->

ing to international security firms, corporate interest in conflict contingency planning in Taiwan rose steeply after the Russia invasion of Ukraine.²⁴² But the question is: *will they leave?*

This Part applies the market framework for corporate foreign policy, discussed above in Part III, to evaluate whether companies will decide to scale back or exit China.²⁴³ It explains why it is less likely that we will witness the significant corporate exit from China that we saw in Russia. In the Russian context, many companies encountered strong demand factors to leave and weak supply factors to stay.²⁴⁴ The situation is reversed in China: companies may experience weaker demand factors to leave and strong supply factors that keep them in China.²⁴⁵

Section A of this Part considers the demand factors that may pressure companies to exit China, such as consumer boycotts, government sanctions, and import controls.²⁴⁶ Section B explores the supply factors that may keep companies in China, such as China's capacity for high-volume manufacturing.²⁴⁷

A. Demand Factors

In review of the influence of demand factors on firms, Subsection 1 first discusses the role of global consumers in influencing corporate positions on actions by the Chinese government.²⁴⁸ Subsection 2, on the other hand, discusses how government regulations and other actions can influence corporate "stay or leave" decisions in China.²⁴⁹

studies-china-u-s-11673981972 [https://perma.cc/B27L-HXAQ] (discussing a Center for Strategic and International Studies report wargaming a Chinese invasion of Taiwan).

²⁴² See, e.g., Phelim Kine, *U.S. Firms Eye Taiwan Exit on Chinese Invasion Risk*, POLITICO (Aug. 4, 2022), <https://www.politico.com/newsletters/politico-china-watcher/2022/08/04/u-s-firms-eye-taiwan-exit-on-chinese-invasion-risk-00049694> [https://perma.cc/5VP5-BH3G] ("I have seven fortune 500 companies asking me to pre-plan and build an outline of triggers for them to start moving people, infrastructure, and assets [outside of Taiwan]. . . . There are some companies that are taking this very seriously [because] they don't want to happen what just happened in Russia where they lost billions of dollars' worth of assets, both financial and hard, so they are already looking to disperse people and assets [to other countries].") (alterations in original) (quoting Dale Buckner, CEO of international security firm Global Guardian)); Ralph Jennings, *China's Military Drills Around Taiwan Drive Foreign Firms to Draw Up Exit Plans for Staff and Assets*, S. CHINA MORNING POST (Aug. 9, 2022), <https://www.scmp.com/economy/global-economy/article/3188277/chinas-military-drills-around-taiwan-drive-foreign-firms> [https://perma.cc/RZ9U-LNNT] (detailing how "[m]ultinational businesses in Taiwan are laying plans to evacuate assets and personnel in case mainland China attacks the island").

²⁴³ See *supra* notes 101–230 and accompanying text.

²⁴⁴ See *supra* notes 115–231 and accompanying text.

²⁴⁵ See *infra* notes 250–316 and accompanying text.

²⁴⁶ See *infra* notes 248–291 and accompanying text.

²⁴⁷ See *infra* notes 292–313 and accompanying text.

²⁴⁸ See *infra* notes 250–265 and accompanying text.

²⁴⁹ See *infra* notes 266–291 and accompanying text.

1. Consumers

In the Russian context, consumers pressured companies to exit Russia because of their views on the Russian invasion of Ukraine.²⁵⁰ In the Chinese context, companies confront multiple consumer bases with different, even conflicting, opinions on the actions of the Chinese government towards Taiwan.²⁵¹ This is the challenge of *heterogeneous consumer preferences* on corporate foreign policy that complicates a company's ability to ascertain what its consumers want from it. The challenge is further exacerbated by the *globalization and diversification of consumer markets* that means that companies will need to identify and address the preferences of consumers in different countries.

China is a significant consumer market for American and European companies in a number of sectors.²⁵² Companies must balance the preferences of their consumers in China with those in the United States and other markets in which they operate, but those preferences may be in conflict.²⁵³ For example, many companies faced criticism in Europe and the United States over their supply chains in China that may involve human rights abuses against the Uyghur population.²⁵⁴ But by responding or appeasing the concerns of these consumers, the same companies confronted backlash and boycotts from their Chinese consumers.²⁵⁵ After taking a stance against sourcing from Xinjiang, Intel and Hugo Boss, for example, both apologized for these positions because of

²⁵⁰ See, e.g., Pajuste & Toniolo, *supra* note 119, at 24 (illustrating the ability of consumers to force companies out of Russia by way of public pressure).

²⁵¹ Compare *China: 83 Major Brands Implicated in Report on Forced Labour of Ethnic Minorities from Xinjiang Assigned to Factories Across Provinces; Includes Company Responses*, BUS. & HUM. RTS. RES. CTR. (Mar. 1, 2020), <https://www.business-humanrights.org/en/latest-news/china-83-major-brands-implicated-in-report-on-forced-labour-of-ethnic-minorities-from-xinjiang-assigned-to-factories-across-provinces-includes-company-responses/> [<https://perma.cc/P4UU-USVB>] (listing the companies which apologized after public outrage of their making use of forced labor in China in their supply chains), with Moss, *supra* note 107 (detailing various steps taken by Adidas to redeem its image in China after large-scale Chinese consumer boycotts to its pledge not to use cotton produced by forced labor in China).

²⁵² See, e.g., Shead, *supra* note 101 (quoting tech analysts). Some have argued that companies, like Apple, were more willing to exit Russia because it did not impact their sales significantly. *Id.* In contrast, the Chinese market represents a significant share of revenue for companies that may be more hesitant to leave. *Id.*

²⁵³ See *supra* note 251 (detailing the split in opinion between Chinese consumers and American consumers).

²⁵⁴ *China: 83 Major Brands Implicated in Report on Forced Labour of Ethnic Minorities from Xinjiang Assigned to Factories Across Provinces; Includes Company Responses*, *supra* note 251.

²⁵⁵ See, e.g., Nike, H&M Face China Fury Over Xinjiang Cotton 'Concerns,' BBC NEWS (Mar. 25, 2021), <https://www.bbc.com/news/world-asia-china-56519411> [<https://perma.cc/V2WU-RTSR>] ("Retail giants Nike and H&M are facing a backlash in China after they expressed concern about the alleged use of Uighur forced labour in cotton production. Many Chinese have called for boycotts, celebrities have cut ties and e-commerce platforms have dropped H&M.").

backlash from Chinese consumers.²⁵⁶ According to the *Wall Street Journal*, Adidas's "stance on Xinjiang triggered a nationalist backlash against Adidas that has had a lasting impact on its sales in China, which until recently was the brand's most important growth market."²⁵⁷ In particular, "[t]housands of consumers disavowed Adidas on social media, saying the brand had disrespected China. And roughly 35 Chinese celebrity influencers Adidas had worked with promptly dumped the brand, according to company executives."²⁵⁸ The *Wall Street Journal* further reports that "repairing its China business is an urgent task as fast-growing Chinese rivals seek to steal market share" and has led Adidas to support state-sponsored events and official cultural and sporting programs.²⁵⁹

According to a recent study by the Swedish National China Centre, "[i]n the past decade, consumer boycotts of foreign companies have become an increasingly common phenomenon in China."²⁶⁰ It found that between 2008 and 2021, "evidence of 90 boycotts of foreign companies, the majority of which have occurred since the beginning of 2016" with "[m]ost of the boycotts target[ing] companies from North America, Europe, Japan or South Korea that operate in the apparel, automotive, and food and beverages sectors."²⁶¹ Although there were many reasons for these boycotts, the study found that "[b]oycotts were most commonly triggered by company statements or actions perceived as challenging China's governance in Hong Kong or sovereignty over Taiwan, or as unfairly criticising China's human rights record in Xinjiang."²⁶² The study also found that "[m]ost of the companies targeted for remarks related to Hong Kong and Taiwan issued apologies, while fewer apologised for statements made regarding Xinjiang."²⁶³ One explanation for the different responses is "the comparatively high level of attention given to the Xinjiang issue by western audiences, and a realisation among foreign companies

²⁵⁶ Jinshan Hong & Yasufumi Saito, *Brands Apologize Quickly to China Consumers, Except on Xinjiang*, BLOOMBERG (July 11, 2022), <https://www.bloomberg.com/news/articles/2022-07-11/brands-apologize-quickly-to-china-consumers-except-on-xinjiang> [<https://perma.cc/2ZVW-YX3Q>] (stating that a new study found that "[a]mid a rising wave of nationalism, Chinese shoppers have mounted at least 78 boycotts of foreign companies since 2016, more than six times the number seen in the preceding eight years").

²⁵⁷ Moss, *supra* note 107.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ VIKING BOHMAN & HILLEVIA PAURUP, SWEDISH NAT'L CHINA CTR. [KINACENTRUM], PURCHASING WITH THE PARTY CHINESE CONSUMER BOYCOTTS OF FOREIGN COMPANIES, 2008–2021, at 2 (2022), <https://kinacentrum.se/wp-content/uploads/2022/07/purchasing-with-the-party-chinese-consumer-boycotts-of-foreign-companies-20082021-3.pdf> [<https://perma.cc/9LLH-57TL>].

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

that apologising to China could entail reputational costs in other markets.”²⁶⁴ The study also recognized the role of party or state-sponsored organizations in these boycotts, which suggests that some companies may be targeted because of the positions of their government on China’s policies or actions.²⁶⁵

2. Government Actors

Companies may be tempted to limit their exposure to China because of the increasing compliance requirements imposed by the United States and other governments that restrict if and how companies can do business in China. Additionally, the Chinese government may penalize companies for complying with these foreign laws, leading to a “no-win” situation for many companies that may opt for exit as a response.²⁶⁶

The United States has imposed sanctions on several Chinese individuals and entities, citing concerns over human rights issues and national security.²⁶⁷ For example, in 2021, the Treasury Department’s Office of Foreign Assets Control designated over two dozen individuals and entities globally for sanctions for their human rights violations, including a number of Chinese individuals and companies.²⁶⁸ A year later, U.S. authorities used the Global Magnitsky Act²⁶⁹ to sanction Chinese individuals, entities, and one hundred fifty China-flagged fishing vessels for “illegal, unreported and unregulated fishing” associated with human rights violations.²⁷⁰ One of the designated entities is listed

²⁶⁴ *Id.*

²⁶⁵ *See id.* at 3 (explaining that retailer H&M may have been targeted for boycotts because of its “leading position in the Better Cotton Initiative, a grouping at the centre of the controversy, and was one of the members that voiced concern about human rights abuses in Xinjiang early on”). Additionally, the Swedish National China Centre further noted that: “H&M’s home nation is Sweden, whose government has in the last four years made several decisions that has drawn criticism from China” and “H&M operates in an industry where there are many alternative domestic brands which makes it appear as a low-cost target.” *Id.*

²⁶⁶ *See, e.g.,* Jeanette Chu, *The New Arms Race: Sanctions, Export Control Policy, and China*, CTR FOR STRATEGIC & INT’L STUD. (Mar. 25, 2022), <https://www.csis.org/analysis/new-arms-race-sanctions-export-control-policy-and-china> [<https://perma.cc/LS8E-D6PX>] (“[M]oving forward, companies will find de-risking a necessary part of their risk calculus. For example, while sanctions are not the primary reason for exiting Russia, companies that do so may be able to avoid some of the complexities surrounding recent regulatory changes.”).

²⁶⁷ *Treasury Sanctions Perpetrators of Serious Human Rights Abuse on International Human Rights Day*, U.S. DEP’T TREASURY (Dec. 10, 2021), <https://home.treasury.gov/news/press-releases/jy0526> [<https://perma.cc/T5FY-EG9E>].

²⁶⁸ *Id.* (citing concerns about technology-based human rights violations in Xinjiang).

²⁶⁹ *The Global Magnitsky Sanctions Program*, U.S. DEP’T STATE, <https://www.state.gov/global-magnitsky-act/> [<https://perma.cc/VC6Y-74AZ>].

²⁷⁰ *Fact Sheet: President Biden Signs National Security Memorandum to Combat Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses*, THE WHITE HOUSE (June 27, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/27/fact-sheet-president-biden-signs-national-security-memorandum-to-combat-illegal-unreported-and-unregulated-fishing->

on the Nasdaq, and “its blacklisting marks the first time the Treasury has directly levied sanctions on a company on a U.S. stock exchange, according to officials.”²⁷¹

Additionally, in 2022, the Biden Administration announced export controls on the sale of semiconductor technology to China in an effort to restrict the availability of technology for use in China’s military programs.²⁷² These restrictions have been labeled as “the broadest export controls issued in a decade” and “appear to establish a more comprehensive policy that will stop cutting-edge exports to a range of Chinese technology companies and cut off China’s nascent ability to produce advanced chips itself.”²⁷³ China has already responded by challenging these rules before the World Trade Organization and may punish companies that comply with these rules but still continue to operate in China.²⁷⁴

In 2021, Customs and Border Protection issued a regionwide Withhold Release Order for cotton and tomato products made in the Xinjiang region.²⁷⁵ In order to avoid seizure or obtain release of goods, “importers must provide transaction documents for every level of the supply chain and transportation documents evidencing that the cotton/tomatoes are not sourced in XUAR [Xin-

and-associated-labor-abuses/ [https://perma.cc/BH6Z-NUD6]; Dylan Tokar, *U.S. Targets Chinese Fishing Vessels, Russian Detention Camps, with Human-Rights Sanctions*, WALL ST. J. (Dec. 9, 2022), <https://www.wsj.com/articles/u-s-sanctions-china-based-vessels-over-alleged-illegal-fishing-practices-11670598344> [https://perma.cc/XG65-4KDW].

²⁷¹ Tokar, *supra* note 270.

²⁷² Ana Swanson, *Biden Administration Clamps Down on China’s Access to Chip Technology*, N.Y. TIMES (Oct. 7, 2022), <https://www.nytimes.com/2022/10/07/business/economy/biden-chip-technology.html> [https://perma.cc/DP32-5D97].

²⁷³ *Id.*

²⁷⁴ Edward White & Demetri Sevastopulo, *China Hits Back at US Chip Sanctions with WTO Dispute*, FIN. TIMES (Dec. 13, 2022), <https://www.ft.com/content/4eaedee4-5267-4e3a-b9da-5d2bb6f356ee> [https://perma.cc/4BN2-L9TX]; Swanson, *supra* note 272.

²⁷⁵ *CBP Issues Region-wide Withhold Release Order on Products Made by Slave Labor in Xinjiang*, U.S. CUSTOMS & BORDER PROT. (Jan. 13, 2021), <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-region-wide-withhold-release-order-products-made-slave#:~:text=Accountability%20and%20Transparency-,CBP%20Issues%20Region%2DWide%20Withhold%20Release%20Order%20on%20Products,by%20Slave%20Labor%20in%20Xinjiang&text=WASHINGTON%20%E2%80%94%20Effective%20January%2013%20at,China's%20Xinjiang%20Uyghur%20Autonomous%20Region> [https://perma.cc/Z9ZV-77VN] (“The [Withhold Release Order] was issued against cotton and tomatoes and their downstream products produced in whole or in part in the Xinjiang region, and includes downstream products produced outside the Xinjiang region that incorporate these inputs. These products include apparel, textiles, tomato seeds, canned tomatoes, tomato sauce, and other goods made with cotton and tomatoes. Importers are responsible for ensuring the products they are attempting to import do not exploit forced labor at any point in their supply chain, including the production or harvesting of the raw material.”).

jiang Uyghur Autonomous Region].”²⁷⁶ In 2022, the Uyghur Forced Labor Production Act went into effect²⁷⁷ and “greatly increases the showing that companies need to make to prove that goods produced in the XUAR, in full or in part, are entitled to entry into the United States.”²⁷⁸ Products manufactured in the region, or by a specific list of entities, “are presumptively barred from entry into the United States unless the importer can present ‘clear and convincing’ evidence that the product has not been tainted by the use of forced labor.”²⁷⁹

In 2021, the Chinese government complicated company compliance with these U.S. laws by passing the Anti-Foreign Sanctions Law.²⁸⁰ The law allows Chinese authorities to block assets, transactions, and visa restrictions against individuals or entities who either created China-related sanctions or complied with them.²⁸¹ Companies, therefore, find themselves in a difficult position, facing penalties from the United States if they violate sanctions, but exposing themselves to counter-sanctions from the Chinese authorities for complying with these same sanctions.²⁸²

Company leaders may also be nervous about staying in China or the region due to heightened military risks and the prospect—however remote—of a Chinese invasion of Taiwan and the ensuing international response. According

²⁷⁶ Robert Ernest et al., *CBP Issues FAQs on Xinjiang Forced Labor, Apparel & Tomato Importers Due Diligence Required to Avoid Exclusion of Goods*, JD SUPRA (Feb. 17, 2021), <https://www.jdsupra.com/legalnews/cbp-issues-faqs-on-xinjiang-forced-labor-8294042/> [<https://perma.cc/5MC7-C8B5>].

²⁷⁷ *Statement by Press Secretary Jen Psaki on the Uyghur Forced Labor Prevention Act*, THE WHITE HOUSE (Dec. 14, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/14/statement-by-press-secretary-jen-psaki-on-the-uyghur-forced-labor-prevention-act/#:~:text=The%20President%20welcomes%20the%20agreement,address%20forced%20labor%20in%20Xinjiang> [<https://perma.cc/557L-DRZ4>].

²⁷⁸ *Enforcement of the Uyghur Forced Labor Prevention Act Begins in the United States*, GIBSON DUNN (June 23, 2022), <https://www.gibsondunn.com/enforcement-of-the-uyghur-forced-labor-prevention-act-begins-in-the-united-states/> [<https://perma.cc/NMT2-98YK>] (“[S]ince there is no de minimis exception in the Act, importers of a wide range of products may find their products the target of a potential exclusion order, detention or seizure. . . . Especially for importers with final products or with products that may have any of the foregoing as material inputs, importers will need to be familiar with and meet the evidentiary burden in reference to the entire supply chain, no matter how small or remote a supplier’s input may be to a final product.”).

²⁷⁹ *Id.*

²⁸⁰ Wan Li, Jeffrey Sims, Ken Tang & Yu Wang, *Anti-foreign Sanctions Law: Update for Companies Doing Business in China*, JD SUPRA (Oct. 15, 2021), <https://www.jdsupra.com/legalnews/anti-foreign-sanctions-law-update-for-3549235/#:~:text=The%20Anti%2DForeign%20Sanctions%20Law%20follows%20on%20the%20creation%20of,and%20denial%20of%20visas%20to> [<https://perma.cc/BD8A-FMZC>]; Kate Yin & Derrick Zhao, *Sizing Up China’s Anti-Foreign Sanctions Law and Other Countermeasures*, GLOB. INVESTIGATIONS REV. (July 8, 2022), <https://globalinvestigationsreview.com/guide/the-guide-sanctions/third-edition/article/sizing-chinas-anti-foreign-sanctions-law-and-other-countermeasures> [<https://perma.cc/UEM8-48AJ>].

²⁸¹ *Supra* note 280.

²⁸² *Supra* note 280.

to a November 2022 poll, “many multinational companies operating [in Taiwan] have begun preparing for the possibility of an invasion by Beijing or other crises in the region.”²⁸³ A report by the Center for Strategic and International Studies found that twenty of the surveyed Taiwanese companies with operations in China had already moved some of their production or sourcing out of China with another third contemplating the same actions.²⁸⁴ Many of these companies are relocating operations to Southeast Asia; others are opting to bring it back to Taiwan.²⁸⁵ But the same survey also found that some Taiwanese companies are instead leaving Taiwan—some in favor of China.²⁸⁶ Among the reasons for exit, companies cite a concern over military attacks in the region and growing concerns over Taiwan’s economic position.²⁸⁷

A survey by the American Chamber of Commerce in Shanghai found that many multinational companies were already scaling back on their investments in China due to COVID-19 related provisions introduced by the Chinese government, along with travel restrictions and supply chain interruptions.²⁸⁸ A similar survey by the European Union Chamber of Commerce in China similarly found that “[n]early one in four European companies in China are considering shifting their investments out of the country,” in response to China’s COVID strategies.²⁸⁹ For some companies, these decisions concern new investments—not plans to terminate existing operations in China.²⁹⁰ Others may look to relocate their operations to other parts of Southeast Asia.²⁹¹

²⁸³ Yu Nakamura & Hideaki Ryugen, *Half of Foreign Companies in Taiwan Make Contingency Plans: Nikkei Poll*, NIKKEI ASIA (Nov. 2, 2022), <https://asia.nikkei.com/Politics/International-relations/Taiwan-tensions/Half-of-foreign-companies-in-Taiwan-make-contingency-plans-Nikkei-poll> [https://perma.cc/3GZK-7U95].

²⁸⁴ SCOTT KENNEDY, CTR FOR STRATEGIC & INT’L STUD., IT’S MOVING TIME: TAIWANESE BUSINESS RESPONDS TO GROWING U.S.-CHINA TENSIONS 12 (2022), <https://www.csis.org/analysis/its-moving-time-taiwanese-business-responds-growing-us-china-tensions> [https://perma.cc/7F4W-J4R7].

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 17–19.

²⁸⁸ AM. CHAMBER OF COM. IN SHANGHAI, AMCHAM SHANGHAI JUNE COVID IMPACT SURVEY 1 (2022), <https://www.amcham-shanghai.org/en/article/amcham-shanghai-june-covid-impact-survey> [https://perma.cc/PJG5-MUHL] (finding that “25% of consumer and services companies have decreased their investment, as have 20% of manufacturing companies”).

²⁸⁹ John Liu, Yujing Liu & James Mayger, *Nearly One in Four European Firms Consider Shifting Out of China*, BLOOMBERG (June 20, 2022), <https://www.bloomberg.com/news/articles/2022-06-20/nearly-one-in-four-european-firms-consider-shifting-out-of-china> [https://perma.cc/PF75-CYHZ].

²⁹⁰ *Id.*

²⁹¹ Evelyn Cheng, *American Companies Increasingly Look Outside of China After Covid*, CNBC (Oct. 27, 2022), <https://www.cnbc.com/2022/10/28/american-companies-increasingly-look-outside-of-china-after-covid.html> [https://perma.cc/W6QX-LBHQ]; Dashveenjit Kaur, *US-China: The List of American Companies That Have Retreated from China*, TECHHQ (Sept. 22, 2022), <https://techhq.com/>

B. Supply Factors

While Section A listed numerous reasons for companies to leave China, this Section explains why global supply chains may make it hard for companies to leave.²⁹² Supply chains can be defined as “system[s] of producing and delivering a product or service, from the very beginning stage of sourcing the raw materials to the final delivery of the product or service to end-users.”²⁹³ Supply chains are important because they “lay[] out all aspects of the production process, including the activities involved at each stage, information that is being communicated, natural resources that are transformed into useful materials, human resources, and other components that go into the finished product or service.”²⁹⁴

Many famous brands do not make the goods with which we associate them, but instead contract with one or more suppliers to produce these goods.²⁹⁵ Companies have focused on core strengths—such as brand development—and have outsourced the other stages of production to third party suppliers, many of whom are in China.²⁹⁶ China has a wide base of suppliers; for example, “[m]ore than 90% of Apple products such as iPhones, iPads and MacBook laptops are manufactured in China by outside contractors.”²⁹⁷ According to Bloomberg Intelligence, “it would take about eight years to move just 10% of Apple’s production capacity out of China, where roughly 98% of the company’s iPhones have been made.”²⁹⁸ It explains that “[s]cores of local component suppliers—not to mention modern and efficient transport, communication and electricity supplies—make it particularly difficult to get out of the world’s second-largest economy.”²⁹⁹

2022/09/us-china-the-list-of-american-companies-that-have-retreated-from-china/ [https://perma.cc/67CC-WLEQ].

²⁹² See *supra* notes 250–291 and accompanying text; *infra* notes 293–313 and accompanying text.

²⁹³ *Supply Chain*, CORP. FIN. INST. (Apr. 17, 2023), <https://corporatefinanceinstitute.com/resources/management/supply-chain/> [https://perma.cc/52KL-4LGF].

²⁹⁴ *Id.*

²⁹⁵ See Kishanthi Parella, *Outsourcing Corporate Accountability*, 89 WASH. L. REV. 747, 756–62 (2014) (illustrating how Apple stands as a prime example of a company with very famous products created by suppliers in China).

²⁹⁶ See *id.* at 760–64 (explaining the relationship of companies adding brand value while outsourced producers create the physical products).

²⁹⁷ Yang Jie, *Apple Looks to Boost Production Outside China*, WALL ST. J. (May 21, 2022), <https://www.wsj.com/articles/apple-looks-to-boost-production-outside-china-11653142077> [https://perma.cc/M9CJ-Q9AJ].

²⁹⁸ Bryce Baschuk, Debby Wu & Peter Elstrom, *Apple’s Tech Supply Chain Shows Difficulty of Dumping China*, BLOOMBERG (Sept. 29, 2022), <https://www.bloomberg.com/news/articles/2022-09-30/apple-s-tech-supply-chain-shows-difficulty-of-dumping-china> [https://perma.cc/4723-NFFZ].

²⁹⁹ *Id.*

The abundance of suppliers has allowed China to offer high-volume manufacturing capabilities that enable American, Chinese, and other companies to bring a large volume of inventory to market in a short period of time.³⁰⁰ This is important for companies like Apple because it allows them to adopt “just in time” production strategies that “puts the right number of parts in the right plant at the right time—with nothing left to spare.”³⁰¹ By doing so, companies reduce their overhead costs and can better calibrate their production to meet consumer demand.³⁰²

China’s high-volume manufacturing capabilities is enabled through the use of “factory cities,” which are “self-contained campuses that include factories, warehouses, office spaces, and housing within a fenced perimeter” and can support ten thousand to two hundred fifty thousand workers on these sites.³⁰³ The advantage of these cities is that they offer a “complete ecosystem that contains everything needed for all stages of electronics production all in one place.”³⁰⁴ These features attract companies who want to manufacture their products as efficiently as possible.³⁰⁵

In one example involving retailer Liz Claiborne and supplier Luen Thai, Professor Trang (Mae) Nguyen explains that “[w]ith Liz Claiborne’s backing, Luen Thai relocated the raw materials suppliers and product manufacturers into one mega-factory located in the Dongguan, Guangdong province in China.”³⁰⁶ According to Professor Nguyen:

Luen Thai’s restructuring resulted in a corresponding change from Liz Claiborne, which at the time was sourcing from over 250 suppliers in thirty-five countries. The retailer started to consolidate its supplier base and relocate its designers from Hong Kong, New York City, and

³⁰⁰ Elizabeth Lopatto, *Tim Cook’s Trick for Making iPhones Is Now at Risk from the Pandemic*, THE VERGE (Mar. 13, 2020), <https://www.theverge.com/2020/3/13/21177024/apple-just-in-time-manufacturing-china-coronavirus-supply-chain> [https://perma.cc/6B3J-BSL5].

³⁰¹ *Id.*; see also Parella, *supra* note 295, at 764–67 (discussing the power dynamics between the suppliers and the buyer when multi-national firms outsource the means of production).

³⁰² See Lopatto, *supra* note 300 (arguing that “Apple’s ability to launch, manufacture, and ship millions of iPhones around the world every year like clockwork with little remaining inventory is a miracle of globalized just-in-time manufacturing”).

³⁰³ Willy Shih, *China’s Zero-Covid Exit and the Potential For 2023 Supply Chain Disruptions*, FORBES (Dec. 13, 2022), <https://www.forbes.com/sites/willyshih/2022/12/13/chinas-covid-zero-exit-and-the-potential-for-2023-supply-chain-impacts/?sh=4848353a103f> [https://perma.cc/JY9A-HUKM].

³⁰⁴ Wade Shepard, *A Look Inside Shenzhen’s High-Tech Empire*, FORBES (July 14, 2016), <https://www.forbes.com/sites/wadeshepard/2016/07/14/a-look-inside-shenzhens-high-tech-empire/?sh=3218952e4f36> [https://perma.cc/Y8HP-KF7Z].

³⁰⁵ *Id.*

³⁰⁶ Trang (Mae) Nguyen, *Hidden Power in Global Supply Chains*, 64 HARV. INT’L L.J. 35, 65 (2023).

elsewhere to the Dongguan complex, so they could closely collaborate with Luen Thai's technicians from the factory and fabric mills.³⁰⁷

China therefore offers Apple and other companies advantages that would be challenging to replicate in other countries.³⁰⁸ The skills gap—particularly in engineers—is one of the reasons that Tim Cook, Apple's CEO, offered when asked why Apple finds it difficult to relocate production facilities from China to elsewhere.³⁰⁹ Cook argued that production of Apple products requires advanced machinery and skilled workers who are familiar with using it.³¹⁰

But the skills advantage is not the only important factor. Apple and other companies seek a "China +1" strategy in which they would maintain production in China but also seek to diversify in other countries.³¹¹ These strategies lead companies to look towards India as an alternative site considering its own supply of engineers and other skilled workers.³¹² India, however, like Vietnam, poses the challenge that it does not have the availability of land that can support the gigantic manufacturing sites that have made Chinese manufacturing so famous.³¹³

For these reasons, it seems unlikely that we can expect companies to exit China in the same numbers leaving Russia without other extenuating factors, such as a military conflict in the region. The diversified consumer base, conflicting consumer preferences over Chinese government actions, and strong supply chains make exit a significantly more complicated strategy.

³⁰⁷ *Id.* at 65–66 (internal citations omitted).

³⁰⁸ Catherine Thorbecke, *Apple Made China the Backbone of Its iPhone Assembly. Shifting Away Could Take Years*, CNN (Dec. 12, 2022), <https://www.cnn.com/2022/12/09/tech/apple-china/index.html#:~:text=In%20an%20investor%20note%20earlier,if%20it%20%E2%80%9Cmoves%20aggressively.%E2%80%9D> [https://perma.cc/KWT8-BGPW]. These advantages include:

[A]vailability of materials and components from nearby suppliers; world-class infrastructure that is already in place at scale; access to a large labor force of engineers as well as low labor costs; and availability of the swaths of land necessary to build the factory-cities that can house hundreds of thousands of workers as well as the sprawling production facilities.

Id.

³⁰⁹ Jack Nicas, *A Tiny Screw Shows Why iPhones Won't Be 'Assembled in U.S.A.'*, N.Y. TIMES (Jan. 28, 2019), <https://www.nytimes.com/2019/01/28/technology/iphones-apple-china-made.html> [https://perma.cc/9EE7-YDFY].

³¹⁰ *Id.*

³¹¹ J. Stewart Black & Allen J. Morrison, *The Strategic Challenges of Decoupling*, HARV. BUS. REV. (2021), <https://hbr.org/2021/05/the-strategic-challenges-of-decoupling> [https://perma.cc/4GK9-JLSZ].

³¹² *Id.*

³¹³ Thorbecke, *supra* note 308.

V. IMPLICATIONS OF CORPORATE FOREIGN POLICY: LESSONS FOR GOVERNMENT POLICYMAKERS AND BUSINESS EXECUTIVES

The previous Parts used this Article's framework to explain company decisions in response to the Russian invasion of Ukraine and to predict how companies may respond to a future conflict over Taiwan if one arises.³¹⁴ This Part explains the significance of this analysis for government policymakers and business executives.³¹⁵ For policymakers, this Article's framework laid out in Section A of this Part explains how national foreign policy—practiced by governments—may be affected by corporate foreign policy practiced by companies.³¹⁶ Specifically, it explains that the economic effects of government-imposed economic sanctions may be much greater than anticipated because companies may impose their own sanctions as well.³¹⁷ Policymakers will need to account for the interaction between government sanctions and corporate sanctions when deciding if and how to use sanctions in the future. For executives, Section B offers lessons on how businesses can better prepare themselves for the next crisis by evaluating (i) a business model's flexibility for centralized or decentralized decision-making; (ii) contract design that enables or restricts adaptation; and (iii) decisions on when to offer aid, what kind of aid, and whether to offer it in partnership with NGOs.³¹⁸

A. Lessons for Government Policymakers

The implications revealed by an examination of corporate foreign policy hold a number of lessons for governments around the globe. Subsection 1 discusses the need to re-evaluate the effects of targeted sanctions based on the possibility of a subsequent wave of "corporate sanctions."³¹⁹ Then, Subsection 2 discusses the need for government officials to understand the growing privatization of foreign policy in the business world.³²⁰

1. Re-examining Targeted Sanctions

Economic sanctions are a staple of United States foreign policy.³²¹ According to the United States Department of the Treasury, sanctions use has increased

³¹⁴ See *supra* notes 101–313 and accompanying text.

³¹⁵ See *infra* notes 319–423 and accompanying text.

³¹⁶ See *infra* notes 319–356 and accompanying text.

³¹⁷ See *infra* notes 319–356 and accompanying text.

³¹⁸ See *infra* notes 345–423 and accompanying text.

³¹⁹ See *infra* notes 321–344 and accompanying text.

³²⁰ See *infra* notes 345–356 and accompanying text.

³²¹ U.S. DEP'T OF TREASURY, THE TREASURY 2021 SANCTIONS REVIEW 1 (Oct. 2021), <https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf> [<https://perma.cc/V6V3->

by almost one thousand percent between 2000 and 2021.³²² The United States favors sanctions because it “allow[s] U.S. policymakers to impose a material cost on adversaries to deter or disrupt behavior that undermines U.S. national security and signal a clear policy stance.”³²³ Despite their popularity, sanctions remain controversial and their use has attracted two primary criticisms: *effectiveness* and *humanitarian harms*.³²⁴ Critics argue that sanctions frequently fail to achieve their objectives:

Because target regimes have control over the redistribution of public resources that are often made scarce by sanctions, they disproportionately use those resources to insulate themselves and their support coalition from the adverse effects of sanctions, while average citizens bear the brunt of the economic hardship.³²⁵

Even the Treasury Department has acknowledged the growing ineffectiveness of economic sanctions. It notes that “the United States now faces new, emerging challenges to the efficacy of sanctions as a national security tool: cyber-criminals; strategic economic competitors; and a workforce and technical infrastructure under pressure from growing financial complexity and competing demands from policymakers, market participants, and others.”³²⁶ Among the reasons for this growing ineffectiveness, the Treasury Department recognizes that “American adversaries—and some allies—are already reducing their use of the U.S. dollar and their exposure to the U.S. financial system more broadly in cross-border transactions.”³²⁷ Additionally, it also identifies “technological innovations such as digital currencies, alternative payment platforms, and new ways of hiding cross-border transactions” as possible means of dodging the full brunt of United States sanctions.³²⁸

CXRE] (“After the September 11, 2001 attacks, economic and financial sanctions (“sanctions”) became a tool of first resort to address a range of threats to the national security, foreign policy, and economy of the United States.”).

³²² *Id.* at 2.

³²³ *Id.* at 1.

³²⁴ Arne Tostensen & Beate Bull, *Are Smart Sanctions Feasible?*, 54 WORLD POLS. 373, 377 (2002).

³²⁵ Dursun Peksen, *Political Effectiveness, Negative Externalities, and the Ethics of Economic Sanctions*, 33 ETHICS & INT’L AFFS. 279, 281 (2019); see also Tostensen & Bull, *supra* note 324, at 375 (“The fundamental flaw in conventional sanctions theory is its assumption that hardships inflicted on the civilian population of a targeted state will lead to grassroots political pressure on that state’s leaders to change their behavior.”).

³²⁶ U.S. DEP’T OF TREASURY, *supra* note 321, at 2.

³²⁷ *Id.*

³²⁸ *Id.*

The second concern is that sanctions impose significant humanitarian harms on innocent civilian populations in the sanctioned country.³²⁹ Sanctions can impede the delivery of humanitarian assistance to the civilian population.³³⁰ Sanctions can also lead to increased government repression and human rights abuses as the sanctioned state's government attempts to maintain control and quell dissent, fostered by the economic effects of sanctions within the sanctioned country.³³¹ Marginalized communities, such as women and minorities, are particularly at risk of economic exclusion and violence.³³²

These concerns have led the United States and other countries to disfavor *comprehensive sanctions* in preference of *targeted sanctions*.³³³ “Comprehensive country-based measures . . . prohibit commercial transactions with an entire country and its people” and have been imposed against Iran, North Korea, and Cuba.³³⁴ Targeted sanctions focus on individual elites, particular institutions, and specific sectors within the sanctioned state.³³⁵ For example, following the Russian invasion of Ukraine, the United States government introduced full blocking sanctions on two Russian financial institutions and five Russian political elites and their families.³³⁶

This Article's analysis raises questions over the distinction between comprehensive and targeted sanctions. Corporate foreign policy can magnify the effects of government foreign policy in unexpected, and even unintended, ways. After the invasion of Ukraine, many companies—whose operations did not run afoul of government sanctions—still chose to scale back their operations in Russia because of the indirect consequences of government sanctions—worsening economic environment, reputational risks of continued operations, and the possibility of future sanctions.³³⁷ U.S. policymakers may have underestimated the scale and magnitude of the economic effects caused by their decision to sanction.³³⁸ Private corporate sanctions also accompany gov-

³²⁹ Peksen, *supra* note 325, at 282 (“The consensus in the literature is that ordinary citizens tend to bear the burden of sanctions political elites and their supporters remain unharmed.”).

³³⁰ *Id.* at 283.

³³¹ *Id.* at 282–83.

³³² *Id.* at 283–84.

³³³ Tostensen & Bull, *supra* note 324, at 373–74.

³³⁴ Justyna Gudowska & John Prendergast, Response, *Can Sanctions Be Smart? The Costs and Benefits of Economic Coercion*, 101 FOREIGN AFFS. 189, 189 (2022); David Mortlock, Britt Mosman, Nikki Cronin & Ahmad El-Gamal, *Sanctions: The US Perspective*, GLOB. INVESTIGATIONS REV. (Jan. 4, 2023), <https://globalinvestigationsreview.com/guide/the-practitioners-guide-global-investigations/2023/article/sanctions-the-us-perspective> [<https://perma.cc/JH5W-E87F>].

³³⁵ *Fact Sheet: United States Imposes First Tranche of Swift and Severe Costs on Russia*, *supra* note 41 (providing samples of who is affected by targeted sanctions).

³³⁶ *Id.*

³³⁷ Kilpatrick, *supra* note 15.

³³⁸ Daniel Flatley, Nick Wadhams & Saleha Mohsin, *Corporate ‘Self-sanctioning’ of Russia Has US Fearing Economic Blowback*, BLOOMBERG (June 14, 2022), <https://www.bloomberg.com/news/>

ernment sanctions even when the former was not required, anticipated, or even desired by governments.³³⁹ The consequence is that the effects of sanctions may be much greater than policymakers may anticipate.

The viability of targeted sanctions depends on the possibility for coordination and calibration of sanctions measures. The advantage of targeted sanctions is that they are intended to serve as precise strikes, aimed at specific actors, organizations, and sectors that are believed to be integral to the sanctioned state's undesirable behavior.³⁴⁰ The reality of corporate sanctions, however, belies these advantages.³⁴¹ Many American companies did not only restrict their new investments in Russia but suspended their current operations and exited the country altogether.³⁴² Likewise, companies did not only cease doing business with the Russian financial sector, but also exited other sectors as well.³⁴³

Either the United States intended for these actions or it did not, and either possibility poses a problem for the continued use of sanctions. If the United States did intend to instigate a corporate exit from Russia, these sanctions then begin to resemble the more problematic comprehensive, countrywide sanctions rather than the promised targeted sanctions.³⁴⁴ If the United States did not intend for corporate exit, then this speaks to the inability of sanctioning states to control or calibrate the effects of their sanctions. To put it bluntly, policymakers cannot accurately predict, much less control, the supplemental private sanctions levied by transnational corporations and other actors in response to the government sanctions introduced by United States and foreign policymakers. This means that the scale, magnitude, and effects of a sanctions policy will be hard to calibrate to maximize effectiveness and minimize harm.

articles/2022-06-14/corporate-self-sanctioning-of-russia-has-us-fearing-economic-blowback [https://perma.cc/8VG8-MDGB] (suggesting that the United States government did not anticipate the collateral consequences from collective corporate action in response to sanctions).

³³⁹ *Id.*

³⁴⁰ Gudowska & Prendergast, *supra* note 334.

³⁴¹ Flatley, Wadhams & Mohsin, *supra* note 338 (discussing the array of negative consequences from corporate sanctions the government may have underestimated and to which it now must react).

³⁴² *Fact Sheet: United States, G7 and EU Impose Severe and Immediate Costs on Russia*, *supra* note 87.

³⁴³ Dellatto & Bissada, *supra* note 89.

³⁴⁴ See *Fact Sheet: United States, G7 and EU Impose Severe and Immediate Costs on Russia*, *supra* note 87 (“[The prohibition on new investments in Russia] builds on the decision made by more than 600 multinational businesses to exit from Russia. The exodus of the private sector includes manufacturers, energy companies, large retailers, financial institutions, as well as other service providers such as law and consulting firms. Today’s [Executive Order] will ensure the enduring weakening of the Russian Federation’s global competitiveness.”).

2. The Privatization of Foreign Policy

One of the reasons for overcompliance is that U.S. policymakers are not the only party pressuring corporations to exit Russia or otherwise restrict their business.³⁴⁵ Instead, as Part III explained, consumers and investors may have strong preferences that companies exit Russia.³⁴⁶

What we may be witnessing is the privatization of foreign policy on two dimensions. First, as discussed above, many corporations voluntarily sanctioned Russia by reducing or terminating their business activities in Russia even when not required to do so under U.S. sanctions.³⁴⁷ The decisions to sanction were made by the companies themselves, albeit in response to risks or conditions created by U.S. policymakers through sanction programs.³⁴⁸ This means that the *sanctioning actors* are no longer governments but also include transnational corporations and other business actors whose corporate sanctions accompany government-based sanctions. These actors then supplement the governmental sanctions regime.

Second, we are also witnessing the privatization and diversification of the actors and organizations that incentivize companies to sanction foreign states. Although governments provide the primary incentive to withdraw through direct sanctions, it is now clear that a range of private actors—consumers, investors, and other groups—may also influence the decisions of companies to do the same. This means that the incentives behind sanctions are increasingly decentralized—they do not originate from one source.

The effectiveness of these private incentives is increased by the actions of third party intermediaries, such as the rankings database introduced by the Yale School of Management (SOM) that tracked whether a business discontinued its Russian operations following the invasion.³⁴⁹ As categorized by the Yale SOM, businesses chose one of five potential responses to the Russian invasion: (i) complete cessation or exit; (ii) curtailment of operations with the possibility of return; (iii) reduction of some operations with continuation of others; (iv) postponement of new investments or developments with continuation of current business; and (v) continuation of business as usual.³⁵⁰ The Yale SOM database investigated, aggregated, and categorized the responses of hundreds of businesses around the world into one of these five categories.³⁵¹ This database also pro-

³⁴⁵ See *supra* notes 115–169 and accompanying text (detailing the demand factors causing companies to exit Russia).

³⁴⁶ See *supra* notes 115–169 and accompanying text.

³⁴⁷ See *supra* notes 115–169 and accompanying text.

³⁴⁸ See *supra* notes 115–169 and accompanying text.

³⁴⁹ *Over 1,000 Companies Have Curtailed Operations in Russia—But Some Remain*, *supra* note 12.

³⁵⁰ *Id.*

³⁵¹ *Id.*

vided a letter grade to each of these business decisions, ranging from “A” for a complete exit or cessation of business to an “F” for continuing business as normal with intermediate grades for the choices in between these two extremes.³⁵²

This database provided four discrete functions that increased the likelihood of success of private incentives: *transparency*, *aggregation*, *comparability*, and *normative value*. By collecting company level information regarding their responses to the Russian invasion, the database spared individuals from gathering this information on their own.³⁵³ It improved transparency regarding the exit decisions of companies and aggregated the information in one place for ease of public use.³⁵⁴ By centralizing the information, the database also improved comparability between the companies that, in theory, would enable individual consumers, employees, or other groups to take action based on which companies’ responses they found preferable. Finally, the database used a grading system that assigned a particular normative value to different company actions.³⁵⁵ In combination, the database provided a number of functions that enabled members of the public to learn, assess, and act upon their corporate policy preferences.³⁵⁶ Although difficult to measure, the database provided the unique possibility—if not the reality—of private actors increasing their attention and pressure on companies to adopt a particular foreign policy towards Russia.

Both dimensions of privatization raise the possibility that government actors are loosening their monopoly over sanctions and, possibly, losing control over which companies will sanction Russia. Policymakers will, therefore, need to keep these risks in mind when deciding when and how to impose sanctions in the future.

B. Lessons for Corporate Executives

Just as there are lessons to be learned for governments, corporate executives also should have major takeaways regarding corporate foreign policy. Subsection 1 discusses how one’s business model impacts one’s ability to respond to international crises.³⁵⁷ Subsection 2 summarizes advantageous contract provisions of which businesses should make use to better insulate themselves from

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ See *infra* notes 360–373 and accompanying text.

future losses.³⁵⁸ Finally, Subsection 3 discusses how companies can distribute aid in the wake of a crisis to best benefit victims and the company itself.³⁵⁹

1. Evaluating the Business Model: Attribution, Control, and Centralized Policymaking

One lesson from the Russian conflict is that executives will need to re-evaluate business models based on the potential for centralized crisis policy-making. In the face of a crisis, a company may find it advantageous to speak with one voice and respond with a clear strategy, whether it is to close stores, terminate business, or exit altogether. The issue is whether a company's business model enables it to speak with one voice. In the Russian conflict, the clearest examples concern disagreements between a company and its franchise partners in Russia.³⁶⁰ For example, Papa Johns and TGI Fridays drew public criticism for maintaining operations in Russia.³⁶¹ They attempted to deflect blame by explaining that their licensed partners in Russia are the ones who own, or otherwise operate, the Russian stores and these partners refused to suspend operations or exit the Russian market.³⁶² Unfortunately for both companies, consumers may not recognize this divergence when the licensed partners continue to operate under the same company name.³⁶³ A common brand unites fran-

³⁵⁸ See *infra* notes 374–383 and accompanying text.

³⁵⁹ See *infra* notes 384–423 and accompanying text.

³⁶⁰ See Elizabeth Sardinias, *The Rush out of Russia: Why Some Brands Are Locked-in*, U. MIA. L. REV. ONLINE (May 3, 2022), <https://lawreview.law.miami.edu/the-rush-out-of-russia-why-some-brands-are-locked-in/> [<https://perma.cc/W22Q-B9NQ>] (describing the conflict on business suspension between Burger King and its main operator in Russia); Luca Piacentini, *How Franchise Brands Are Responding to Russia's Invasion of Ukraine*, 1851 FRANCHISE (Mar. 15, 2022), <https://1851franchise.com/how-franchise-brands-are-responding-to-russias-invasion-of-ukraine-2718227#stories> [<https://perma.cc/65YS-9GVH>] (explaining the difficulties presented by franchise agreements for a corporation's decision to exit a country).

³⁶¹ Fieldstadt, *supra* note 187; Timsit & Fernandez Simon, *supra* note 146.

³⁶² See, e.g., *TGI Fridays Statement on Restaurants in Russia*, TGI FRIDAYS (Mar. 11, 2022), <https://tgifridays.com/downloads/news/TGI%20Fridays%20Statement%20on%20Operations%20in%20Russia.pdf> [<https://perma.cc/228F-97AN>] (“The decision of whether the TGI Fridays restaurants in Russia, which are owned by independent franchisees, stay open can only be made by local franchisees. We have made the decision to donate any proceeds that we receive as part of our franchisee fees to Mercy Chefs which is providing food and water to both refugees fleeing Ukraine and those suffering inside the country.”).

³⁶³ See Lori Qingyuan Yue & Paul Ingram, *Industry Self-regulation as a Solution to the Reputation Commons Problem*, in THE OXFORD HANDBOOK OF CORPORATE REPUTATION 279–80 (Michael L. Barnett & Timothy G. Pollock eds., 2012) (discussing the complexity of the variables impacting a corporation's reputation); Sheila Goins & Thomas S. Gruca, *Understanding Competitive and Contagion Effects of Layoff Announcements*, 11 CORP. REPUTATION REV. 12, 30 (2008) (revealing consumers' inability to make a complete distinction between rival corporations when weighing the reputation of one of the corporations); Tieying Yu & Richard H. Lester, *Moving Beyond Firm Boundaries: A Social Network Perspective on Reputation Spillover*, 11 CORP. REPUTATION REV. 94, 95 (2008) (in-

chisees and franchisor in a way that attributes the franchisee's conduct to the franchisor.³⁶⁴ This attribution creates the risk that consumers and third parties will blame the franchisor for the actions of the licensed partners, even when their positions diverge.

It is, therefore, important to consider the potential for centralized policy-making when choosing a business model. Many U.S. companies chose to enter, or expand, in foreign markets using the master franchise model.³⁶⁵ The master franchise model is ideal for international business because it allows the franchisor to take advantage of specialized skills and expertise of the franchisee.³⁶⁶ Accordingly, "[t]his can help overcome language and translation issues, difficulties in supporting foreign franchisees at a distance and from different time zones, as well as facilitate adaptation of the franchisor's systems to local culture, customs, business practices and legal requirements."³⁶⁷ The other advantage of a franchise agreement is that it can allow for rapid expansion at lower cost and risk sharing between the franchisor and the master franchisee.³⁶⁸

But this model also comes with accompanying disadvantages because the franchisor cedes substantial control over the sub-franchisees.³⁶⁹ This reality can expose companies to risks associated with brand image and use of trademarks.³⁷⁰ It is important to keep in mind that "compared to other franchise structures, such as multi-unit development, direct franchising, area representa-

roducing the idea of "reputation spillover," or how the reputation of one entity affects the reputation of a similarly situated entity).

³⁶⁴ See, e.g., Creswell, *supra* note 16 (illustrating how the acts of franchisee result in negative feedback directed towards the franchisor).

³⁶⁵ See Kathie Lee et al., *Alternatives to Master Franchising: Area Development Agreements, Area Representatives and Joint Ventures*, 10 INT'L J. FRANCHISING L. 3, 4-5 (2012) (providing an overview of what is contained in the master franchise model); Will Woods & Ann Hurwitz, Westlaw Prac. L., Domestic and International Franchising, Master Franchising, and Regulation of Franchise Agreements in the United States: Overview (Nov. 1, 2018) (Westlaw Practical Law guide) (on file with author) ("Many US franchisors use master franchise agreements when expanding internationally. They contract with a local entity (master franchisee) to develop the franchisor's brand in a particular geographic area according to an agreed schedule, through unit franchise agreements entered into between the master franchisee and its affiliates or third parties.").

³⁶⁶ Bloomberg Law, Corporate Practice Portfolio Series No. 102: Franchising, Forms of Business Portfolios (Bloomberg Practical Guidance) (on file with author).

³⁶⁷ *Id.*

³⁶⁸ Lee, *supra* note 365, at 19. See generally Kevin Maher, John Pratt & Tao Xu, International Master Franchising: The Subfranchisees Are Doing What? 4 (Oct. 2017) (conference paper), <https://www.americanbar.org/content/dam/aba/events/franchising/course-an17/an17-w24-paper-complete.pdf> [<https://perma.cc/P5NT-ED9V>] (highlighting the financial incentives for a franchisor, such as "the possibility of expanding the brand network without . . . having to invest as much capital (both in staffing and financial terms) as would be necessary if the franchisor were to set up foreign operations directly. . . . [and] without substantially increasing the size of its management team").

³⁶⁹ Lee, *supra* note 365, at 3.

³⁷⁰ *Id.*

tive, and joint venture, master franchising typically affords franchisor the least degree of control over the activities occurring at the unit level.”³⁷¹ The risks and backlash Papa Johns has faced may cause other companies to favor choices such as direct franchising or a joint venture agreement in the future. These arrangements come with greater costs associated with infrastructure and personnel, but could allow for greater control of operational decisions in times of crisis.³⁷² Even those companies participating through a joint venture, however, encountered challenges with extricating themselves from Russia in the wake of its invasion of Ukraine.³⁷³

2. Evaluating Contract Provisions: Conflict-related Contractual Innovation

Another approach to centralizing crisis policymaking is to include contractual language that can provide a business with flexibility to respond to a conflict situation—even if they choose to retain a business model that is fraught. Some point out, for example, that many franchise agreements do not include a force majeure clause that could have enabled many businesses to terminate their agreements.³⁷⁴ Force majeure clauses allow a contract party to excuse or defer performance without legal liability.³⁷⁵ These clauses traditionally include “acts of war” as a condition that excuses performance.³⁷⁶ According to the law firm Jones Day:

A party considering relying on a force majeure clause will need to demonstrate that the relevant events are the effective cause of the non-performance. . . . [Which] is more likely to be the case in contracts which have a direct nexus to Ukraine, where performance is more likely to be directly affected by the conflict, but ultimately will depend on the causal relationship between the events and obligations in question.³⁷⁷

³⁷¹ Maher, *supra* note 368, at 11.

³⁷² Lee, *supra* note 365, at 15.

³⁷³ *Actions on Burger King Russia*, *supra* note 188 (describing RBI’s (Burger King’s parent company) 15% stake in joint venture).

³⁷⁴ David Brancaccio & Rose Conlon, *Why Over 450 Companies Have Withdrawn from Russia, and Why Some Haven’t*, MARKETPLACE (Mar. 29, 2022), <https://www.marketplace.org/2022/03/29/why-over-450-companies-have-withdrawn-from-russia-and-why-some-havent/> [<https://perma.cc/LR5N-W47L>].

³⁷⁵ *FAQs: Ukraine-Russia Conflict: Force Majeure and Other Defenses to Contractual Performance*, BAKER HOSTETLER (Apr. 25, 2022), <https://www.bakerlaw.com/insights/faqs-ukraine-russia-conflict-force-majeure-and-other-defenses-to-contractual-performance/> [<https://perma.cc/Q876-5WKU>].

³⁷⁶ *Id.*

³⁷⁷ Gregory J. Barden, Michelle Bradfield, Sarah Batley & Rhys Thomas, *Conflict in Ukraine: Liability for Non-Performance Under English Law*, JONES DAY: INSIGHTS (Mar. 2022), <https://www.jonesday.com/en/insights/2022/03/conflict-in-ukraine-force-majeure-and-english-law> [<https://perma.cc/Q876-5WKU>].

A force majeure clause may also include triggering events associated with an armed conflict, such as governmental orders.³⁷⁸ We can, therefore, expect companies to re-evaluate the value and wording of force majeure clauses in their contracts.

Other contractual provisions may be particular to the type of agreement. Many businesses opted to use a master franchise agreement for their operations in Russia, an agreement that affords the franchisor the least amount of control over the master franchisee and sub-franchisees.³⁷⁹ Some companies may choose to forego the franchise structure completely.³⁸⁰ Others may choose to retain this business structure but to adapt the contract provisions to address the reputational risks that the Russian invasion triggered. In this regard, companies may adopt some of the contractual choices that franchisors have used in the past to exert greater control in master franchise agreements. One strategy is to draft the subfranchise agreement so that the franchisor is a named third-party beneficiary of the master franchisee's rights under the agreement with the right to enforce its terms.³⁸¹ The success of these provisions will depend on whether a particular jurisdiction recognizes and enforces such third-party rights.³⁸² Another strategy may be for the franchisor to enter into contracts directly with both the master franchisee and subfranchisees. This, however, leaves the franchisor open to legal action by the subfranchisee, a risk that the standard master franchise model avoids by eliminating privity of contract between the franchisor and subfranchisees.³⁸³

cc/BS4X-EWMU]; see also Daniel Perry, Melanie Yanez & Stephen Benz, *Russian Invasion of Ukraine: Potential Litigation Issues*, HARVARD L. SCH. F. ON CORP. GOV. (Apr. 12, 2022), <https://corpgov.law.harvard.edu/2022/04/12/russian-invasion-of-ukraine-potential-litigation-issues/> [https://perma.cc/72AS-6SUT] (announcing that “the Ukrainian Chamber of Commerce and Industry (the “Ukrainian CCI”) issued a statement certifying that an event of force majeure has occurred and is continuing”).

³⁷⁸ DEBEVOISE & PLIMPTON, *RUSSIA RELATED SANCTIONS—HELPFUL GUIDANCE ON THE PROPER APPLICATION OF A FORCE MAJEURE CLAUSE* 3–4 (2022), https://www.debevoise.com/-/media/files/insights/publications/2022/06/07_russia-related-sanctions.pdf?rev=0e6e54f8eb33471fb850ef139ae13981&hash=DCBA629109B4AD432170A1A76DCD6EE1 [https://perma.cc/YQC9-TKYF] (discussing the impact of sanctions on a force majeure clause).

³⁷⁹ See Maher et al., *supra* note 368, at 15 (explaining that “inherent in a master franchise structure there is a certain level of diminution of the franchisor’s ability to control the operations of unit subfranchisees and to enforce brand standards and legal remedies”).

³⁸⁰ See, e.g., Inti Pacheco, *Nike Discontinues Franchise Agreement in Russia*, WALL ST. J. (May 25, 2022), <https://www.wsj.com/livecoverage/russia-ukraine-latest-news-2022-05-25/card/nike-discontinues-franchise-agreement-in-russia-ibO34aVxqtCMFeR6rGs> [https://perma.cc/UHW2-ZA76] (reporting Nike’s decision to end its franchise agreement in Russia due to “operational challenges in Russia”).

³⁸¹ Maher et al., *supra* note 368, at 15.

³⁸² *Id.*

³⁸³ *Id.*

3. Determining Assistance: Offer It Early, In-Kind, and with NGO Partners

As discussed above in Part II, humanitarian assistance is a component of foreign policy for both countries and companies.³⁸⁴ But its use is not uniform between companies, or even by the same company.³⁸⁵ Why, then, should companies—organized to serve profit-seeking objectives—prepare themselves to deliver humanitarian aid?

We can imagine a few good reasons. Millions of individuals are suffering as a consequence of the war. If it is in a company's power to alleviate that suffering, then the company should do it.³⁸⁶ But this reasoning may not persuade the C-suite, so there are two additional reasons why investing in humanitarian assistance can affect a company's bottom line.³⁸⁷ The first is about managing risk: the Russian conflict illustrated the reputational risks that arise when a company delays too long in developing a corporate foreign policy or adopting one that was not aligned with stakeholder expectations.³⁸⁸ The Yale SOM database categorized and graded companies on their business operations in Russia, and early empirical research suggests that there may have been financial consequences to these grades.³⁸⁹

In the future, these organizations, or others, may aggregate, classify, and grade companies on the humanitarian aid they offer in the next crisis, perhaps focusing on those companies with the largest global presence or business lines in life-sustaining products and services. Such a database could create significant reputational risks for companies that are unprepared to offer meaningful aid. We can, therefore, expect that humanitarian relief assistance should be a priority for two types of companies. First, large brand name companies should be on notice that consumers, employees, media, and other actors will be watching them closely to see what aid they offer to those affected in the next crisis. Because of their size, resources, and name recognition, corporate giants will

³⁸⁴ See *supra* notes 94–100 and accompanying text (explaining the role humanitarian aid plays in the foreign policy of both companies and governments).

³⁸⁵ See *supra* notes 96–102 and accompanying text.

³⁸⁶ See, e.g., Susan Kuo & Benjamin Means, *Corporate Social Responsibility After Disaster*, 89 WASH. U. L. REV. 973, 978–84 (2012) (describing how local companies offer assistance after disasters).

³⁸⁷ Rieth, *supra* note 66, at 304 (“[B]y engaging in humanitarian relief efforts[,] corporations have the chance to enter new markets, train employees under extreme circumstances, boost employee morale, put their instruments and standard operating procedure to the test and improve their relationship with state and civil society actors. These factors could lead to new business and less public shaming and reduce NGO campaigns against them.”).

³⁸⁸ See *supra* notes 60–67 (explaining the blowback suffered by Shell for its delayed reaction to the Russian invasion of Ukraine).

³⁸⁹ See *supra* notes 142–144 and accompanying text (explaining that the Yale School of Management project allows consumers to examine the gap between corporate talk and corporate action).

not avoid the societal expectation to act—an expectation recognized by statements from the Business Roundtable and prominent CEOs.³⁹⁰

Second, expectations are also high for those companies that operate in industries whose products and services may prove crucial in a natural disaster or armed conflict.³⁹¹ Many companies gained international attention by making in-kind donations where there is a close nexus between the aid offered and the products and services of the company.³⁹² Airbnb offered housing assistance.³⁹³ Tesla offered satellite connectivity.³⁹⁴ Travel companies offered assistance in transporting Ukrainian refugees to safety.³⁹⁵ Holland American offered one of its vessels to house and feed fifteen hundred displaced persons for three months.³⁹⁶ Marks and Spencer donated twenty thousand items of winter clothing.³⁹⁷

The nexus between humanitarian need and a company's business lines suggests that companies in particular industries can predict if they will be under the spotlight when the next crisis emerges. For example, there is often a shortage of clean drinking water in many of these crises.³⁹⁸ Therefore, compa-

³⁹⁰ *Statement on the Purpose of a Corporation*, BUS. ROUNDTABLE, https://system.businessroundtable.org/app/uploads/sites/5/2023/02/WSJ_BRT_POC_Ad.pdf [<https://perma.cc/3U96-7VKL>]; see, e.g., Larry Fink, BlackRock, Inc., *A Sense of Purpose*, HARVARD L. SCH. F. ON CORP. GOV. (Jan. 17, 2018), <https://corpgov.law.harvard.edu/2018/01/17/a-sense-of-purpose> [<https://perma.cc/L45A-FB23>] (containing Larry Fink's annual letter to CEOs in which Fink calls for "[a] new model for corporate governance" focused on "making a positive contribution to society").

³⁹¹ See Michael E. Porter & Michael R. Kramer, *The Link Between Competitive Advantage and Corporate Social Responsibility*, HARV. BUS. REV. 77, 85 (2006) (differentiating between "generic social issues," "[v]alue chain social impacts," and "[s]ocial dimensions of competitive context").

³⁹² Rieth, *supra* note 66, at 297 ("Previously, business corporations limited themselves to donations of funds. Today they are more willing to make use of their core business resources: personnel, infrastructure/material and expertise. Donations of funds can be made by any company, whereas only some companies can make their goods and services available.").

³⁹³ See *supra* notes 219–228 and accompanying text (discussing the evolution of Airbnb's capacity to provide humanitarian aid).

³⁹⁴ See *supra* notes 1–3 and accompanying text (illustrating the public pressure placed on Elon Musk to convince Tesla to provide satellite connectivity).

³⁹⁵ Ed Cunningham, *How These Travel Companies Are Stepping Up to Help the People of Ukraine*, TIME OUT (Mar. 17, 2022), <https://www.timeout.com/news/how-these-travel-companies-are-stepping-up-to-help-the-people-of-ukraine-031622> [<https://perma.cc/4955-TJY2>] (describing airline and rail companies that provided free transportation for Ukrainian refugees).

³⁹⁶ *Holland America Line Ship Will Become Temporary Home for Ukrainian Refugees in the Netherlands*, HOLLAND AM. LINE (Apr. 1, 2022), <https://www.hollandamerica.com/en/us/news/2022-press-releases/news-04012022-ship-home-for-refugees> [<https://perma.cc/HDS9-FM7F>].

³⁹⁷ *Ukraine: Find Out How You Can Help*, MARKS & SPENCER, <https://www.marksandspencer.com/c/ukraine-appeal#:~:text=What%20we're%20doing,fundraising%20and%20double%20Sparks%20donations> [<https://perma.cc/W4SD-WJ5S>].

³⁹⁸ See, e.g., *1.4 Million People Without Running Water Across War-affected Eastern Ukraine*, UNICEF (Apr. 15, 2022), <https://www.unicef.org/press-releases/14-million-people-without-running-water-across-war-affected-eastern-ukraine> [<https://perma.cc/JVH7-C4T2>] ("In total, over 6 million

nies operating in the bottled water industry can predict that society will watch their reactions closely in the next crisis.³⁹⁹ The same could be said of those in the food industry and other industries trading in life-sustaining products and services.⁴⁰⁰ Airbnb rightly predicted that its business model—providing short term housing—would put it under the spotlight in a crisis.⁴⁰¹ This was true amidst the crisis caused by Hurricane Sandy and led Airbnb to invest in developing partnerships, funding, and capabilities allowing it to deliver aid in a future crisis.⁴⁰² In-kind donations often require greater planning than monetary donations, further illustrating the need for a proactive humanitarian assistance policy and preparation.

The second reason is about seizing an opportunity: research in strategic management suggests that philanthropic activities can provide a company with insurance-like protection when a negative event occurs.⁴⁰³ Stakeholders may not sanction a company as harshly and, consequently, the company may be spared more dire financial consequences.⁴⁰⁴ But this insurance only works if companies invest in particular types of other-regarding activities.⁴⁰⁵ Other-regarding behavior, or company behavior that benefits causes and individuals outside the company's monetary interest, is important because it signals a company's capacity to pursue motives other than profits; stakeholders, meanwhile, value other-regarding behavior because it assures them that a company's leaders may extend them consideration and generosity, should the need

people in Ukraine are struggling every day to have drinking water, one of the most essential human needs.”).

³⁹⁹ Rieth, *supra* note 66, at 297–98 (describing how “Coca-Cola provided bottled water to people in disaster regions” and that following the 2004 tsunami in Southeast Asia, Coca-Cola “coordinated with government and non-government actors to provide bottled drinking water[.] . . . basic food, tents, clothes and medical supplies” as well as later “engag[ing] in water supply and public sanitation programs for several villages”).

⁴⁰⁰ See *id.* at 306 (explaining that the following sectors have core competencies that are particularly valued in a disaster: IT, logistics, food, infrastructure, and pharmaceuticals).

⁴⁰¹ *Support for Refugees Fleeing Ukraine*, *supra* note 219.

⁴⁰² *Id.*

⁴⁰³ See Paul C. Godfrey, Craig B. Merrill & Jared M. Hansen, *The Relationship Between Corporate Social Responsibility and Shareholder Value: An Empirical Test of the Risk Management Hypothesis*, 30 STRATEGIC MGMT. J. 425, 426 (2009) (“[C]ertain types of CSR activities can generate moral capital or goodwill that tempers punitive sanctions by stakeholders during a negative event (i.e., an insurance effect). We propose that the resultant moral capital may have little to do with *generating* economic value, but plays a substantial role in *preserving* economic value.”).

⁴⁰⁴ See *id.* at 428 (suggesting that “goodwill generated should reduce the overall severity of sanctions by encouraging stakeholders to give the firm ‘the benefit of the doubt’ when ambiguity over motive exists”); *id.* at 429 (“CSR activity will signal to investors the presence of moral capital that may temper potential sanctions In this case, CSR activity serves as a signal to investors about the probable reactions of other key stakeholders.”).

⁴⁰⁵ *Id.*

arise.⁴⁰⁶ These signals are particularly salient when they are directed towards individuals, organizations, or communities that are not essential to the operation of the company—the company’s assistance appears less instrumental and more altruistic.⁴⁰⁷ A crisis situation offers a company many opportunities to signal its other-regarding characteristics because the victims of the crises—such as those affected by the Russian invasion—are unlikely to be necessary to the operation of the company.⁴⁰⁸ When a company nonetheless provides aid to these affected populations, it sends a strong signal to that company’s stakeholders concerning its capacity to consider the stakeholders’ interests.⁴⁰⁹

These signals, however, work best when companies follow certain rules in offering humanitarian assistance.⁴¹⁰ First, companies gain a much stronger reputational benefit by acting early in the wake of a crisis because it is more likely to gain attention and be perceived as altruistic and other-regarding.⁴¹¹ Second, strategic management research finds that in-kind donations generate a much stronger signal than monetary donations.⁴¹² This suggests that those companies that donated millions of dollars to relief organizations may not have generated comparable benefits to those that provided aid directly to the victims of the war, such as by offering their own goods and services. Third, many companies may not be suited to offering humanitarian assistance, which is why the same research finds important benefits to partnering with an NGO in the delivery of aid.⁴¹³ In addition to expertise, NGO partners may also enhance the legitimacy and publicity of the donation, thereby increasing the likelihood that consumers and civil society will take notice: “If a [Corporate Social Responsi-

⁴⁰⁶ See *id.* (indicating that “CSR engagement must be substantial enough to create a credible and reasonable declaration of unselfish intention”).

⁴⁰⁷ *Id.*

⁴⁰⁸ Peter M. Madsen & Zachariah J. Rodgers, *Looking Good by Doing Good: The Antecedents and Consequences of Stakeholder Attention to Disaster Relief*, 36 STRATEGIC MGMT. J. 776, 778 (2014).

⁴⁰⁹ *Id.* at 780 (stating that “[s]takeholders are likely to devote extra attention to the disaster relief CSR activities of such firms in the hope that they themselves may benefit from future firm CSR”).

⁴¹⁰ *Id.* at 791–92.

⁴¹¹ *Id.* at 781, 791–92.

⁴¹² *Id.* at 781, 791. But see STACEY WHITE & HARDIN LANG (CONTRIBUTOR), CTR. FOR STRATEGIC & INT’L STUD., CORPORATE ENGAGEMENT IN NATURAL DISASTER RESPONSE 14 (2012), https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/120117_White_CorporateEngagement_Web.pdf [<https://perma.cc/4YGS-L3BM>] (explaining that cash donations are the most popular form of donations from companies and may be particularly valued by humanitarian organizations “because of its speed, flexibility, and usefulness in supporting the recovery of local markets”).

⁴¹³ See White, *supra* note 412, at 18 (noting “a growing cadre of companies are formalizing strategic global partnerships with UN humanitarian agencies and NGOs”); see also Madsen & Rogers, *supra* note 408, at 780, 792 (pointing out that a corporation gets more praise for their aid if an NGO makes it known publicly); Thomas & Fritz, *supra* note 229 (discussing the complementarity of skills and knowledge between aid organizations and corporate sector).

bility] initiative involves close partnership with an NGO, the involvement of the NGO should lead observers to transfer some of the legitimacy of the NGO in the context of the pursuit of social good to the partnered firm.”⁴¹⁴

Companies need to prepare now to employ their crisis policy strategies in the future. If stakeholders reward early action, then a company cannot wait until a crisis occurs to begin planning how it may offer assistance.⁴¹⁵ Instead, planning needs to start immediately, especially if a company will rely on an NGO partner.⁴¹⁶ These partnerships take different forms with varying objectives.⁴¹⁷ Some companies adopt a strategic partnership model that “involve[s] the core business or program activities of both partners.”⁴¹⁸ For example, Airbnb partnered with Mercy Corps, as well as FEMA and the International Organization for Migration, to offer housing for relief workers and meet the needs of refugees.⁴¹⁹ Partnering with these NGOs and government organizations allowed Airbnb to pursue goals such as ensuring that refugee populations are housed together.⁴²⁰ Other companies chose NGO partnerships that are more philanthropic, involving less integration between the organizations, and instead focused on the unilateral delivery of relief supplies or funds collected by the former.⁴²¹ Marriott Bonvoy, for example, partnered with UNICEF and World Central Kitchen in order to deliver aid (meals, supplies, water, and other resources) funded through its own donations and the donations of its custom-

⁴¹⁴ Madsen & Rogers, *supra* note 408, at 780; Rieth, *supra* note 66, at 304. *But see* Jennifer Bealt, Jair Camilo, Fernández Barrera & S. Afshin Mansouri, *Collaborative Relationships Between Logistics Service Providers and Humanitarian Organizations During Disaster Relief Operations*, 6 J. HUMANITARIAN LOGISTICS & SUPPLY CHAIN MGMT. 118, 127 (2016) (listing the following barriers to collaborative partnerships between logistics service providers and humanitarian organizations: cost, staff preparedness, requirements, and degree of involvement of logistics service providers).

⁴¹⁵ Thomas & Fritz, *supra* note 229 (explaining the difficulties of corporations providing non-monetary donations following the 2004 tsunami in South Asia, including the lack of a “comprehensive list available to corporations of what was needed and by whom” and “no mechanisms to keep track of what corporations had available and where”).

⁴¹⁶ Bealt et al., *supra* note 414, at 128.

⁴¹⁷ *See* Dima Jamali, Mary Yianni & Hanin Abdallah, *Strategic Partnerships, Social Capital and Innovation: Accounting for Social Alliance Innovation*, 20 BUS. ETHICS 375, 377 (2011) (pointing out that “whereas the philanthropic approach to business-NGO relationships takes largely the form of altruistic donations from the business to the NGO, strategic partnerships are linked to core competence on both sides, and rooted in entrepreneurship, mutual learning and differentiation”).

⁴¹⁸ *Id.*

⁴¹⁹ Roach, *supra* note 220.

⁴²⁰ *See id.* (“Airbnb.org needed to figure out a way to better connect with people in need of housing and ensure refugees could stay where other refugees were staying. In 2015, the organization started to partner with organizations like FEMA and Mercy Corps to offer housing for relief workers and other people. In 2019, Airbnb.org began working with the International Organization for Migration to connect Syrian and Afghan refugees in Romania with housing—a partnership the organization is continuing for Ukraine relief efforts.”).

⁴²¹ *See* Jamali et al., *supra* note 417, at 378 (stating that “philanthropic partnerships are limited in depth and breadth and mostly take the form of outsourcing, donor recipient relationships or charity”).

ers.⁴²² Clorox provided humanitarian aid to Ukrainian refugees by partnering with the Red Cross.⁴²³ These are all important dimensions of corporate foreign policy, but their future use depends on the same careful business planning required to deploy the other tools of corporate foreign policy, such as private sanctions.

CONCLUSION

In the wake of the Russian invasion of Ukraine, hundreds of businesses voluntarily decided to postpone new investments, suspend operations, or completely exit Russia. Many others offered aid to those affected by the war, ranging from monetary donations, provision of in-kind goods and services, and even logistical and technical assistance in the crisis. This Article provides a framework to identify, understand, predict, and evaluate these various forms of corporate foreign policy. *Demand factors* refer to the preferences of investors, consumers, and government actors for a business to restrict, or end, its business in Russia or offer aid to Ukraine. But a business's decisions are not only driven by the preferences of its stakeholders. Instead, the ability of a business to meet its stakeholders' expectations also depends on *supply factors*, such as business model, contract design, political risk insurance, international investment dispute resolution, and organizational preparedness for crisis response. Collectively, this framework explains the circumstances under which we can expect companies to assert themselves on the world stage in a crisis situation.

This framework provides guidance for both executives and policymakers on how to plan for future crises. For policymakers, this framework explains that economic sanctions imposed by governments can encourage a second wave of private sanctions imposed by companies that magnify the economic, social, and political consequences of the former. Policymakers must evaluate these consequences when deciding if and how they plan to impose sanctions. Policymakers, on the other hand, are provided with a framework to help predict the nature, breadth, and strength of private sanctions that can aid policymakers in this evaluation. For executives, this Article explains the importance of business model, contract design, and strategic partnerships for preparing for the next crisis. Many essential decisions are made decades before a crisis arises, but if they are made improperly, the company likely will be unable to respond effectively. Companies must invest in this infrastructure immediately to effectively deal with crises in the future.

⁴²² *Marriott International Statement*, *supra* note 192.

⁴²³ *Message from CEO Linda Rendle on Ukraine and Business in Russia*, *supra* note 59.