

A review of Canada's use of autonomous sanctions under the *Special Economic Measures Act (SEMA)* and the *Justice for Victims of Corrupt Foreign Officials Act (JVCFOA)* between 2017-2021

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Abstract

The use of autonomous sanctions by Canada and its allies has increased significantly over the last 30 years, yet there is little research that examines how Canada uses these measures and in what circumstances. This thesis asks in what circumstances does Canada resort to using autonomous sanctions measures, and documents how Canada has used the Special Economic Measures Act (SEMA) and the Justice for Victims of Corrupt Foreign Officials Act (JVCFOA)— Canada’s Magnitsky legislation— between 2017-2021. This time scale was chosen because the JVCFOA was adopted in 2017, and at the same time, the SEMA legislation was updated to expand the circumstances in which it can be invoked. Notably, there is a legislated requirement for the committees of the Senate and of the House of Commons that are designated or established by each House to review both pieces of legislation before October of 2022, and the JVCFOA has remained unused in over three years (since November 2018). This research finds that Canada is not using its legislation in a coherent manner, which is exacerbated by a lack of transparency by the Government of Canada in terms of how decisions are made regarding who it targets with sanctions and why. This thesis concludes with policy-relevant recommendations made in three categories: changes to the SEMA and JVCFOA legislation, administrative and legal, and outreach, education, and communication.

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Chapter 1: Introduction and Methodology

1.1: Introduction

In the last 30 years, the use of sanctions by Canada and its allies has significantly increased.¹ Strategic competition and a divided UN Security Council (UNSC) has meant that western states have had to resort to measures outside of the UN system to underline egregious violations of international law. Sanctions are a popular tool of foreign policy for states like Canada due to the low material cost of enacting the sanctions measures and the relatively low risk of escalation accompanying their use.² These factors, among others, can explain why sanctions are Canada's go-to response to human rights violations and corruption occurring in foreign states. When mandatory sanctions are required by the UNSC, Canada must comply.³ Canada, however, may also enact sanctions *autonomously* via three different pieces of national legislation: the *Special Economic Measures Act (SEMA)*,⁴ the *Freezing Assets of Corrupt Foreign Officials Act (FACFOA)*⁵ and the *Justice for Victims of Corrupt Foreign Officials Act (JVCFOA)*.⁶ This thesis explains what autonomous sanctions are and why Canada needs them, and then examines Canada's use of two of its autonomous sanctions legislation between 2017- 2021 corresponding to the start date when the *JVCFOA* was created and the *SEMA* was updated, seeking to answer: how does Canada use autonomous sanctions measures and in what circumstances?

This study will not only provide insight into how Canada uses its autonomous

¹ Craig Martin, "Economic Sanctions under International Law: A Guide for Canadian Policy," *Rideau Institute on International Affairs and the Human Rights Research and Education Centre*, November 28, 2021, <https://doi.org/10.2139/ssrn.3973142>, p. 6; Meredith Lilly and Delaram Arabi, "Symbolic Act, Real Consequences: Passing Canada's Magnitsky Law to Combat Human Rights Violations and Corruption," *International Journal: Canada's Journal of Global Policy Analysis* 75, no. 2 (2020): p. 164.

² Scott McTaggart, "Sanctions: The Canadian and International Architecture Background Paper," Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019), p.2.

³ Andrea Charron, "Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?," *Canadian Foreign Policy Journal* 14, no. 2 (2008): pp. 1-18, <https://doi.org/10.1080/11926422.2008.9673460>, p.1.

⁴ "Special Economic Measures Act," Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>.

⁵ "Freezing Assets of Corrupt Foreign Officials Act," Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/F-31.6/page-1.html>.

⁶ "Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)," Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

measures (about which there is currently a paucity of research),⁷ but will also provide information about the use and utility of the newer *JVCFOA* legislation. Autonomous sanctions are those that are applied in addition to UN sanctions and/or to sanction with like-minded allies, sometimes within organizations to which Canada belongs.⁸ Canada prefers to sanction multilaterally or in concert with other states, never unilaterally (i.e., alone). Canada adopted the *JVCFOA* in 2017 and also updated the *SEMA* with multi-partisan support to address human rights abuses and corruption occurring in foreign states.⁹ Theoretically, a state like Canada— as a relatively vocal, long-time supporter of human rights on the international stage, and known for its peacekeeping past— should be able to make good use of this type of legislation. And yet today, as human rights violations and corruption cases are on the rise globally,¹⁰ Canada has not invoked this legislation in three years (as of December 2021). Instead, the *SEMA* appears to be preferred, having just been used to decry the rigged elections in Belarus and subsequent actions.¹¹ Might the greater use of the *SEMA* over the *JVCFOA* provide clues about Canada’s other preferences when it comes to using autonomous measures, such as the targets and the reasons for sanctioning?

This thesis explores possible reasons for this preference and will determine

⁷ Other than a few studies commissioned by Global Affairs Canada which remain barred from public consumption, there has been very little academic study of the *JVCFOA* and *SEMA* together. One article provides a comprehensive review of the *SEMA*, Michael Nesbitt, “Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act,” *Ottawa Law Review* 48, no. 2 (March 1, 2017), the other few studies that discuss the *SEMA* and *JVCFOA* are: Lilly and Arabi, “Symbolic Act, Real Consequences: Passing Canada’s Magnitsky Law to Combat Human Rights Violations and Corruption,” *International Journal: Canada's Journal of Global Policy Analysis* 75, no. 2 (2020): pp. 163-178; Martin, “Economic Sanctions under International Law: A Guide for Canadian Policy,” *Rideau Institute on International Affairs and the Human Rights Research and Education Centre*, November 28, 2021.; and Andrea Charron, “Expert Roundtable on Canadian Economic Sanctions Oct 9-10 2019 Summary of Findings and Recommendations,” Centre for Defence and Security Studies (SSHRC, the University of Manitoba’s Centre for Defence and Security Studies and Institute for Humanities, the Canadian Defence and Security Network and Carleton University, November 2019), https://umanitoba.ca/centres/media/Canadian-Economic-Sanctions-Workshop_finalreport_Nov-2019.pdf.

⁸ “Sanctions, International Humanitarian Law and the Humanitarian Space in the Canadian Perspective: An Interview with Elissa Golberg: International Review of the Red Cross” (Cambridge University Press, October 5, 2021), p.91.

⁹ Nesbitt, “Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act,” *Ottawa Law Review* 48, no. 2 (March 1, 2017)., pp.513-514.

¹⁰ Antonio Guterres, “Basic Freedoms under Assault, Secretary-General Tells Human Rights Council, Launching Call to Revive Respect for Dignity, Equality amid Rising Tensions,” United Nations (United Nations, February 14, 2020), <https://www.un.org/press/en/2020/sgsm19985.doc.htm>.

¹¹ “Canadian Sanctions Related to Belarus,” Global Affairs Canada, December 23, 2021, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/belarus.aspx?lang=eng.

whether there are any particular features of the *JVCF OA* which deter decision-makers from using this foreign policy tool more often. These findings will be especially important given that the world order is changing to pit nationally-minded, especially authoritarian states, against globally-minded and more democratic states, such as Canada.¹² In this context, demand for the use of autonomous sanctions by western allies is expected to continue to increase. Yet currently, there is limited research on Canadian sanctions, and little is understood about how Canada uses autonomous sanctions and why it invokes particular legislation in particular cases.¹³ This thesis fills that gap in the literature and may provide insights into how to improve the utility of the *SEMA* and *JVCF OA* as tools of foreign policy.

This thesis does not directly explore the usual question regarding the efficacy or effectiveness of Canadian sanctions for several reasons. First, the question of effectiveness (and by inference, efficacy) has already been studied extensively. Quantitative studies conducted by Hufbauer et al. in the 1990s and early 2000s brought into question the effectiveness of sanctions broadly speaking,¹⁴ while the Targeted Sanctions Consortium Database provided the first comprehensive, quantitative database on UN targeted sanctions imposed between 1991-2014 that evaluates their effectiveness,¹⁵ and the Threat and Imposition of Sanctions (TIES) database also evaluates the effectiveness of all sanctions threatened or imposed between 1945-2005 using a game theoretic model and a new EU sanctions database.¹⁶ From a more Canadian-specific perspective, Kim Richard Nossal's book *Rain Dancing* compares Canadian and Australian sanctions up until 1990, and argues that Canada lacks the economic capabilities to make sanctions effective and so argues Canada tends to put in place sanctions to be "seen" to be doing something without expectation of a change in target behaviour.¹⁷ Meredith Lilly and Andrea Charron also note that because Canada's sanctions are not extra-territorial,

¹² Alexander Cooley and Daniel H. Nexon, "The Real Crisis of Global Order: Illiberalism on the Rise" *Foreign Affairs*, 101(1). January/February 2021:103-118.

¹³ Nesbitt, "Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act," (2017)., p. 514.

¹⁴ Gary Clyde Hufbauer et al., *Economic Sanctions Reconsidered*, 3rd ed. (Washington, DC: Peterson Institute for International Economics, 2007).

¹⁵ Thomas Biersteker, "Targeted Sanctions Initiative," Targeted Sanctions Initiative, IHEID, accessed February 12, 2022, <https://www.graduateinstitute.ch/research-centres/global-governance-centre/targeted-sanctions-initiative>.

¹⁶ T. Clifton Morgan, Navin Bapat, and Yoshiharu Kobayashi, "Threat and Imposition of Economic Sanctions 1945–2005: Updating the Ties Dataset," *Conflict Management and Peace Science* 31, no. 5 (2014): pp. 541-558, <https://doi.org/10.1177/0738894213520379>.

¹⁷ Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian and Australian Foreign Policy* (Toronto: University of Toronto Press, 1994).

these sanctions’ ‘material’ impact for targeted individuals is usually minimal and thus unlikely to affect a change in targets’ behaviour, unless they have a strong, existing connection to Canada.¹⁸ While these studies focus on the ability of sanctions to effect change in targets’ behaviour, it is important to note that there are multiple understandings of effectiveness and efficacy which further complicate this question. For example, sanctions may be effective in terms of symbolizing Canada’s commitment to addressing human rights violations or signalling alignment with its allies on a particular issue.¹⁹ Given that the question of efficacy has been substantially studied, and due to this question’s complex nature, this thesis instead asks what are the different reasons for choosing the *SEMA* and the *JVCFOA* legislation when enacting autonomous sanctions? By developing a better understanding of this reasoning, we may also learn ways to improve the efficacy of Canada’s autonomous sanctions.

Since this study focusses on Canada’s *choice* of legislation in particular cases, it does not explore the use of trade sanctions, which are generally applied in reference to designated harmful or dangerous goods, or in the context of a trade dispute. This study also excludes those sanctions implemented under the *United Nations Act*, since all members of the United Nations General Assembly (Canada being a founding member) are compelled by international law to comply with the mandatory sanctions invoked under Chapter VII by the UNSC.²⁰ While this research touches on the *FACFOA* as one of Canada’s three autonomous sanctions legislation, the *FACFOA* can only be invoked when a foreign state requests that Canada freeze a particular individuals’ assets, meaning that Canada cannot use this legislation of its own accord or to respond to just any incident of corruption.²¹ Nevertheless, it remains an instrument for enacting autonomous measures, because it falls outside of compulsory UN measures and Canada must make a decision whether or not to follow suit. In practice, the *FACFOA* has only been used in reference to Ukraine and Tunisia

¹⁸ Andrea Charron and Meredith Lilly, “More Sanctions Is the Wrong Tool for Human Rights Protection,” Policy Options, April 9, 2021, <https://policyoptions.irpp.org/magazines/february-2017/more-sanctions-is-the-wrong-tool-for-human-rights-protection/>.

¹⁹ Margaret Doxey, the doyenne of sanctions, talked about “gesture” sanctions in Margaret P. Doxey, “Sanctions through the Looking Glass the Spectrum of Goals and Achievements,” *International Journal* 55, no. 2 (2000): p. 207. See also Sue Eckert, “Evidence for the Standing Committee on Foreign Affairs and International Development,” Number 027, First Session, 42nd Parliament, *Our Commons*, (October 19, 2016), <https://www.ourcommons.ca/DocumentViewer/en/42-1/FAAE/meeting-27/evidence>.

²⁰ McTaggart, “Sanctions: The Canadian and International Architecture Background Paper,” Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019).

²¹ “Freezing Assets of Corrupt Foreign Officials Act,” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/F-31.6/page-1.html>.

(extended in 2019 and 2021 respectively, with Egypt repealed)²² but no new regulations regarding different states have been made between 2017-2021 representing the years of focus for this study.

Instead, this thesis focusses on autonomous sanctions enacted under the *SEMA*, (which, prior to 2019 were referred to by Global Affairs Canada (GAC) as targeted “economic” sanctions), and the *JVCFOA*, which are considered targeted sanctions, with the goal of understanding their use and the subsequent implications for Canadian foreign policy.

To better understand the reasons why the *SEMA* and *JVCFOA* are invoked, this thesis examines how the *SEMA* and the *JVCFOA* have been used between 2017- 2021 and will document the answers to the following questions to ensure a rigorous and equal assessment of the cases:

- 1) On what date were the sanctions imposed?
- 2) What sanctions regime was used (*SEMA* or *JVCFOA*)?
- 3) Who were the targets (states, individuals, or both)? And how many individuals were targeted? (Where applicable)
- 5) Were the sanctions imposed with other allies, a coalition, or unilaterally?
- 6) What is the objective in imposing the sanctions? and
- 7) Under what triggering mechanism as outlined in the legislation were the sanctions imposed?

This information is compared in a pivot table and used to draw conclusions about why the *SEMA* and the *JVCFOA* are each used in particular cases and not in others. By examining the application of sanctions under each Act in chronological order, a more complete understanding of the timeline of their use will be established in the literature. For example, 40 individuals from Venezuela were targeted under the *SEMA* in September of 2017,²³ then 19 individuals from Venezuela were targeted under the *JVCFOA* in November of 2017²⁴ which is relatively close in time and includes some overlap between the targets. However, in May of 2018, when 14 new individuals from Venezuela were added under the *SEMA*, there were no additions under the *JVCFOA* to follow. This occurred again in April of 2019 when another 43 Venezuelans were added under the *SEMA*. The purpose of this research is to make sense of such discrepancies by developing a better

²² Ibid.

²³ “Canadian Sanctions Related to Venezuela,” Global Affairs Canada, January 14, 2020, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/venezuela.aspx?lang=eng.

²⁴ “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

understanding of these patterns, the political context in which they occur, and the triggering mechanisms involved in each Act.

1.2: Methodology

To inform the outline of global trends in the use of sanctions, a literature review of the general sanctions literature to date is conducted. Importantly, the *JVCFOA* legislation was only introduced in 2017 and the *SEMA* updated, and very little has been written about either since then.²⁵ This research fills that gap in the literature by providing an understanding of how Canada has used the *SEMA* and *JVCFOA* thus far.

The core part of this research involves examining how the *SEMA* and *JVCFOA* legislation have been used between 2017- 2021. To this end, the sanctions employed under the *SEMA* and *JVCFOA* in this period are recorded in a pivot table in order of occurrence, while including variables such as: the sanctions regime (*SEMA*, *JVCFOA*, or both), the targets (individuals, entities and states), the purpose for imposing sanctions and the objective of sanctions, and the exceptions, and the sanctioning authority (i.e., in a coalition, with an ally (ies), or unilaterally). Also identified (where possible) are the inferred triggering mechanism as identified in the legislation (e.g., Subsection a) (i) and (ii)), and the exceptions as outlined in the Acts. Since the listing of individuals typically occurs in groupings or under one country heading, each grouping is listed as one case (e.g., all perpetrators of Saudi journalist Jamal Khashoggi's murder in 2018 are under the *JVCFOA* and so those 14 names associated with the murder will count as 1 case). This process can help to identify any patterns (e.g., similarities, differences) in the use of both pieces of legislation thus far.

The pivot table below demonstrates how such information will be organized.

²⁵ See again: Lilly and Arabi, "Symbolic Act, Real Consequences: Passing Canada's Magnitsky Law to Combat Human Rights Violations and Corruption," *International Journal: Canada's Journal of Global Policy Analysis* 75, no. 2 (2020): pp. 163-178; Martin, "Economic Sanctions under International Law: A Guide for Canadian Policy," *Rideau Institute on International Affairs and the Human Rights Research and Education Centre*, November 28, 2021.; and Charron, "Expert Roundtable on Canadian Economic Sanctions Oct 9-10 2019 Summary of Findings and Recommendations," Centre for Defence and Security Studies (SSHRC, the University of Manitoba's Centre for Defence and Security Studies and Institute for Humanities, the Canadian Defence and Security Network and Carleton University, November 2019).

Table 1: Use of the *SEMA* and *JVCFOA* legislation between 2017- 2021.

Date of <i>SEMA</i> and <i>JVCFOA</i> sanctions between 2017-2021	Sanctions regime (<i>SEMA</i> or <i>JVCFOA</i>)	Targets (State, individual, or both)	Objective(s)	Triggering mechanism	Reason for imposing sanctions	Exceptions	Other sanctioning partners or unilateral
<i>Case 1: Day, Month, Year</i>	<i>2 choices (SEMA or JVCFOA)</i>	<i>Name of state and number of new individuals (if applicable)</i>	<i>Multiple choices</i>	<i>4 options under SEMA, 2 options under JVCFOA</i>	<i>Multiple responses</i>	<i>Multiple responses</i>	<i>Multiple choices (UN²⁶, U.S., E.U., U.K., Unilateral)</i>

This table and some of its variables are adapted from the Targeted Sanctions Consortium Database Codebook.²⁷ While the codebook was developed primarily in reference to the use of sanctions by the UNSC, many of its elements, including potential objectives and purpose, can be usefully applied to the case of *SEMA* and *JVCFOA* sanctions. The relevant data to populate the table can be gathered from the GAC sanctions data consolidated on the Department of Justice’s webpage,²⁸ the Canadian Sanctions Database,²⁹ the CanadianSanctionsMap webpage and corresponding spreadsheet,³⁰ the *Canada Gazette*,³¹ the two pieces of legislation themselves: *SEMA*, and the *JVCFOA* and their corresponding regulations.³² In order to contextualize this data and to understand why sanctions are imposed in each case, official statements and press releases made by Canadian political leaders, such as current Prime Minister Justin Trudeau, and former

²⁶ Note: There have been no sanctions imposed through the *SEMA* between 2017-2021 that were additions to UN measures.

²⁷ Thomas Biersteker, “TSC Database Codebook,” Cambridge Core (Cambridge University Press), accessed February 12, 2022, <https://www.cambridge.org/core/books/targeted-sanctions/tsc-database-codebook/96533734AEAE223B9E47B6AAABC90CFD>.

Note: The Targeted Sanctions Consortium Database Codebook is a coding practice developed by international sanctions experts and led by Dr. Thomas Biersteker.

²⁸ “Canadian Sanctions,” Global Affairs Canada, November 9, 2021, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/index.aspx?lang=eng.

²⁹ Andrea Charron, “The Canadian Sanctions Database” (Centre for Defence and Security Studies, University of Manitoba).

³⁰ Andrea Charron et al., “CanadianSanctionsMap,” accessed February 12, 2022, <https://www.canadiansanctionsmap.com/sanctions-objectives>.

³¹ “The Canada Gazette,” (Public Services and Procurement Canada, February 11, 2022), <https://www.canadagazette.gc.ca/accueil-home-eng.html>. Note: The *Canada Gazette* is the official newspaper of the Government of Canada, and has been publishing new statutes, new and proposed regulations and other notices since 1841.

³² “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

Minister of Foreign Affairs, Chrystia Freeland will be reviewed. The official transcripts from meetings of the House of Commons' Standing Committee on Foreign Affairs and International Development (FAAE), and the Senate's Foreign Affairs and International Trade Committee (AEFA) discussing and debating Bill S-226 which created the *JVCFOA* and changing the *SEMA* will also be examined.³³ These debates reveal important details about the general attitude towards the adoption of the *JVCFOA*, its proposed purpose within Canadian foreign policy, and the spirit of the bill. Finally, the Committee on Foreign Affairs and International Development's report, *A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond*³⁴ will be reviewed.

Through analyzing the above-mentioned primary sources and ordering the use of the *SEMA* and *JVCFOA* legislations between 2017- 2021, a better understanding of the potential political and technical reasons why the legislation has been used in certain cases can be determined.

1.3: Thesis organization

The first chapter of this thesis indicates the research question, its significance, and the methodology to be employed. The second chapter explains what autonomous sanctions are, why Canada needs them, and what is already known about Canada's sanctions practice in relation to global trends in the use of sanctions. The third chapter discusses the adoption of both the updated *SEMA* and the new *JVCFOA*, and provides a detailed comparison of the legislation, including the legal frameworks, scope of application, associated restrictions, listing criteria and process, delisting criteria and process, exceptions, enforcement of the legislation, and associated penalties. The fourth chapter outlines how Canada has used both pieces of legislation since 2017 including when they were used, with which allies these sanctions were imposed, and for what stated purposes. It also looks at specific cases where the legislation has been used to illustrate the broader trends in Canada's use of autonomous sanctions. The fifth and final chapter draws conclusions about the state of Canada's autonomous sanctions practice and the Canadian foreign policy

³³ Senate of Canada. "Senate Committee on Foreign Affairs and International Trade— meetings and videos." Senate of Canada. Accessed January 28, 2021. <https://sencanada.ca/en/committees/studiesandbills/42-1?p=10>.

³⁴ "A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond." Committee Report No. 7 - FAAE (42-1) - House of Commons of Canada. Accessed January 28, 2021. <https://www.ourcommons.ca/DocumentViewer/en/42-1/FAAE/report-7/>.

implications, given the broader understanding of how Canada has used each piece of legislation between 2017- 2021. Finally, the chapter discusses ongoing and systemic challenges in Canada's use of autonomous sanctions and outlines some policy-relevant lessons learned.

Chapter 2: Canada's Philosophy and Approach to Sanctioning

Canada's use of sanctions up until 2017 reflects global sanctioning trends and Canada's evaluation of these trends in reference to its own national interests. This chapter briefly introduces Canada's sanctions legislation and then looks at major trends in the use of sanctions captured in the sanction's literature, and how Canada responded to these trends. This chapter also explains what autonomous sanctions are and why it is important for Canada to use these measures. It is only with a clear picture of Canada's past use of sanctions that we can understand its current use of autonomous measures.

2.1. Introduction to Canadian sanctions

Canada has four pieces of standing sanctions legislation authorizing the imposition of sanctions. These are the *United Nations Act* (UNA), the *Freezing Assets of Corrupt Foreign Officials Act* (FACFOA), the *Special Economic Measures Act* (SEMA), and the *Justice for Victims of Corrupt Foreign Officials Act* (JVCFOA). Regulations are established under the relevant Act for each sanctions regime, defining the scope of the measures imposed and any exceptions to their use. Sanctions place restrictions on the activities permissible between persons in Canada or Canadians outside Canada and foreign states, individuals, or entities.³⁵ These sanctions may take many different forms, depending on the Act used to apply them. For example, under the SEMA legislation, Canada currently maintains sanctions against 13 different states (and individuals and entities from some of these states) in forms ranging from asset freezes, inadmissibility into Canada (otherwise known as "travel" sanctions), arms embargoes, financial prohibitions, and technical assistance prohibitions, to export and import restrictions.³⁶ Under the JVCFOA, targeted sanctions take the form of asset freezes and travel bans against individual perpetrators only.³⁷ There can also be multiple objectives when applying sanctions, which Canada typically lists in each regulation under the SEMA and JVCFOA under a subheading.

³⁵ Neelu Shanker, "Webinar: Canada's Sanctions Update presentation," *Association of Certified Sanctions Specialists*, January 21, 2021.

³⁶ "Types of Sanctions," Global Affairs Canada, August 9, 2021, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/types.aspx?lang=eng.

³⁷ "Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)," Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

Sanctions must be complied with by any person located in Canada and by Canadians located or engaged in activities abroad. Failing to comply is an offence and potentially an indictable one. The maximum penalties for contravening sanctions under the *SEMA* and the *JVCFOA* are summary convictions with a \$25,000 fine or 1 year prison term or both, or if a conviction and indictment -a 5-year prison term. Under the *UNA*, the maximum penalty for a summary conviction is a \$100,000 fine or 1-year in prison or both, and a conviction on indictment can carry a 10-year prison term. In Canada, the Royal Canadian Mounted Police are responsible for enforcing most sanctions in Canada and the Canadian Border Security Agency enforce inadmissibility and export and import restrictions.³⁸

Sanctions may be triggered by certain actions or events.³⁹ For example, in 2018, Canada enacted sanctions against seventeen individual perpetrators in connection with the extrajudicial execution of Saudi journalist Jamal Khashoggi.⁴⁰ The abuse of human rights in this case was the reason for imposing sanctions. The triggering mechanism is the stipulation identified in the legislation itself, identifying the scenario in which sanctions can be employed— in this case, for gross human rights violations. To provide another example, under the *SEMA*, one of the triggering mechanisms stipulates that sanctions may be applied where: “a grave breach of international peace and security has occurred that has resulted in or is likely to result in a serious international crisis.”⁴¹ An example of sanctions applied for this reason by Canada using the *SEMA* is to address the illegal annexation of Crimea by the Russian Federation.⁴²

Importantly, Canada is under no obligation to invoke sanctions just because such a

³⁸ McTaggart, “Sanctions: The Canadian and International Architecture Background Paper,” Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019).; Shanker, “Webinar: Canada’s Sanctions Update presentation,” *Association of Certified Sanctions Specialists*, January 21, 2021.; Charron, “Canada’s Domestic Implementation of U.N. Sanctions: Keeping Pace?,” *Canadian Foreign Policy Journal* 14, no. 2 (2008): pp. 7-8.

³⁹ The Special Economic Measures Act (*SEMA*) and the Justice for Victims of Corrupt Foreign Officials Act (*JVCFOA*) each have their own “triggering mechanisms” or “circumstances” under which the legislation can be invoked.

⁴⁰ “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

⁴¹ “*Special Economic Measures Act*,” (S.C. 1992, c. 17), <https://laws-lois.justice.gc.ca/PDF/S-14.5.pdf>. (Accessed 8 November, 2020).

⁴² “Canadian Sanctions Related to Russia,” Global Affairs Canada, November 26, 2021, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/russia-russie.aspx?lang=eng.

transgression transpires, unless it is decided upon by the United Nations Security Council (UNSC) under Chapter VII, which would fall under the *United Nations Act* rather than the *SEMA*.⁴³ The choice is left to the Minister of Foreign Affairs who is ultimately responsible for all of Canada's sanctioning activity (after advice from the Justice Department and Global Affairs as well as the Privy Council Office and Treasury Board Secretariat) to determine in which cases to use the *SEMA*, *FACFOA*, and the *JVCFOA*. However, Canada is faced with increasing domestic and external pressure, especially with the adoption of the *JVCFOA*, to apply sanctions in a wider range of cases.⁴⁴ This choice made available under the *SEMA*, *FACFOA*, and the *JVCFOA* are what make this legislation considered to be "autonomous" because Canada has the freedom, under these Acts, to enact sanctions independently of the authority of an international organization, and therefore act autonomously. This means that Canada can freely choose to act alone (unilaterally), in tandem with its allies via another international organization such as the Organization of American states (OAS)⁴⁵, or in a coalition of like-minded allies when applying sanctions under either of these Acts.⁴⁶ These come in contrast to the *UNA*, which is not considered autonomous but multilateral since Canada is *required* to comply with all sanctions agreed to by the UNSC under the *UNA*, meaning that it does not have a choice in how the *UNA* is used or when it is invoked.⁴⁷ This thesis examines Canada's use of autonomous measures, but it is important to understand the history of Canada's use of autonomous and UN sanctions to understand Canada's sanctioning philosophy.

⁴³ "Sanctions, International Humanitarian Law and the Humanitarian Space in the Canadian Perspective: An Interview with Elissa Goldberg: International Review of the Red Cross" (Cambridge University Press, October 5, 2021), p.88; McTaggart, "Sanctions: The Canadian and International Architecture Background Paper," Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019). *Note: There have been cases when Canada invokes additional measures under SEMA if the UNSC was particularly conflicted about what measures to apply and Canada and/or allies feel additional measures are required. Iran, Libya, South Sudan and North Korea are examples of targets of both sanctions under UNA and SEMA.*

⁴⁴ Marie-Danielle Smith, "60 MPs Urge Sanctions against Chinese Officials," *Macleans.ca*, July 15, 2020, <https://www.macleans.ca/politics/ottawa/60-mps-urge-sanctions-against-chinese-officials/>.

⁴⁵ Technically, sanctioning with the Organization of American States as a requirement of being a member, for example, is an example of multilateral sanctions, Canada uses its autonomous legislation (the *SEMA*) to make this happen.

⁴⁶ See explanation by Craig Martin in "Economic Sanctions under International Law: A Guide for Canadian Policy," *Rideau Institute on International Affairs and the Human Rights Research and Education Centre*, November 28, 2021, p. 21: "[Canada's *SEMA* sanctions] are "unilateral" in the sense that they are unauthorized, not in the sense that they are the policy of one state alone, as they are frequently imposed by several states pursuant to some shared or cooperative policy towards the target state (as in the case of NATO sanctions referred to above). For this reason "autonomous" is perhaps the better term."

⁴⁷ "Sanctions, International Humanitarian Law and the Humanitarian Space in the Canadian Perspective: An Interview with Elissa Golberg: International Review of the Red Cross" (Cambridge University Press, October 5, 2021), pp. 88, 91-92.

This review will begin with the Cold War period since the transition from the Cold War to post-Cold War use of sanctions illustrates how Canada's philosophy toward sanctioning shifted.

2.2. Cold War Sanctions: Canada as a cautious participant in autonomous measures

During the Cold War period, the UNSC was often locked in a stalemate, where the United States and Soviet Union had divided large parts of the world into spheres of influence aided by their allies, thus making agreement on imposing sanctions very difficult.⁴⁸ The veto power of the Permanent Five (P5) members of the UNSC (i.e. the Soviet Union, United States, France, China and the United Kingdom) prevented the imposition of sanctions against their allies or states that were otherwise relevant to the national interests of the P5. The UNSC voted 12 times on the imposition of sanctions during this period, yet the only mandatory sanctions regimes they could agree to were an arms embargo against apartheid South Africa and an arms embargo against Southern Rhodesia.⁴⁹

Instead, the UNSC opted for “voluntary” measures, meaning they were not obligatory, in response to the Arab- Israeli conflict,⁵⁰ North Korea,⁵¹ Congo,⁵² and Portugal.⁵³ In lieu of UN sanctions, many states opted for autonomous sanctions which could be imposed independently of the UN and either unilaterally (alone) or in coalitions with other states or allies or as part of an organization other than the UN (such as the OAS). These autonomous sanctions became a key aspect of the Cold War beginning in the 1950s and the United States was the most prolific, applying measures against the Soviet Union, China, and proxy adversaries North Korea, North Vietnam, Cuba, and later Afghanistan.⁵⁴

⁴⁸ Charron, “Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?,” *Canadian Foreign Policy Journal* 14, no. 2 (2008): p. 4; Also see: Nesbitt, “Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act,” *Ottawa Law Review* 48, no. 2 (March 1, 2017).

⁴⁹ Charron, “Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?,” *Canadian Foreign Policy Journal* 14, no. 2 (2008): p. 4; Clara Portela, “Are European Union Sanctions ‘Targeted’?” *Cambridge Review of International Affairs* 29, no. 3 (2016), pp. 912–913.

⁵⁰ United Nations Security Council (UNSC) Res 50 (29 May 1948) UN Doc S/RES/50.

⁵¹ United Nations Security Council (UNSC) Res 82 (25 June 1950) UN Doc S/RES/82.

⁵² United Nations Security Council (UNSC) Res 169 (24 November 1961) UN Doc S/RES/169.

⁵³ United Nations Security Council (UNSC) Res 180 (31 July 1963) UN Doc S/RES/180.

⁵⁴ Kim Richard Nossal, *Rain Dancing: Sanctions in Canadian and Australian Foreign Policy* (Toronto: University of Toronto Press, 1994), p. ix, as cited in Paul Aseltine, “Canada's Sanctions Regimes: An Investigation into Canada's ...,” accessed February 12, 2021.,

https://mspace.lib.umanitoba.ca/bitstream/handle/1993/30690/Aseltine_Paul.pdf?sequence=1, p. 36.

Canada remained supportive of UNSC measures during the Cold War and used its Area Control List and *Export and Import Permits Act* to align with the voluntary measures where applicable.⁵⁵ However, when it came to the autonomous measures imposed by the United States, Canada was a bit more cautious in following suit during the Cold War. Rather than following the lead of the United States consistently, Canada only imposed sanctions in line with the United States against the Soviet Union invasion of Afghanistan in 1979 and adopted boycotts to wine and sporting events to protest South Africa's Apartheid policy. Later on in the Cold War, between the 1970s-80s, Canada and the United States responded together to address the development of nuclear technology by imposing sanctions against Pakistan, India, and South Korea.⁵⁶ Canada, for example, never matched the US's sanctions against Cuba and indeed, needed to adopt counter measures to shield Canadian companies from their effects.

Canada's national interests and foreign policy priorities during this period, summarized by Paul Aseltine were to, "promote decolonization, contain communism, support allies and end white minority rule in South Africa and Southern Rhodesia."⁵⁷ As a result, Canada responded with sanctions to actions and events related to these issues, but remained a cautious participant in sanctions outside of the UN, preferring to focus on significant issues that were backed by multiple allies where possible rather than just one ally.

2.3. Post- Cold War Sanctions: Greater enthusiasm for sanctions, but more problems

The end of the Cold War gave way to the 1990s and what is now termed the "sanctions decade," which was marked by a significant increase in the number of sanctions regimes imposed by the UNSC due to the end of the stalemate between the Soviet Union and the United States.⁵⁸ As noted by Elissa Goldberg, former Assistant Deputy Minister of Global Affairs Canada, there were only four cases in which Canada imposed sanctions under both the United Nations Act and the SEMA:

⁵⁵ Aseltine, "Canada's Sanctions Regimes: An Investigation into Canada's ...," accessed February 12, 2021., p. 37.

⁵⁶ Hufbauer et al., *Economic Sanctions Reconsidered*, 3rd ed. (Washington, DC: Peterson Institute for International Economics, 2007), p.12.

⁵⁷ Aseltine, "Canada's Sanctions Regimes: An Investigation into Canada's ...," accessed February 12, 2022, https://mspace.lib.umanitoba.ca/bitstream/handle/1993/30690/Aseltine_Paul.pdf?sequence=1, p. 39.

⁵⁸ Named after a book by David Cortright and George Lopez: David Cortright and George A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (London, 2000); Margaret P. Doxey, "Reflections on the Sanctions Decade and Beyond," *International Journal: Canada's Journal of Global Policy Analysis* 64, no. 2 (2009): pp. 539-549, p. 541.

Iran, Libya, North Korea, and South Sudan. In most cases, these measures were meant to add on to the existing UN measures:

In these four situations, Canada either imposed autonomous measures before the UN Security Council made the decision to implement sanctions, or wanted to build on the Security Council measures. These additional measures sought to increase pressure and send a clear message that Canada would not accept egregious behaviour that threatened international peace and security.⁵⁹

Canada followed along with the UN comprehensive measures of the 1990s that targeted Iraq, Libya, Haiti, and the former Yugoslavia as well as the less-comprehensive sanctions against many African states, pleased to be involved in multilateral efforts.⁶⁰ Comprehensive measures targeted states as a whole with measures such as arms embargoes, trade embargoes, diplomatic sanctions, and other assistance prohibitions. However, economic sanctions in the form of trade embargoes were soon revealed to have devastating consequences for the most vulnerable (and innocent) civilians of targeted states. Today, comprehensive sanctions are often described as being “blunt” or “dumb” measures, because they lack discretion in terms of targets, and are levied all at once, with very little escalatory power.⁶¹

Indeed, by the mid-1990s, it became increasingly apparent that applying economic sanctions to entire states can have unintended humanitarian impacts, and ethical issues were raised by various international humanitarian groups, including the Red Cross and Human Rights Watch.⁶² Sanctions against Iraq, the former Yugoslavia, and Haiti—the poorest country in the western hemisphere—highlighted these concerns, bringing the issue of harm against civilians to the attention of the UNSC.⁶³ These sanctions are considered the cause of deaths of nearly 500,000 Iraqi children, high malnutrition rates, higher rates of maternal mortality in a rapid period of time,

⁵⁹ “Sanctions, International Humanitarian Law and the Humanitarian Space in the Canadian Perspective: An Interview with Elissa Golberg: International Review of the Red Cross” (Cambridge University Press, October 5, 2021), pp. 91-92.

⁶⁰ Doxey, “Reflections on the Sanctions Decade and Beyond,” *International Journal: Canada's Journal of Global Policy Analysis* 64, no. 2 (2009): pp. 540-541; Note: for a comprehensive overview of the use of UN sanctions, see: Andrea Charron, *UN Sanctions and Conflict: Responding to Peace and Security Threats* (London: Routledge, 2013).

⁶¹ Thomas Biersteker, “Targeted Sanctions and Human Rights,” *Economic Sanctions and International Law*, pp. 101-102; Daniel Drezner, “Sanctions sometimes smart: Targeted sanctions in theory and practice,” *International Studies Review* 13, no. 1 (2011), pp. 96-108; Susan Hannah Allen and David J. Lektzian, “Economic sanctions: A blunt instrument?” *Journal of Peace Research* 50 no. 1 (2013), pp. 121-135.

⁶² Daniel W. Drezner, “Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice,” *International Studies Review* 13, no. 1 (2011): pp. 96-108, <https://doi.org/10.1111/j.1468-2486.2010.01001.x>, pp. 96-98.

⁶³ Barry A. Burciul, “UN Sanctions: Policy Options for Canada,” *Canadian Foreign Policy Journal* 6, no. 1 (1998): p. 5.

and destruction of social safety nets and livelihoods.⁶⁴ These realizations led the P5 members to pen a paper in 1995 pledging to always consider these potential harmful effects when applying sanctions moving forward.⁶⁵

At the same time, the effectiveness of sanctions was also brought into question as a quantitative studies' trilogy in 1985, 1990, and 2007 by Hufbauer et. al. revealed inconsistent effectiveness of sanctions at best.⁶⁶ Two other significant databases were also established to study the effectiveness of UN sanctions: the Targeted Sanctions Consortium, which now holds sanctions data from 1991-2014,⁶⁷ and the Threat and Imposition of Sanctions (TIES) database, which holds data on both threatened and imposed sanctions from 1945-2005.⁶⁸ Both revealed strong evidence that UN sanctions were largely ineffective.

Comprehensive sanctions could no longer be justified due to their effectiveness—they not only inflicted harm on civilians but were now also seen as of dubious utility. During this time, Canadian academics, and practitioners such as David Malone and Margaret Doxey and Canada's UN Ambassador to the UN, Robert Fowler began to conceptualize sanctions in a new way that highlighted a variety of purposes behind sanctions aside from punishment alone.⁶⁹ Doxey argued that sanctions could be used for the purposes of deterrence, compliance, destabilization, limiting conflicts, showing solidarity, symbolically, or to signal something. These individuals recognised that by applying blanket sanctions against the entire state, innocent civilians were caught in too wide a net.⁷⁰ Instead, sanctions needed to be applied against key decision-makers and elites to coerce them into changing state behaviour.

As a result of these individuals' and others' efforts, individual states and the UN abandoned

⁶⁴ See: Abbas Alnasrawi, "Iraq: Economic Sanctions and Consequences, 1990–2000," *Third World Quarterly* 22, no. 2 (2001): pp. 205-218; Cortright and Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (London, 2000).

⁶⁵ "S/1995/300," Security Council Report, accessed February 12, 2022, <https://www.securitycouncilreport.org/un-documents/document/rol-s1995-300.php>.

⁶⁶ See: Hufbauer et al., *Economic Sanctions Reconsidered*, 3rd ed. (Washington, DC: Peterson Institute for International Economics, 2007).

⁶⁷ Biersteker, "Targeted Sanctions Initiative," Targeted Sanctions Initiative, IHEID, accessed February 12, 2022, <https://www.graduateinstitute.ch/research-centres/global-governance-centre/targeted-sanctions-initiative>.

⁶⁸ Morgan, Bapat, and Kobayashi, "Threat and Imposition of Economic Sanctions 1945–2005: Updating the Ties Dataset," *Conflict Management and Peace Science* 31, no. 5 (2014).

⁶⁹ Andrea Charron, "Three Canadians and Their Contributions to United Nations Sanctions: A Tribute to Margaret Doxey, David Malone, and Robert Fowler," *Canadian Foreign Policy Journal* 16, no. 3 (2010): pp. 1-15.

⁷⁰ See Margaret P. Doxey, *Economic Sanctions and International Enforcement* (London: Macmillan Press for the Royal Institute of International Affairs, 1980); Margaret P. Doxey, "Reflections on the Sanctions Decade and Beyond," *International Journal: Canada's Journal of Global Policy Analysis* 64, no. 2 (2009): pp. 539-549, pp 541-542.

the use of comprehensive sanctions in favour of targeted or “smart” sanctions, which would ideally target only individual perpetrators (not entire states) while minimizing their impact on innocent civilians.

2.4. Targeted or “smart” sanctions and the need for autonomous measures

As indicated by their name, targeted sanctions are more pointed and less blunt than comprehensive measures. They might target and freeze a key individual’s assets or prevent them from travelling to sanctioning states—⁷¹ the focus with smart sanctions is on targeting the perpetrators’ financial and other assets, such as properties and real estate in other countries, while also naming and shaming those individuals publicly, with the hopes of altering their behaviour. This approach allows for greater precision, as sanctions can either be lifted in response to positive changes in behaviour, or intensified, by levying additional measures, if need be.⁷²

Smart sanctions quickly became the preferred policy of the UNSC, heavily advocated for by the United States and the United Kingdom which wanted to keep sanctions as a prominent policy tool of the UN.⁷³ As stated by Daniel Drezner, citing Geoffrey Garret and Barry Weingast, “The development of smart sanctions has solved many of the political problems that prior efforts at comprehensive trade sanctions had created. Smart sanctions served as a useful focal point for policy coordination among the great powers, medium powers, and global civil society.”⁷⁴

Smart sanctions also became the norm for individual states imposing sanctions autonomously in coalitions or unilaterally. Indeed, it was during the sanctions decade that individual states increasingly began to adopt their own sanctions legislation, creating mechanisms to apply sanctions outside of the UN framework. The possibility of future stalemates and vetoes of proposed sanctions in the UNSC remained a concern, thus incentivizing the creation of other avenues for imposing them. Importantly, prior to this time, UN sanctions were seen as the most

⁷¹ McTaggart, “Sanctions: The Canadian and International Architecture Background Paper,” Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019).

⁷² Drezner, “How Smart Are Smart Sanctions?” *International Studies Review* 5, no. 1 (2003), pp. 107–10; Drezner, “Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice.” *International Studies Review* 13, no. 1 (March 1, 2011), pp. 96–99.

⁷³ Drezner, “Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice.” *International Studies Review* 13, no. 1 (March 1, 2011), p. 100.

⁷⁴ *Ibid.*, p. 97., citing Geoffrey Garret and Barry Weingast, “Ideas, Interests and Institutions: Constructing the European Community’s Internal Market.” In *Ideas and Foreign Policy*, eds. by Judith Goldstein and Robert Keohane. Ithaca, NY: Cornell University Press, 1993.

legitimate as they were required by international law via a Charter which all member states ratified.⁷⁵ The revelation of smart sanctions further opened the opportunity for applying sanctions outside of the UN in smaller coalitions or in regional organizations, because smart sanctions were thought to be less detrimental than comprehensive sanctions, and therefore their legitimacy was less likely to be questioned.⁷⁶

Canada adopted its *Special Economic Measures Act (SEMA)* in 1992 as the first real Canadian mechanism for applying sanctions autonomously. As Michael Nesbitt notes, these measures “... did not really become regularized as a tool of unilateral policy until around the mid-to-late-2000s.”⁷⁷ Canada referred to sanctions imposed under the *SEMA* as “smart” sanctions, because names of individuals and entities are listed under countries targeted by sanctions.⁷⁸ While the *SEMA* allows for more broad-based measures, such as arms embargoes, export bans and technical assistance prohibitions, it can be targeted via asset freezes and travel bans on individuals deemed most responsible for egregious behaviour.⁷⁹

In the early days of the *SEMA*'s adoption, there were many developments in the Canadian and global understandings of sanctions. Indeed, the *SEMA* was adopted in the early 1990s— at the beginning of the ‘sanctions decade,’ prompted by concerns that as a new member of the regional OAS, Canada had no legislation to comply with OAS measures against Haiti that were being discussed. The *SEMA* allowed for Canada to apply sanctions in cases when the UNSC was deadlocked and/or if other organizations, to which Canada belonged, applied measures as well as to support close allies.⁸⁰

Between 1999-2000, Canada was a non-permanent member on the UNSC, and the

⁷⁵ Martin, “Economic Sanctions under International Law: A Guide for Canadian Policy,” *Rideau Institute on International Affairs and the Human Rights Research and Education Centre*, November 28, 2021, p.17.

⁷⁶ *Ibid.*, p. 17.

⁷⁷ Nesbitt, “Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act,” *Ottawa Law Review* 48, no. 2 (March 1, 2017), p.518.

⁷⁸ “Canadian Sanctions,” Global Affairs Canada, November 9, 2021, https://www.international.gc.ca/world-monde/international_relations-reactions_internationales/sanctions/index.aspx?lang=eng.

⁷⁹ “Types of Sanctions,” Global Affairs Canada, August 9, 2021, https://www.international.gc.ca/world-monde/international_relations-reactions_internationales/sanctions/types.aspx?lang=eng.

⁸⁰ During the Falkland Islands’ crisis in the 1980s, Canada applied measures against Argentina in support of the UK but did not have standing legislation to do it easily other than through the area control list and export and import controls Act. See: Lisa L. Martin, “Institutions and Cooperation: Sanctions during the Falkland Islands Conflict,” *International Security* 16, no. 4 (1992): p. 143.

Government of Canada wanted to contribute to the improvement of sanctions' effectiveness. The main champion of these ideas was David Malone who previously worked as the Canadian Deputy Permanent Representative to the UN.⁸¹ He believed in the importance of sanctions and saw that they were not going away as a tool of foreign policy, and therefore wanted to learn how to improve their effectiveness.⁸² His and the Government's chosen emphasis on sanctions led to the commissioning of two books studying the effectiveness of sanctions by David Cortright and George Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (2000) and *Smart Sanctions: Targeting Economic Statecraft* (2002).⁸³ Margaret Doxey also wrote multiple books which contributed to policy discussions surrounding the various purposes behind sanctions and the enforcement of sanctions.⁸⁴ In addition to these works by prominent Canadians studying sanctions' effectiveness, Canada also participated in significant international sanctions' conferences on the same subject: the Interlaken (1998-2001), the Bonn-Berlin (1999-2001), and the Stockholm (2001-2002).⁸⁵ As noted by Elissa Goldberg, Deputy Minister of GAC, in her 2021 interview with the International Review of the Red Cross:

Canada was a thought leader in the late 1990s and early 2000s, along with Switzerland and a few other countries, in supporting extensive lessons-learned efforts to develop more strategic sanctions regimes that would more specifically target decision-makers or perpetrators of human rights violations, acts of significant corruption or breaches of peace and security, and limit the impact on civilian populations more broadly.⁸⁶

This statement reflects the emphasis the Government of Canada still places on its past role in the development of sanctions practice.

Finally, Kim Richard Nossal captured the history of Canada's use of sanctions up to 1990

⁸¹ Charron, "Three Canadians and Their Contributions to United Nations Sanctions: A Tribute to Margaret Doxey, David Malone, and Robert Fowler," *Canadian Foreign Policy Journal* 16, no. 3 (2010): p. 7, as cited in Aseltine, "Canada's Sanctions Regimes: An Investigation into Canada's ...," accessed February 12, 2022, p. 43.

⁸² *Ibid.*, p.8.

⁸³ *Ibid.*, p.8.

⁸⁴ See, for example: Margaret P. Doxey, *Economic Sanctions and International Enforcement* (London: Macmillan Press for the Royal Institute of International Affairs, 1980); Doxey, *International Sanctions in Contemporary Perspective* (Houndmills: Macmillan, 1996).

⁸⁵ Charron, "Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?," *Canadian Foreign Policy Journal* 14, no. 2 (2008): p. 12, as cited in Aseltine, "Canada's Sanctions Regimes: An Investigation into Canada's ...," accessed February 12, 2022, p. 44.

⁸⁶ "Sanctions, International Humanitarian Law and the Humanitarian Space in the Canadian Perspective: An Interview with Elissa Goldberg: International Review of the Red Cross" (Cambridge University Press, October 5, 2021), p.99.

in his book *Rain Dancing*,⁸⁷ published in 1994. While his book was published quite early on, and the *SEMA* was not adopted until 1992, his assessment of Canada's sanctioning philosophy remains relevant today. In his words, "Western sanctions are...driven by sanctimony...manifested in the frequently expressed desire of Western liberals to project their own conception of moral standards beyond their borders and out into the international system."⁸⁸ He highlights Canada's desire to signal its solidarity with allies and to symbolize its beliefs that a particular target is committing an objectionable act, "Rather than being primarily moved by instrumentality, non-great powers like Australia and Canada embrace sanctions largely for symbolic reasons,"⁸⁹ also noting that Canada has a strong desire to "satisfy the expectations"⁹⁰ of likeminded states. Ultimately, he refers to Canada's use of sanctions up until that point as akin to only going through the motions of seeming to do something. Sanctions were "an activity that actually accomplishes very little, but that makes the participants feel good because something is being done about a serious problem."⁹¹ In other words, while the nature of Canada's sanctions is largely symbolic, and there is not as much "bite" from Canadian sanctions as there may be from other, more powerful states or when mandatory measures are applied via the UNSC, it is nevertheless important to Canada to support these allies and to signal its beliefs. As argued by Nossal,

... even if Australians and Canadians were to recognize explicitly that the sanctions that can be imposed by a middle power do not have the instrumental effects touted by their proponents, they could not simply turn off their concern for the wrong-doing of others- of their punishment-mindedness towards wrong-doers.⁹²

Canadian and other allied sanctions may not have a strong effect individually, but as a coalition, they could. As a result, the UK, EU Australia and other allies have increasingly turned to autonomous measures to deal with the new strategic competition facing the world in 2020 and beyond. Additionally, there remains a belief that imposing sanctions in coordination or in coalitions can be more effective than imposing sanctions in an ad hoc or uncoordinated manner against targets, as the more targeted sanctions imposed (akin to layering measures), the more restrictions there are on the targets' movements and financial assets. Canada has always preferred

⁸⁷ Nossal, *Rain Dancing: Sanctions in Canadian and Australian Foreign Policy* (Toronto: University of Toronto Press, 1994).

⁸⁸ *Ibid.*, pp. 258-259.

⁸⁹ *Ibid.*, *preface*, p. xiii.

⁹⁰ *Ibid.*, p. 253.

⁹¹ *Ibid.*, *preface*, p., xiii.

⁹² *Ibid.*, p. 259.

to act multilaterally via an international organization or with allies. Thus, Canada imposed the *SEMA* always in consultation and with other allies between 1992- 2017, when the *JVCFOA* legislation was then adopted and the *SEMA* legislation was updated.⁹³

During this period, Canada chose repeatedly to “bandwagon” with allies, in particular the United States and the EU, not only by sanctioning similar targets for similar transgressions, but also by imposing similar measures (i.e., asset freezes, embargoes), and citing similar objectives (usually to support democracy and respect human rights). Between 1992-2015, Canada sanctioned Haiti, Iran, Myanmar, Libya, Russia, Syria, Ukraine, Zimbabwe, and South Sudan under the *SEMA*, each time with at least one ally or in addition to UN sanctions measures already imposed against the state in question.⁹⁴

2.5. Horizontal sanctions

Since the early 2000s, a new type of sanctions has become increasingly recognized, called “horizontal” sanctions. While traditionally, sanctions regimes (including targeted sanctions) focus on specific countries and list individuals under these countries, horizontal sanctions regimes focus on specific thematic areas. The term horizontal refers to the organizational principle of the sanctions, and “horizontalization” is the process by which sanctions measures become detached from geographic location to instead encapsulate transnational events or occurrences, such as cybercrime or terrorism.⁹⁵ Clara Portela, who has written extensively on horizontal sanctions and EU measures, argues that horizontalization “represents a further stage in the evolution of targeted sanctions,”⁹⁶ and a further ‘individualization’ as well, since it detaches individual targets from any state. While previously, individuals would be listed under the country of origin of their crime or under their country of affiliation, horizontal sanctions, “allow for the listing of individuals and entities responsible for activities irrespective of their location or national affiliation,”⁹⁷ in one list.

The September 11th “9/11” attacks were the impetus for developing what are often called

⁹³ Charron, “The Canadian Sanctions Database” (Centre for Defence and Security Studies, University of Manitoba; “Sanctions, International Humanitarian Law and the Humanitarian Space in the Canadian Perspective: An Interview with Elissa Golberg: International Review of the Red Cross” (Cambridge University Press, October 5, 2021),p. 92.

⁹⁴ Ibid.

⁹⁵ Clara Portela, “Horizontal Sanctions Regimes: Targeted Sanctions Reconfigured?,” *Research Handbook on Unilateral and Extraterritorial Sanctions*, 2021, p. 445.

⁹⁶ Ibid., p. 444.

⁹⁷ Ibid., p. 444.

“blacklists,” but which can also be called horizontal sanctions lists. The crime of terrorism was deemed transnational, as the crimes themselves were taking place outside of the country of origin of the perpetrators, and the perpetrators could be from multiple states. In this case, the UNSC developed a blacklist around the theme of terrorism, which listed individuals from various states under one list.⁹⁸ Today, this style of sanctions has become more important, as non-state actors, including entities may be implicated in serious crimes such as human rights abuses, terrorism, significant acts of corruption, and cyber- attacks, among others. Canada’s closest sanctioning allies, the US, EU, and UK, have each developed themed blacklists according to their priorities and interests. Prior to 2017, Canada’s only true “thematic” blacklist was in support of the UNSC’s sanctions against Al Qaeda, the Taliban, ISIL and affiliates under the UN Act and Criminal Code of Canada⁹⁹ and the *FACFOA*, which froze assets of individuals implicated in acts of significant corruption on the request of the country at stake.¹⁰⁰ The Magnitsky-style legislation which names individuals from around the world for gross violations of human rights or corruption adopted first by the United States and then by Canada and its allies (to be discussed further below), are examples of horizontal sanctions.

As Portela notes, there are key political advantages that are unique to horizontal sanctions. With horizontal measures, a state can “...respond to disquieting developments without pointing the finger at the leadership of the country where the threat or condemned action originated... the resulting ambiguity can be usefully applied to cases in which attribution is either impossible or undesirable.”¹⁰¹ This is particularly helpful for states like China and Russia, known abusers of human rights, but also prone to sweeping retaliation and in the case of the former, hostage diplomacy. This means that aside from being useful for addressing transnational incidents without a clear affiliation to a particular state, horizontal measures may also be used for purely political reasons. Even if there is a real connection between an individuals’ actions and their state of affiliation, the sanctioning state may choose not to connect them.

⁹⁸ Ibid., pp. 441-442.

⁹⁹ Global Affairs Canada, “Canadian Sanctions Related to Terrorist Entities, Including Al-Qaida and the Taliban,” Global Affairs Canada, July 2, 2020, https://www.international.gc.ca/world-monde/international_relations-internationales/sanctions/terrorists-terroristes.aspx?lang=eng.

¹⁰⁰ Portela, “Horizontal Sanctions Regimes: Targeted Sanctions Reconfigured?,” *Research Handbook on Unilateral and Extraterritorial Sanctions*, 2021, p. 444; “Freezing Assets of Corrupt Foreign Officials Act,” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/F-31.6/page-1.html>.

¹⁰¹ Portela, “Horizontal Sanctions Regimes: Targeted Sanctions Reconfigured?,” *Research Handbook on Unilateral and Extraterritorial Sanctions*, 2021, p. 445.

Despite these advantages, horizontal sanctions may lose some effectiveness in terms of “naming and shaming,” which can play an important role in altering the problematic behaviour, because the state is separated from the individuals targeted. If an individual is targeted without connection to their state or the state of origin of their crime, they are afforded more anonymity, which leads to less name recognition and a lesser ability to publicly shame the individual with the goal of coercing a change in their behaviour.¹⁰² The public recognizes Russia, but who would recognize, for example, Viktor Vasiliyevich Zolotov?¹⁰³

Additionally, over time, sanction blacklists and targeted sanctions in general have received criticism due to the potential impact on those individuals’ own human rights, and the lack of due process. When targeting individuals with sanctions first became a popular practice in the 1990s, the rights of those targeted were not of high concern.¹⁰⁴ After all, the reason for turning to more targeted rather than state-wide sanctions was to protect the rights and lives of innocent civilians of targeted countries, not of the perpetrators. As stated by Thomas Biersteker:

As long as the state sponsoring the resolution met the minimum political standard of obtaining a veto-proof voting majority on the security council, most member states assumed that the case against the targets (mostly public officials) had been successfully made and that the rights of individuals had not been violated in the process.¹⁰⁵

However, as sanctions became a common tool of censure against those supposedly involved in or supportive of terrorism following the 9/11 attacks of 2001, more concern grew about their invalidation of the human rights of the “sanctioned.”¹⁰⁶ These concerns focussed on what could happen if individuals were wrongly listed, if the hardship imposed on them amounted to cruel or unusual punishment, or if the sanctions imposed on an individual adversely affected their family members or dependents not complicit in their actions or crimes.¹⁰⁷ When two legal challenges were

¹⁰² Thomas J., Biersteker, “UN Targeted Sanctions as Signals: Naming and Shaming or Naming and Stigmatizing?” *The Politics of Leverage in International Relations*, 2015, pp. 164-166.

¹⁰³ “Regulations Amending the Special Economic Measures (Russia) Regulations: SOR/2019-71,” Canada Gazette, Part 2, Volume 153, Number 7: Regulations Amending the Special Economic Measures (Russia) Regulations (Public Works and Government Services Canada, Government of Canada, April 3, 2019), <https://canadagazette.gc.ca/rp-pr/p2/2019/2019-04-03/html/sor-dors71-eng.html>.

¹⁰⁴ Biersteker, “Targeted Sanctions and Individual Human Rights.” *International Journal* 65, no. 1 (December 1, 2009): p. 101.

¹⁰⁵ Ibid., p. 101.

¹⁰⁶ Ibid. p. 101.

¹⁰⁷ Ibid., p 102.

brought before the European Court of Justice regarding individual targeted sanctions brought about after 9/11, the court ruled in the defendants' favour.¹⁰⁸

Further concerns were then raised about the lack of due process involved in imposing sanctions against individuals, and the lack of transparency in the process of listing and de-listing individuals. As a result of these concerns, the UNGA asked the Security Council to make reforms, "to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and removing them, as well as for granting humanitarian exceptions."¹⁰⁹ Following an in-depth research and reporting phase, reforms were made by the UNSC in 2006, 2008, and 2009, involving the establishment of review committees and the creation of an Ombudsperson to review questions and complaints by individuals listed in one regime.¹¹⁰ As noted by Biersteker, the new reforms, "improve[d] listing procedures by extending the time the committee considers new listing requests, requesting all committee members to share information, not just the designating state(s), and approving a narrative summary of the reasons for listing prior to making a new designation."¹¹¹ These reforms, while important, are still considered only initial steps toward ensuring the protection of individuals, by some scholars. Concerns still outstanding in regard to UN sanctions include the lack of time limits on listings and the temporary nature of the Ombudsperson (only one sanctions regime currently has one and a focal point can aid delisting requests for other regimes).¹¹² In the Canadian context regarding autonomous sanctions, Craig Martin notes that:

These questions should be of particular concern and salience for Canadians, given that Canada's embrace of economic sanctions as a tool of foreign policy is apparently driven to a considerable degree by its support for international human rights. The possibility that a policy can be challenged as violating and undermining the very legal regime that it is claimed to be defending and advancing, obviously creates the grounds for allegations of irrationality and hypocrisy.¹¹³

Nevertheless, this style of sanctions has become more common in recent years among Canada's allies, which means it remains important for Canada.

¹⁰⁸ Ibid., p. 104; Portela, "Are European Union Sanctions 'Targeted'?" *Cambridge Review of International Affairs* 29, no. 3 (2016), pp. 914-916.

¹⁰⁹ The UNGA World Summit Outcome document, September 2005 as cited in Biersteker, "Targeted Sanctions and Individual Human Rights." *International Journal* 65, no. 1 (December 1, 2009), p. 104.

¹¹⁰ Ibid, p. 104.

¹¹¹ Ibid., p. 114.

¹¹² Ibid., pp. 115-116. For information on the Focal Point for delisting, see <https://www.un.org/securitycouncil/sanctions/delisting/delisting-requests>

¹¹³ Martin, "Economic Sanctions under International Law: A Guide for Canadian Policy," *Rideau Institute on International Affairs and the Human Rights Research and Education Centre*, November 28, 2021, p.48.

2.6. Magnitsky- style sanctions

Since 2016/2017, a new, specific type of horizontal measures has grown in popularity around the world. ‘Magnitsky’ measures, as they are often called, are targeted, horizontal sanctions used to punish perpetrators of human rights and corrupt acts in the form of asset freezes and travel bans. Importantly, this measure was inspired by the story of Sergei Magnitsky, a Russian tax lawyer and auditor working for American billionaire Bill Browder in Russia. Magnitsky uncovered a tax theft of \$230m by Russian Interior Ministry officers, and after deciding to testify against these individuals, was himself arrested and detained by Russian officials. Magnitsky was subject to inhuman conditions while in detention and was denied medical treatment, ultimately resulting in his death at the age of 37 in 2009.¹¹⁴ Therefore, the sentiment behind “Magnitsky”-style legislation is to honour Magnitsky’s memory by denouncing acts of corruption and human rights violations, and publicly naming and shaming perpetrators with the hopes of changing their behaviour. This type of ‘Magnitsky’ legislation was first adopted by the United States under President Obama in 2012, titled the *Russia and Moldova Jackson–Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012*, although it only targeted Russian officials at the time.¹¹⁵ New US legislation was introduced in 2016 titled the *Global Magnitsky Act*.¹¹⁶ This Act expanded the targeting to foreign nationals from any state given that the United States’ sanctions generally have extra-territorial reach. Soon after, other states, including Canada, adopted Magnitsky-style legislation of their own. As of December 2021, Australia, the UK, the EU, Estonia, Lithuania, Latvia, Gibraltar, Jersey, and Kosovo have Magnitsky-like legislation. Canada adopted its Magnitsky measure, the *Justice for Victims of Corrupt Foreign Officials Act (JVCFOA)*, in 2017 with support from all major political parties and enthusiasm from

¹¹⁴ Karine Azoulay and Timothy Robin MacKay, “Bill S-226: an Act to Provide for the Taking of Restrictive Measures in Respect of Foreign Nationals Responding for Gross Violations of Internationally Recognized Human Rights and to Make Related Amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act,” accessed February 12, 2022, https://publications.gc.ca/collections/collection_2019/bdp-lop/lp/YM32-3-421-C25-eng.pdf, pp. 2-3.; “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

¹¹⁵ “Russia and Moldova Jackson- Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012,” (Public Law 112- 208), (December 14, 2012), <https://www.congress.gov/112/plaws/publ208/PLAW-112publ208.pdf>

¹¹⁶ “S.284 - 114th Congress (2015-2016): Global Magnitsky Human ...,” accessed February 12, 2022, <https://www.congress.gov/bill/114th-congress/senate-bill/284>.

many Senators.¹¹⁷ Canada adopted this legislation partly to ensure it did not fall behind its closest sanctioning partner and ally the United States to address brutal human rights abuses around the world perpetrated by particular individuals.¹¹⁸ Canada also took the opportunity to fill the gaps in its existing autonomous sanctions' legislation, the *SEMA*, by expanding the threshold criteria for the use of sanctions at the same time.¹¹⁹ Whereas the *SEMA* allows for states, entities, and individuals to be targeted, the *JVCFOA* targets only individuals, without linking those individuals to any particular state, as is a key feature of horizontal sanctions.

Despite the anonymization that the *JVCFOA* affords, Canada has targeted five times as many individuals for human rights abuses via the *SEMA* than via the *JVCFOA* since 2017. Meanwhile, the *JVCFOA* has remained unused in over three years (since November of 2018), despite there being many cases of corruption and human rights abuses by individuals from around the world which could qualify for such sanctions,¹²⁰ and despite the fact that its allies are increasingly turning to these thematic measures when applying sanctions.¹²¹

Very few theories have been advanced in the literature as to why the *SEMA* has been preferred over the *JVCFOA* since the latter's adoption. Meredith Lilly and Delaram Arabi suggest that this preference for the *SEMA* may be because Canada prefers to sanction with other states, which prior to 2017, was only possible via the *SEMA*,¹²² (the suggestion being that Canada prefers to sanction with a community of like-minded states rather than being "alone" as only the United States had Magnitsky legislation at the time). Canadian Trade lawyer John Boscariol questions

¹¹⁷ "Statement by Minister of Foreign Affairs on Justice for Victims of Corrupt Foreign Officials Act," News release, *Global Affairs Canada*, (October 18, 2017), https://www.canada.ca/en/global-affairs/news/2017/10/statement_by_ministerofforeignaffairsonjusticeforvictimsofcorrup.html.

¹¹⁸ "House of Commons Standing Committee on Foreign Affairs and International Development," Transcript, December 7, 2016, FAAE - Home - House of Commons of Canada. Accessed January 28, 2021. <https://www.ourcommons.ca/Committees/en/FAAE?parl=41&session=2>.

¹¹⁹ Nesbitt, "Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act," *Ottawa Law Review* 48, no. 2 (March 1, 2017); p. 556.; Lilly and Arabi, "Symbolic Act, Real Consequences: Passing Canada's Magnitsky Law to Combat Human Rights Violations and Corruption." *International Journal: Canada's Journal of Global Policy Analysis* 75, no. 2 (2020), pp. 169- 170; "Special Economic Measures Act," Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>.

¹²⁰ See the "circumstances" section of the *JVCFOA* which outlines the cases in which Canada may invoke the legislation. "Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)," Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

¹²¹ See Portela, "The Spread of Horizontal Sanctions," CEPS, July 5, 2019, <https://www.ceps.eu/the-spread-of-horizontal-sanctions/>.

¹²² Lilly and Arabi, "Symbolic Act, Real Consequences: Passing Canada's Magnitsky Law to Combat Human Rights Violations and Corruption." *International Journal: Canada's Journal of Global Policy Analysis* 75, no. 2 (2020), pp. 172- 173.

why perpetrators' names are not simply listed under both the *SEMA* and the *JVCFOA*, as was done in the case of individuals from Venezuela connected to the Maduro regime.¹²³ There are also immediately apparent similarities in the use of the *SEMA* and the *JVCFOA*, which make it difficult to determine why Canada applies the *SEMA* in some cases and the *JVCFOA* in others. To provide some examples: both Acts can be used to address human rights abuses and corruption, both Acts allow Canada the freedom to choose when (and when not to) enact sanctions, both Acts allow Canada to enact sanctions collectively (with other allies or in a coalition) or unilaterally (on its own), and both Acts have been used against developed and developing states and individuals from both.¹²⁴

Along with documenting this preferencing of the *SEMA*, Meredith Lilly and Delaram Arabi found that Canada has continued to follow the leads of its allies when applying sanctions, rather than seizing opportunities to act unilaterally and to target individuals exclusively, which are two key features of the *JVCFOA*.¹²⁵ Another potential explanation for this preferencing of the *SEMA* may be because of its more "permissive" wording, and decision-makers' greater familiarity with the *SEMA*. In other words, when in doubt, decision-makers may use the more familiar legislation. It is expected that part of the reason why the *SEMA* is preferred is because of policy-makers' ability to leverage other remedies available under the *SEMA*, such as partial or full supply bans against states, if needed. Theoretically, this would still allow Canada to list individuals under both the *SEMA* and *JVCFOA*. However, in practice, GAC employs a policy of no double-listing, except if listing under a different triggering mechanism.¹²⁶

It is possible and even likely that there is more than one reason why Canada has preferred the *SEMA* to the *JVCFOA* since 2017 or indeed, no particular reason at all, and unfortunately, there can be no definitive answer provided as to why the *SEMA* is invoked more often than the *JVCFOA*

¹²³ John Boscariol, (@tradelawyer), "Yes, I agree that is likely one reason, but one wonders why Canada wouldn't list them under both #Magnitsky and *SEMA* if that was the case- as, for example, they have done with Venezuela." December 10, 2020, 7:38am.

¹²⁴ "Canadian Sanctions," Global Affairs Canada, November 9, 2021, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/index.aspx?lang=eng.

¹²⁵ Lilly and Arabi, "Symbolic Act, Real Consequences: Passing Canada's Magnitsky Law to Combat Human Rights Violations and Corruption," *International Journal: Canada's Journal of Global Policy Analysis* 75, no. 2 (2020), p. 172.

¹²⁶ "Sanctions, International Humanitarian Law and the Humanitarian Space in the Canadian Perspective: An Interview with Elissa Golberg: International Review of the Red Cross" (Cambridge University Press, October 5, 2021), p.92.

in practice because this decision-making is subject to cabinet confidentiality.¹²⁷ However, this preferencing can be clearly documented, and it is this preferencing that can provide clues about how Canada uses autonomous sanctions. While there are numerous similarities between the legislation as discussed above, the triggering requirements for the *SEMA* and the *JVCFOA* have yet to be examined and compared to determine what causes Canada to invoke particular legislation in particular cases. Looking at why the *SEMA* is more “useful” in practice while also examining use cases can provide insights into what type of incidents Canada typically responds to with sanctions, and what kind of targets Canada typically sanctions. This will be further explored in Chapter 3 when comparing the various aspects of the legislations and in Chapter 4 when looking at use cases.

¹²⁷ As Nesbitt writes in “Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act,” *Ottawa Law Review* 48, no. 2 (March 1, 2017). “GAC does not offer detailed explanations for how its sanctions decisions are made.,” p.559.

Chapter 3: Canada's sanctions legislation: the *SEMA* and the *JVCFOA*

In order to better understand Canada's two core pieces of autonomous sanctions legislation, a thorough comparison of the various aspects of the legislation must be provided. This comparison will highlight any challenges that arise from aspects of the legislation like the listing processes, triggering mechanisms, and penalties that might help to explain Canada's sanctioning behaviours and collaboration (or lack thereof) with allies. It is important to highlight that some of the challenges identified with the legislation as discussed here have been raised in the past in reference to the *SEMA* alone, including in the 2017 report titled *A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond*,¹²⁸ which was the result of the review of existing autonomous sanctions legislation. This report included 13 recommendations for improving Canada's legislation and practice, which is returned to in the concluding Chapter 5 of this thesis to compare what we know now with what was raised then.

This chapter begins by briefly explaining the *FACFOA*, which will not be fully compared with the *SEMA* and *JVCFOA* due to its very narrow use, and the fact that new regulations were not established during the 2017-2021 timeframe. The chapter then explains how the *SEMA* and *JVCFOA* were adopted in 1992 and 2017 respectively and examines the intentions behind the bills that established these Acts at the time of their adoption. The analysis systematically compares the legal frameworks, the scope of application, the restrictions, the listing criteria and process, delisting criteria and process, exceptions, enforcement, and penalties of both pieces of legislation.

3.1: Brief overview of the *FACFOA*

The *Freezing Assets of Corrupt Foreign Officials Act (FACFOA)* was adopted in 2011 as Canada's first stand alone "thematic" sanctions regime¹²⁹, focussing on the theme of corruption. Under this legislation, the Government of Canada can seize, freeze, or sequester the assets found

¹²⁸ "A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond." Committee Report No. 7 - FAAE (42-1) - House of Commons of Canada. Accessed January 28, 2021.

¹²⁹ Note: the UNSC had required mandatory sanctions against Al Qaeda, the Taliban and associates since 1999 which have been expanded to include ISIL (Da'esh). This is the first thematic sanctions regime which Canada supported, although it was not autonomous.

in Canada of a “politically exposed foreign person” (PEFP)¹³⁰ or restrict dealings with such an individual when requested in writing by a foreign state. This occurs when the requesting state is experiencing some amount of political turmoil, and when the individual in question is involved in acts of corruption, and therefore their assets were obtained illegally. The *FACFOA* legislation has rarely been used in practice, having only been used in reference to Tunisia and Egypt in 2011 and Ukraine in 2014. The Egypt and Tunisia regulations have been amended five times, with a total of 123 individuals from Tunisia and 148 individuals from Egypt listed over the full period. The Ukraine regulations list 18 individuals. These regulations, unlike those under the *SEMA* and *JVCFOA*, expire five years after they are established. The Ukraine and Tunisia regulations were renewed in 2019 and 2021 respectively, but no new regulations (against other countries) have been established between 2017-2021.¹³¹

3.2: The adoption of the *SEMA* and overview

The *Special Economic Measures Act* was adopted in 1992 to fill an essential gap— Canada did not have a mechanism by which to autonomously enact sanctions when it wished. Until the adoption of the *SEMA*, Canada could only enact sanctions that were mandatory and adopted by the UNSC under its own *United Nations Act*. As discussed above, when the UNSC was in a political deadlock, there was simply no other mechanism through which Canada could employ similar measures, and Canada could also not make additions to UN measures if it wished to nor sanction should another organization to which Canada was a member, require measures to be put in place.¹³² The *SEMA* was introduced as standing enabling legislation, meaning that it would allow the Government of Canada to develop regulations in response to a variety of acts or events specified

¹³⁰ The Act defines a “politically exposed foreign person” as a current or former holder of one of the listed senior government positions or their close personal and business associates, including family members, “Freezing Assets of Corrupt Foreign Officials Act,” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022).

¹³¹ Ibid.

¹³² Charron, “Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?,” *Canadian Foreign Policy Journal* 14, no. 2 (2008): p. 4.; see also Nesbitt, “Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act,” *Ottawa Law Review* 48, no. 2 (March 1, 2017).

under the legislation. Canada could then use this to support its allies' autonomous measures or to make additions to UN measures.¹³³

The legislation was drafted by the then Department of External Affairs and International Trade and by Justice Canada, and it could be invoked in two instances: 1. to comply with a decision by an international organization or association of which Canada is a member that requires its members to impose economic measures against a foreign state, or 2. To respond to a “grave breach of international peace and security that has or is likely to result in a serious international crisis.”¹³⁴ In 1991, as the legislation was being debated, there was another debate occurring in Canada regarding the possible application of sanctions against Haiti in line with the OAS. Canada had just become a member of the OAS in 1990 after being a long-time permanent observer, and Canada applied sanctions to Haiti under the *SEMA* (to cover measures required by the UNSC and OAS). This was the first and only time that this trigger was used under the *SEMA*.¹³⁵ Importantly, the *SEMA* was updated in 2017 (at the same time that the *JVCFOA* was adopted), so that it could also be used to respond to “gross and systematic human rights violations” committed in a foreign state and to acts of corruption, which are variations of the two triggering mechanisms under the *JVCFOA*.¹³⁶

In the debates surrounding Bill C-53, which would establish the *SEMA*, liberal MP Mr. Lloyd Axworthy asked whether there should be a clear definition for “a serious international crisis.” Mr. Barry Mawhinney, a bureaucrat working within the then Department of External Affairs and International Trade responded, stating, “I think it would be very difficult to set out a set of criteria, which would virtually have to be inexhaustible as the types of situations might arise.

¹³³ Standing Senate Committee on Foreign Affairs and International Trade, Minutes of Proceedings and Evidence, 42nd Parliament, 1st Sess., No. 15 (8 December 2016), <https://sencanada.ca/en/Content/SEN/Committee/421/ae/fa/15ev-52994-e> (accessed 13 May 2020).

¹³⁴ “Sanctions, International Humanitarian Law and the Humanitarian Space in the Canadian Perspective: An Interview with Elissa Golberg: International Review of the Red Cross” (Cambridge University Press, October 5, 2021), p.87.

¹³⁵ McTaggart, “Sanctions: The Canadian and International Architecture Background Paper,” Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019), p.2. *Note that SOR/92-369 is no longer available to view on the Canadian sanctions webpage by Global Affairs Canada since it has been repealed.*

¹³⁶ Nesbitt, “Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act,” *Ottawa Law Review* 48, no. 2 (March 1, 2017), pp.513-514.

It is very clear that the policy aspects of this are not addressed in the act.”¹³⁷ This preference for broad and flexible rather than specific or prescriptive definitions, has remained a key feature of Canada’s sanctions regulations since the *SEMA*’s adoption. The *SEMA* also did not include a provision requiring reviews or updates on the impact or enforcement of the sanctions. These challenges have remained a key aspect of study for academics seeking to understand how Canada uses autonomous measures.¹³⁸

3.3: The adoption of the *JVCFOA* and overview

The *Justice for Victims of Corrupt Foreign Officials Act (JVCFOA)* is Canada’s Magnitsky-style sanctions legislation, adopted in 2017, following its closest sanctioning ally, the United States’ adoption of the *Global Magnitsky Act*.¹³⁹

The United States was first to adopt Magnitsky-style legislation in 2012, targeting only Russian officials, and then expanded its reach to foreign nationals or entities from any state in 2016.¹⁴⁰ As outlined in Chapter 2, this legislation is named after Russian national Sergei Magnitsky, who, after uncovering a tax theft of \$230 million by Russian law enforcement officials, was arrested in Russia and detained without trial in a Russian prison. In 2009, at the age of 37, Magnitsky died in prison due to unlawful neglect,¹⁴¹ which led Bill Browder to begin lobbying the US government to adopt targeted sanctions against those involved in Magnitsky’s death.¹⁴² So far, Magnitsky- style legislation has been adopted by the United States (2012 and expanded in 2016),

¹³⁷ “House of Commons Committees, 34th Parliament, 3rd Session: Legislative Committee E on Bill C-53, an Act to Provide for the Imposition of Special Economic Measures,” Canadian Parliamentary Historical Resources, accessed February 12, 2022, https://parl.canadiana.ca/view/oop.com_HOC_3403_28_1/23?r=0&s=6.

¹³⁸ See: Nesbitt, “Canada’s ‘Unilateral’ Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada’s Special Economic Measures Act,” *Ottawa Law Review* 48, no. 2 (March 1, 2017); Lilly and Arabi, “Symbolic Act, Real Consequences: Passing Canada’s Magnitsky Law to Combat Human Rights Violations and Corruption,” *International Journal: Canada’s Journal of Global Policy Analysis* 75, no. 2 (2020); Charron, “Expert Roundtable on Canadian Economic Sanctions Oct 9-10 2019 Summary of Findings and Recommendations,” Centre for Defence and Security Studies (SSHRC, the University of Manitoba’s Centre for Defence and Security Studies and Institute for Humanities, the Canadian Defence and Security Network and Carleton University, November 2019).

¹³⁹ “S.284 - 114th Congress (2015-2016): Global Magnitsky Human ...,” accessed February 12, 2022, <https://www.congress.gov/bill/114th-congress/senate-bill/284>.

¹⁴⁰ *Ibid.*

¹⁴¹ “Committee on Legal Affairs and Human Rights,” Resolution 1966 (2014) - Refusing impunity for the killers of Sergei Magnitsky (Parliamentary Assembly of the Council of Europe), accessed February 12, 2022, <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20409&lang=en>.

¹⁴² Senate of Canada. “Senate Committee on Foreign Affairs and International Trade— meetings and videos.” Senate of Canada. Accessed January 28, 2021. <https://sencanada.ca/en/committees/studiesandbills/42-1?p=10>.

Estonia (2016), Lithuania (2017), Canada (2017), Latvia (2018), Kosovo (2020), the United Kingdom (2020), the European Union (2020), Australia (2021) and Gibraltar (2017) and Jersey (2018), independent of the UK (2020).

Like the United States, Canada’s Magnitsky-style legislation is dedicated to addressing both human rights violations and corruption. This comes in contrast to its ally, the EU’s, Magnitsky-style legislation, the EU Global Human Rights Sanctions Regime (*EUGHRSR*), adopted in December 2020, which only addresses human rights abuses, in line with its plan to develop a separate horizontal sanctions regime dedicated to the theme of corruption.¹⁴³

The *JVCFOA*’s preamble prominently features the story of Magnitsky:

Whereas Sergei Magnitsky, a Moscow lawyer who uncovered the largest tax fraud in Russian history, was detained without trial, tortured and consequently died in a Moscow prison on November 16, 2009;

Whereas no thorough, independent and objective investigation has been conducted by Russian authorities into the detention, torture and death of Sergei Magnitsky, nor have the individuals responsible been brought to justice;

Whereas the unprecedented posthumous trial and conviction of Sergei Magnitsky in Russia for the very fraud he uncovered constitute a violation of the principles of fundamental justice and the rule of law.¹⁴⁴

While Canada’s legislation allows for the targeting of individuals from any state, its explicit reference to Magnitsky and Russia in its preamble differs from other allies’ legislation, such as the *EUGHRSR*, which focusses on internationally-recognized human rights violations,¹⁴⁵ without singling out one country— in this case, Russia. One of the key advantages of horizontal sanctions legislation is the anonymity and country-neutrality it affords that helps to avoid politically-challenging situations. In Portela’s words, “The emphasis on country-neutrality is visible already in the EU’s labelling of its prospective human rights sanctions regime: while it is unequivocally

¹⁴³ “Human Rights,” EU Sanctions Map, accessed February 13, 2022, <https://sanctionsmap.eu/>; “Press Release: EU Adopts a Global Human Rights Sanctions Regime,” Council of the European Union, December 7, 2020, <https://www.consilium.europa.eu/en/press/press-releases/2020/12/07/eu-adopts-a-global-human-rights-sanctions-regime/>.

¹⁴⁴ “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

¹⁴⁵ “Human Rights,” EU Sanctions Map, accessed February 13, 2022, <https://sanctionsmap.eu/>; “Press Release: EU Adopts a Global Human Rights Sanctions Regime,” Council of the European Union, December 7, 2020, <https://www.consilium.europa.eu/en/press/press-releases/2020/12/07/eu-adopts-a-global-human-rights-sanctions-regime/>.

inspired by the US ‘Global Magnitsky’ legislation, it obviates the name of the late Russian accountant.”¹⁴⁶

The Preamble continues with the story of Magnitsky and makes specific mention of “a member of the Ukrainian Parliament Lieutenant Nadiya Savchenko and other Ukrainians [who] were illegally convicted and imprisoned in Russia in violation of international norms and fundamental justice”.¹⁴⁷ The Preamble is reflective of the core champions of the legislation, including specific MPs such as former Justice Minister Irwin Cotler and Conservative MP James Bezan for Selkirk-Interlake-Eastman, and the Hon. Raynell Andreychuk, Senator for Saskatchewan in the Senate as well as Garry Kasparov, Russian pro-democracy advocate.

One of the reasons why Canada’s Parliament wished to adopt Magnitsky-style legislation was because of a concern about failing to keep pace with allies when they imposed such sanctions in the future.¹⁴⁸ Prior to 2017, Canada’s only choice to apply autonomous sanctions was the *SEMA*, which was not conducive to targeting individual acts of human rights violations or corruption but rather ‘where the Governor in Council (GiC) is of the opinion that a grave breach of international peace and security has occurred that has resulted or is likely to result in a serious international crisis’ which may or may not fit cases of human rights abuses and corruption.¹⁴⁹ The proposed *JVCFOA* was seen as a way to fill any gaps present in Canada’s legislation, and to allow for more options when imposing sanctions following the leads of its allies.¹⁵⁰ With Magnitsky-style legislation, Canada would have the option to follow suit with the United States or other allies fairly quickly, without having to create country-specific regulations which could be a lengthy process. It would also ensure that individual perpetrators were not linked to any particular state such as is the case with the *SEMA*, which could help to protect against retaliatory action and avoid other politically-costly situations.

This is the logic behind most horizontal sanctions, as discussed in Chapter 2. Canada’s

¹⁴⁶ Portela, “Horizontal Sanctions Regimes: Targeted Sanctions Reconfigured?,” *Research Handbook on Unilateral and Extraterritorial Sanctions*, 2021, p. 445.

¹⁴⁷ “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

¹⁴⁸ Senate of Canada. “Senate Committee on Foreign Affairs and International Trade meetings and videos.” Senate of Canada. Accessed January 28, 2021. <https://sencanada.ca/en/committees/studiesandbills/42-1?p=10>.

¹⁴⁹ “Special Economic Measures Act,” Justice Laws Website, Government of Canada (Legislative Services Branch , February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>.

¹⁵⁰ Senate of Canada. “Senate Committee on Foreign Affairs and International Trade meetings and videos.” Senate of Canada. Accessed January 28, 2021. <https://sencanada.ca/en/committees/studiesandbills/42-1?p=10>.

JVCFOA, like other horizontal sanctions, allows for a running list of sanctioned individuals from any country. Unlike geographic sanctions, a new regulation is not required when a new country that has never been the target of Canadian sanctions before is being targeted for the first time (or individuals from a country never sanctioned before). Rather, their name is simply added to the list of sanctioned individuals.

Another reason for the support for adoption of the *JVCFOA* was because it would be the first avenue established for targeting individuals who had acted in ways that were not strongly connected to broader circumstances occurring in the state of origin of the crime(s), or which fell below the *SEMA* 's threshold of constituting “a threat to international peace and security”. For example, acts of corruption might reasonably be considered serious or punishable acts but might not constitute a threat to peace and security of the international community.¹⁵¹ This is also a key feature of horizontal sanctions, as they can be used to respond to transnational incidents, rather than solely national.¹⁵²

At the same time, the proposed bill was described as a “bare minimum” measure meant to prevent the circulation of dirty money in Canada, and as a way to ensure that Canada would not be a safe haven for individuals implicated in egregious acts.¹⁵³ Therefore, even if the sanctions themselves were deemed ineffective at coercing a change in behaviour, at least, in theory, they might prevent criminals from finding refuge in Canada.

The last driver of the adoption of the *JVCFOA* was timing; Canada was required to review its *SEMA* (every five years) around the same time that its closest sanctioning ally, the United States, was moving to globalize its Magnitsky Act. The requirement to review the *SEMA* was an ideal impetus to debate new Magnitsky-style legislation. As a result of the five-year review clause requiring a committee of the House of Commons and of the Senate to conduct a “comprehensive review of the provisions and operation” of the *SEMA*, the FAAE received an order from the House of Commons designating it as the House Committee tasked with conducting the required review on 14 April 2016.¹⁵⁴ While the legislation was briefly reviewed, the main focus of

¹⁵¹ McTaggart, “Sanctions: The Canadian and International Architecture Background Paper,” *Economics, Resources and International Affairs Division*, Publication No. 2019-45-E, (November 19, 2019).

¹⁵² Portela, “The Spread of Horizontal Sanctions,” CEPS, July 5, 2019, <https://www.ceps.eu/the-spread-of-horizontal-sanctions/>.

¹⁵³ “A Coherent and Effective Approach to Canada’s Sanctions Regimes: Sergei Magnitsky and Beyond.” Committee Report No. 7 - FAAE (42-1) - House of Commons of Canada. Accessed January 28, 2021.

¹⁵⁴ “A Coherent and Effective Approach to Canada’s Sanctions Regimes: Sergei Magnitsky and

the discussions was on the introduction of Canadian Magnitsky-style legislation. The report that resulted from the review, *A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond*, did, however, highlight many of the key issues revisited in this thesis that remain of concern today.

Bill S-226 received royal assent on 18 October 2017 in the 42nd Parliament, first session (sponsored originally by a private member's bill in the Senate by Senator Raynell Andreychuk) with multi-partisan support, after receiving five briefs and hearing from 41 witnesses between 16 October and 7 December 2016.¹⁵⁵ Despite academics and practitioners noting the lack of coherence and issues with the existing *SEMA* legislation let alone new legislation,¹⁵⁶ the decision to enact the Magnitsky legislation was already determined. There was strong multi-partisan support and a compelling story of human rights violations— Magnitsky's story— attached to this legislation, which in some ways precluded the option of not adopting this style of legislation. The questions debated by FAAE were not of whether the legislation should be adopted, but rather of the specifics, for example, what the de-listing process should look like for designated individuals and the establishment of a review process scheduled for five years after the bill was passed.¹⁵⁷

Despite the successful passing of Bill S-226, many of the challenges originally raised by academics and practitioners about the *JVCFOA* remain relevant today. To name a few, the *JVCFOA* applies only to individuals and excludes the listing of legal entities, its qualifying circumstances are quite narrow, it provides exculpatory immunity to corporations directly involved in violations and does not allow for the listing of secondary participants in human rights abuses. Meredith Lilly and Delaram Arabi make the compelling argument that this legislation and the amendments to the *SEMA* were “passed primarily for symbolic reasons, and neither Canadian legislators nor the government really intended to pursue autonomous sanctions.”¹⁵⁸ This argument

Beyond.” Committee Report No. 7 - FAAE (42-1) - House of Commons of Canada. Accessed January 28, 2021., p. 5.

¹⁵⁵ “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

¹⁵⁶ “A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond.” Committee Report No. 7 - FAAE (42-1) - House of Commons of Canada. Accessed January 28, 2021., pp.1-2.

¹⁵⁷ Senate of Canada. “Senate Committee on Foreign Affairs and International Trade— meetings and videos.” Senate of Canada. Accessed January 28, 2021. <https://sencanada.ca/en/committees/studiesandbills/42-1?p=10>.

¹⁵⁸ Lilly and Arabi, “Symbolic Act, Real Consequences: Passing Canada's Magnitsky Law to Combat Human Rights Violations and Corruption,” *International Journal: Canada's Journal of Global Policy Analysis* 75, no. 2 (2020): p.165.

is to be revisited in subsequent chapters after reviewing how Canada has used the legislation between 2017-2021.

As of December 2021, the *JVCFOA* legislation has remained unused in over 3 years, having last been invoked in November of 2018 for measures against 17 individuals from Saudi Arabia, in connection to the extrajudicial killing of Saudi national and journalist, Jamal Khashoggi.¹⁵⁹

3.4: Comparison of the legislation

3.4.1: Legal framework and usage

Both the *SEMA* and *JVCFOA* contain “triggering mechanisms,” or “qualifying circumstances” which are the wording in the legislation that outlines the circumstances in which the legislation can be invoked. The *SEMA* tends to apply in cases of systematic or widespread events or actions that are connected to broader circumstances unfolding in a particular state, whereas the *JVCFOA* is used to respond to individual acts or isolated incidents that need not be connected to broader circumstances in a state.¹⁶⁰ Occasionally, individuals can be listed via both legislations, but it is rare.¹⁶¹

The *SEMA* has four triggering mechanisms, whereas the *JVCFOA* has two, making the *SEMA* more flexible in terms of the range of circumstances in which it can be invoked. The *SEMA* can be used: 1. When an organization to which Canada is a member calls on its members to impose sanctions (e.g., the OAS), 2. In the case of a grave breach of international peace and security, 3. In the case of gross and systematic human rights violations, and 4. In the case of acts of

¹⁵⁹ “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

¹⁶⁰ Martin, “Economic Sanctions under International Law: A Guide for Canadian Policy,” *Rideau Institute on International Affairs and the Human Rights Research and Education Centre*, November 28, 2021, p.44.

¹⁶¹ For example, this has occurred in reference to individuals from Venezuela, where 3 individuals targeted under the *SEMA* are also listed under the *JVCFOA*. See: Andrea Charron and Erin Tramley, “Rethinking Sanctions: Important Questions for Canada to Consider,” Canadian International Council, accessed February 12, 2022, <https://thecic.org/rethinking-sanctions-important-questions-for-canada-to-consider/>.

corruption.¹⁶² The *JVCFOA* can only be used in response to human rights violations (that need not be systematic) and acts of significant corruption.¹⁶³

Both the *SEMA* and *JVCFOA* are standing “enabling” legislation, which means that they enable the Government of Canada to enact further orders and regulations under these Acts. Under the *SEMA*, the GiC makes separate regulations for each regime because regulations must relate to a foreign state, a person in that foreign state, an entity in that foreign state an entity in that foreign state¹⁶⁴ or a national of the foreign state who is not ordinarily resident in Canada.¹⁶⁵

It is important to note that the triggers in *SEMA* are not grounds for listing, but rather are the possible circumstances for which the GiC can make certain orders under the *SEMA* (e.g., create the regulation and impose measures). Listings can then be made in relation to the triggers, but they do not need to exactly match the original reason for the original regulation or order. For example, a regulation may be initiated due to gross and systematic human rights violations in a country, but an individual may then be listed for being a senior official in the governing regime (i.e., not for directly committing gross and systematic human rights violations, but for being implicated in these broader circumstances in the country). In the same way, individuals’ names may be listed any time after the state they are from was listed, (even years later) which may mean that while the state was listed for a particular reason, the individual is later listed for reasons that are not at all related to the original purpose. Similarly, the use of the *SEMA* could be triggered by a requirement to comply with sanctions initiated by the OAS, rather than for a descriptive reason such as gross and systematic human rights violations.¹⁶⁶

As previously highlighted in the section on the *JVCFOA*’s adoption, the *JVCFOA* allows

¹⁶² McTaggart, “Sanctions: The Canadian and International Architecture Background Paper,” Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019), pp.4-5; “Special Economic Measures Act,” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>.

¹⁶³ McTaggart, “Sanctions: The Canadian and International Architecture Background Paper,” Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019), pp.4-5; “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

¹⁶⁴ “Special Economic Measures Act,” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022). The definition of an entity is: a body corporate, trust, partnership, fund, an unincorporated association or organization or a foreign state.

¹⁶⁵ “Sanctions, International Humanitarian Law and the Humanitarian Space in the Canadian Perspective: An Interview with Elissa Golberg: International Review of the Red Cross” (Cambridge University Press, October 5, 2021), p.89.

¹⁶⁶ McTaggart, “Sanctions: The Canadian and International Architecture Background Paper,” Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019), pp.4-5.

for a running list of sanctioned individuals from any country, meaning that all names fall under only one list rather than multiple state-specific lists. Unlike the *SEMA*, which can be considered “geographic” sanction regimes, a new regulation is not required when individuals from a country never sanctioned before are listed under the *JVCFOA*.¹⁶⁷

Each regulation under the *SEMA* has sections, which vary depending on the regulation and when they came into effect. For example, more recent regulations (i.e., from 2019-onward) include sections with considerations undertaken relative to the imposition of the sanctions contained in the regulations, such as “gender-based analysis plus,” “modern treaty obligations and Indigenous engagement consultations,” “strategic environmental assessment,” “regulatory analysis: benefits and costs,” and “instrument choice” justifications, whereas regulations prior to 2019 did not contain these sections. Additionally, “exceptions” to the regulations fall under different section titles. For example, sometimes the term “exceptions” is used, whereas other times, the section title is “non-application,” and in other cases, exceptions are included under the gender-based analysis plus sections. Other sections include “consultation,” “immunity,” “small business lens,” “one-for-one rule,” “regulatory cooperation and alignment,” and “implementation, compliance and enforcement, and service standards.” The names and types of sections that appear under each regulation of the *SEMA* are not consistent (i.e., not all regulations have the same sections), and the reasoning for this is not clear.

The justifications and considerations underneath these subheadings are typically not very descriptive, but rather include general statements about a consultation taking place or not taking place and why. For example, under the June 17, 2021 Belarus regulations, the text below the “consultation” subheading says the following:

Global Affairs Canada engages regularly with relevant stakeholders including civil society organizations and cultural communities and other like-minded governments regarding Canada's approach to sanctions implementation. With respect to the amendments, public consultation would not have been appropriate, as publicizing the names of the listed persons targeted by sanctions would have likely resulted in asset flight prior to the coming into force of the amendments.¹⁶⁸

¹⁶⁷ “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

¹⁶⁸ “Regulations Amending the Special Economic Measures (Belarus) Regulations: SOR/2021-154,” Canada Gazette, Part 2, Volume 155, Number 14: Regulations Amending the Special Economic Measures (Belarus) Regulations (Public Works and Government Services Canada, Government of Canada, July 7, 2021), <https://www.gazette.gc.ca/rp-pr/p2/2021/2021-07-07/html/sor-dors154-eng.html>.

The last sentence of this paragraph is seen in the vast majority of the regulations under the *SEMA*, illustrating that in practice, Canada’s policy is to not consult with the public directly (i.e., civil society organizations, cultural communities, etc.) regarding listings due to a concern about asset flight. In reality, few of the individuals targeted by Canada’s sanctions regimes have significant assets in Canada, meaning that this justification regarding concerns about asset flight may not be relevant.¹⁶⁹ Ultimately, there is repeated use of the subheading “consultation,” in most regulations, despite the fact that these consultations do not take place.

Similarly, in earlier regulations (prior to 2020), there tend to be fewer details included in subheading content. For example, the April 12, 2019 regulations under Venezuela state the following under the Gender-based analysis plus subheading:

The new sanctions made under the Amending Regulations focus impact on figures believed responsible for key roles in the deteriorating situation in Venezuela, rather than on Venezuela as a whole. This results in minimizing collateral effects to those dependent on those individuals. Canada has included exemptions in sanctions regulations and issues permits to allow the delivery of humanitarian assistance to provide some mitigation of the impact of sanctions on vulnerable groups. As a result, these new sanctions are likely to have limited impact on the citizens of Venezuela.¹⁷⁰

In this paragraph, there is a reference to focussing on individual targets rather than targeting the state as a whole, and reference to the list of exceptions, but no further details are provided about considerations specific to Venezuela.

In contrast to earlier regulations like the one above, the regulations made in late 2020 and early 2021 tend to contain more descriptive sections, with greater details provided about considerations made by the Government. For example, the March 21, 2021 regulations under China state the following under the Gender-based analysis plus subheading:

The new Regulations focus on an entity in charge of implementing policies related to security matters in the XUAR, including the management of detention centres. They also focus on individuals who are Government Administrators in key Party leadership roles in the Political and Legal Affairs Committee of the XUAR, and who contribute to human rights violations in the XUAR, rather than on the PRC as whole. This results in minimizing

¹⁶⁹ See: Charron and Lilly, “More Sanctions Is the Wrong Tool for Human Rights Protection,” Policy Options, April 9, 2021, <https://policyoptions.irpp.org/magazines/february-2017/more-sanctions-is-the-wrong-tool-for-human-rights-protection/>.

¹⁷⁰ “Regulations Amending the Special Economic Measures (Venezuela) Regulations: SOR/2019-106,” Canada Gazette, Part 2, Volume 153, Number 9: Regulations Amending the Special Economic Measures (Venezuela) Regulations (Public Works and Government Services Canada, Government of Canada, May 1, 2019), <https://canadagazette.gc.ca/rp-pr/p2/2019/2019-05-01/html/sor-dors106-eng.html>.

collateral effects to those dependent on those individuals. Women are a particular target of the Strike Hard Against Violent Terrorism Campaign and broader human rights violations in Xinjiang. There are credible testimonials of mass sterilization, sexual violence, and rape in detention camps. Exemptions are included in the Regulations, including to allow for the delivery of humanitarian assistance to provide some mitigation of the impact of sanctions on vulnerable groups. As such, these new sanctions are likely to have limited impact on the citizens of the People's Republic of China.¹⁷¹

This paragraph is much more descriptive than the one in reference to Belarus, while still including the more general references to targeting individuals and entities rather than the state as a whole and referencing the list of exceptions. The greater specificity in more recent regulations may indicate that there is now greater open-source materials available to the Government of Canada to review, but also that there is an effort to provide more details about things like gender-based analysis and humanitarian impacts recently. This is not only because of Canada's new Feminist International Assistance Policy and on the Women, Peace and Security agenda,¹⁷² but may also be because of the uptick in Canada's use of sanctions in 2021. The *SEMA* was invoked eleven times in 2021 compared to four times in 2020, four times in 2019 (two more times to replace/remove names), and four times in 2018. With greater use of sanctions often comes greater pressure to justify this use and to show mindfulness of these factors that affect people's lives.

Unlike the *SEMA*, the *JVCFOA* does not include these various sections and subheadings in its regulation. This is in part because the *JVCFOA* only targets individuals and contains no option to target states or entities, meaning that there would be no reason to write that particular listings minimize impact on the state as a whole, as targeting the state is not an option under the legislation.

In terms of usage, sanctions regulations under the *SEMA* have been applied against

¹⁷¹ "Special Economic Measures (People's Republic of China) Regulations: SOR/2021-49," Canada Gazette, Part 2, Volume 155, Number 7: Special Economic Measures (People's Republic of China) Regulations (Public Works and Government Services Canada, Government of Canada, March 31, 2021), <https://gazette.gc.ca/rp-pr/p2/2021/2021-03-31/html/sor-dors49-eng.html>.

¹⁷² In her 2021 interview with the IRRC, Assistant Deputy Minister of Global Affairs Canada, Elissa Goldberg notes, "[Canada's] efforts are grounded in a gender-responsive approach to humanitarian action as outlined in the Feminist International Assistance Policy, which addresses the specific needs and priorities of people in vulnerable situations, particularly women and girls, and its related Action Area Policy." See: Government of Canada, "Action Area Policy: Human Dignity (Health and Nutrition, Education, Gender- Responsive Humanitarian Action)", available at: www.international.gc.ca/world-monde/issues_development-enjeux_developpement/priorities-priorites/fiap_human_dignity-paif_dignite_humaine.aspx?lang=eng.

Belarus, China, Russia, Nicaragua, Venezuela, Ukraine, Myanmar since 2017, but sanctions against Syria, South Sudan, Iran, North Korea, Zimbabwe, and Libya also remain in effect from before 2017.¹⁷³ Under the *JVCFOA*, since 2017, names have been added to the regulation list three times. The first time, in 2017 against 52 nationals from three jurisdictions (Russia, South Sudan and Venezuela), one addition in February 2018 from Myanmar, and 17 additions in November 2018 from Saudi Arabia.¹⁷⁴ In total, there have been 70 designated foreign nationals listed under the *JVCFOA*.

There is a one-time comprehensive review requirement for the *JVCFOA*, (which also includes a review of the *SEMA*), within five years of it coming into force or amendments, which means both must be reviewed by the committees of the Senate and of the House of Commons that are designated or established by each House of Parliament before 18 October 2022.¹⁷⁵

3.4.2: Scope of application (the type of actors targeted and territorial reach)

The scope of application refers to the type of actors that can be targeted under each legislation and the territorial reach of the legislation.

In terms of the types of actors that can be targeted, the *SEMA* targets states (or political subdivisions of a foreign state), individuals or entities from anywhere in the world. The *SEMA* prohibits dealings in the property, including financial assets, of persons designated under the regulations (the term “persons” refers to both individuals and entities in the *SEMA*). It is not clear if property jointly owned by designated and non-designated actors are also subject to restrictive measures.¹⁷⁶ The sanctions also apply on properties that are directly or indirectly controlled by

¹⁷³ “Special Economic Measures Act,” Justice Laws Website, Government of Canada (Legislative Services Branch , February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>.

¹⁷⁴ “Regulations Amending the Justice for Victims of Corrupt Foreign Officials Regulations: SOR/2018-25,” Government of Canada, Public Works and Government Services Canada, Public Services and Procurement Canada, Integrated Services Branch, Canada Gazette (Public Works and Government Services Canada, Government of Canada, March 7, 2018), <https://gazette.gc.ca/rp-pr/p2/2018/2018-03-07/html/sor-dors25-eng.html>.; “Regulations Amending the Justice for Victims of Corrupt Foreign Officials Regulations: SOR/2018-259,” Government of Canada, Public Works and Government Services Canada, Public Services and Procurement Canada, Integrated Services Branch, Canada Gazette (Public Works and Government Services Canada, Government of Canada, March 7, 2018), <https://gazette.gc.ca/rp-pr/p2/2018/2018-03-07/html/sor-dors25-eng.html>.

¹⁷⁵ McTaggart, “Sanctions: The Canadian and International Architecture Background Paper,” Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019), p.6.; “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

¹⁷⁶ See section 3 – 6 of the *SEMA* “Special Economic Measures Act,” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>.

designated persons. There is no official guide issued by the Government of Canada outlining circumstances amounting to ‘control’, such as managing a business, sharing its liabilities, etc. Some private firms and legal experts have created guides for clients,¹⁷⁷ but these are not endorsed or fact-checked by the Government or Canada.

The *JVCFOA* authorizes the Government of Canada to designate foreign nationals who are responsible for, or complicit in, gross violations of internationally recognized human rights. A designation under *JVCFOA* may also be made in respect to foreign public officials (or their associates) who, in the government’s view, are responsible for, or complicit in, acts of significant corruption. Unlike the *SEMA*, the *JVCFOA* does not allow for the listing of states or entities.¹⁷⁸

For both the *SEMA* and *JVCFOA*, inadmissibility to Canada (otherwise known as a travel ban) is automatic for a foreign national who violates human or international rights.¹⁷⁹ This is not immediately obvious, however, as the inadmissibility criteria is triggered via the *Immigration and Refugee Protection Act* and not the *SEMA* or *JVCFOA* legislation.¹⁸⁰ Furthermore, GAC does not show a travel ban icon on its website to indicate to the public to look for the legislation.

“Special Economic Measures Act,” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>.

¹⁷⁷ See, for example, the subscription-based sanctions guide offered by Canadian and Global law firm, Norton Rose Fulbright: <https://www.nortonrosefulbright.com/fr-ca/centre-du-savoir/publications/e8ba502c/understanding-sanctions>.

¹⁷⁸ “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

¹⁷⁹ Para 35 (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for:

(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

(b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*;

(c) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association;

(d) being a person, other than a permanent resident, who is currently the subject of an order or regulation made under section 4 of the *Special Economic Measures Act* on the grounds that any of the circumstances described in paragraph 4(1.1)(c) or (d) of that Act has occurred; or

(e) being a person, other than a permanent resident, who is currently the subject of an order or regulation made under section 4 of the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*.

¹⁸⁰ For an explanation of the process changing the IRPA to automate inadmissibility for human rights offenses, see “Canada Gazette, Part I, Volume 152, Number 51: Regulations Amending the Immigration and Refugee Protection Regulations,” Canada Gazette, Part 1, Volume 152, Number 51: Regulations Amending the Immigration and Refugee Protection Regulations (Public Works and Government Services Canada, Government of Canada, December 1, 2021), <https://gazette.gc.ca/rp-pr/p1/2018/2018-12-22/html/reg1-eng.html>.

In terms of territorial reach, sanctions are only enforceable within Canada’s jurisdictional reach for both the *SEMA* and *JVCFOA*, meaning there is no extra-territorial reach.¹⁸¹ This comes in contrast to the United States, which has the authority to enact sanctions against third countries or parties for not complying with their sanctions (although this authority has not typically been used in practice).¹⁸² The *SEMA* territorial reach encompasses all individuals, entities or property within Canada or any Canadians or Canadian-owned entities outside of Canada. GAC notes that whether a corporation is Canadian is determined by where the headquarters is located or where the corporation is registered.¹⁸³ The *JVCFOA* allows for the listing of foreign nationals, and like the *SEMA*, all individuals, entities or property within Canada and any Canadians or Canadian-owned entities outside of Canada are expected to comply.¹⁸⁴

3.4.3: Restrictions

Since the *SEMA* can involve the targeting of states, entities, and individuals while the *JVCFOA* only allows for the targeting of individuals, the restrictions included under each legislation differ. However, as pertains to individuals, both legislations are similar, as they include asset freezes and travel bans (a.k.a., “inadmissibility” to enter Canada).¹⁸⁵ The *SEMA* specifically references the seizure, freezing, or sequestration of property and the restriction or prohibition of property transactions. (However, under section 35 of the Immigration and Refugee Protection Act, the inadmissibility or “travel ban” is only applicable to foreign nationals and not to Canadians or permanent residents). Restrictions under the *SEMA* that pertain more to states or entities include

¹⁸¹ Martin, “Economic Sanctions under International Law: A Guide for Canadian Policy,” *Rideau Institute on International Affairs and the Human Rights Research and Education Centre*, November 28, 2021, p.46; Nesbitt, “Canada’s ‘Unilateral’ Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada’s Special Economic Measures Act,” *Ottawa Law Review* 48, no. 2 (March 1, 2017), pp. 535-536. *Note: While Nesbitt argues that Canada should pursue the use of extraterritorial sanctions, Martin argues against this.*

¹⁸² McTaggart, “Sanctions: The Canadian and International Architecture Background Paper,” Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019), pp.11-12.

¹⁸³ “Special Economic Measures Act,” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>.

¹⁸⁴ *Note: Under the JVCFOA , persons in Canada and Canadian-incorporated entities and Canadian citizens outside Canada are prohibited from: Dealing, directly or indirectly, in any property of a designated foreign national; Entering into or facilitating, directly or indirectly, of any financial transaction related to a dealing in property of a designated foreign national; Providing financial services or any other services to, for the benefit of, or on the direction or order of, a designated foreign national; Acquiring financial services or any other services for the benefit of, or on the direction or order of, a designated foreign national; Making available any property to a designated foreign national or to a person acting on his or her behalf.*

¹⁸⁵ Martin, “Economic Sanctions under International Law: A Guide for Canadian Policy,” *Rideau Institute on International Affairs and the Human Rights Research and Education Centre*, November 28, 2021, p.44.

restrictions on import and export of goods, transfers of technical data, provision of financial services, and docking of ships or landing of aircraft in Canada. These types of restrictions do not exist under the *JVCFOA*.¹⁸⁶

The types of restrictions that exist under Canada's legislation are quite similar or comparable to those used by Canada's allies under comparable legislation. For example, the EU's geographic sanctions legislation, like the *SEMA*, allows for import and export restrictions and other broad-based economic measures.¹⁸⁷ Meanwhile, other Magnitsky-style legislation similar to the *JVCFOA*, such as the US' Global Magnitsky Act and the *EUGHRSR*, also employ asset freezes and travel bans.¹⁸⁸ Despite the fact that these allies have similar options when it comes to restrictions, it is not always the case that states apply the same restrictions as their allies when sanctioning states, individuals, or entities in concert. This means that theoretically, targets can find loopholes or exploit gaps where restrictions are not uniformly applied, which means they would have less incentive to change behaviour.

3.4.4: Listing criteria, threshold of evidence, and listing process

While not necessarily considered listing criteria, it is important to note that in practice, Canada has only applied autonomous measures (under the *SEMA* or *JVCFOA*) in consultation with like-minded states or allies, such as the UK, US, or European Union. This is because Canada sees sanctions as more effective when applied in coordination with other states/ organizations. Assistant Deputy Minister of GAC, Elissa Goldberg states the following about Canada's practice of sanctioning with allies:

Canada has always maintained that sanctions are more effective when applied in a coordinated manner. Collaboration with partners can be an important way in which the impact of such measures can be augmented. It also offers a key means of sending a strong collective signal that gross violations of internationally recognized human rights, acts of significant corruption, or other breaches of international norms are of profound concern.¹⁸⁹

¹⁸⁶ McTaggart, "Sanctions: The Canadian and International Architecture Background Paper," Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019), p.5.

¹⁸⁷ EU Sanctions Map, accessed February 13, 2022, <https://sanctionsmap.eu/>.

¹⁸⁸ "Human Rights," EU Sanctions Map, accessed February 13, 2022, <https://sanctionsmap.eu/>;
"S.284 - 114th Congress (2015-2016): Global Magnitsky Human ...," accessed February 12, 2022, <https://www.congress.gov/bill/114th-congress/senate-bill/284>.

¹⁸⁹ "Sanctions, International Humanitarian Law and the Humanitarian Space in the Canadian Perspective: An Interview with Elissa Golberg: International Review of the Red Cross" (Cambridge University Press, October 5, 2021), p.92.

As well, Canada prefers not to be alone on the international stage. For example, when Canada alone criticized Saudi Arabia for human rights abuses on twitter and Saudi Arabia retaliated by requiring all Saudi students to leave Canada,¹⁹⁰ it realized how vulnerable it was when taking unilateral action. In effect, the presence of similar sanctions by allies is a precondition for Canada imposing sanctions for both effect and cover.

For both pieces of legislation, proposals for listings may come from a petition by a human rights group or NGO or civil society organization to a Member of Parliament or, under the *SEMA*, if required by a regional organization to which Canada belongs (e.g., the Organization of American States). However, the most common impetus for listings is a result of one of Canada's allies, the US, EU, or UK applying or considering application of such measures. Listing proposals are considered by the sanctions division within GAC, usually after geographic specialists within GAC are consulted and always with the assistance of the Department of Justice. While these proposals may be reviewed, the decision-making authority to recommend to the GiC rests with the Minister of Foreign Affairs, and the GiC ultimately decides who to list.¹⁹¹

Scott McTaggart notes that “All three Acts (referring to the UNA as well) require that regulations or orders made pursuant to their provisions be tabled in Parliament.”¹⁹² This explains why any explanations regarding decisions about who to sanction, when to sanction, and why, are subject to cabinet confidentiality. In practice, this has many negative implications, as best outlined by Michael Nesbitt:

GAC does not offer detailed explanations for how its sanctions decisions are made. Some of the decisions seem on their face to defy a plain reading of *SEMA*'s grant of authority; and, there seems to be a complete dearth of internal, governmental evaluation of its sanctions record—both successes and failures. As a result, some of the sanctions decisions taken by GAC can seem indeterminate—that is, it is not clear that they are properly guided (or “determined”) by law and by evidence. For this reason, based on existing explanations, interpretations, and practice, it has been near impossible to predict when Canada will impose sanctions on a foreign country. Perhaps the best predictor of Canada's practice is

190 Josh Dehaas, Saudi Arabia's demand that students go home could hurt Canadian economy <https://www.ctvnews.ca/politics/saudi-arabia-s-demand-that-students-go-home-could-hurt-canadian-economy-1.4042657>, accessed 19 February, 2022.

¹⁹¹ “Sanctions, International Humanitarian Law and the Humanitarian Space in the Canadian Perspective: An Interview with Elissa Golberg: International Review of the Red Cross” (Cambridge University Press, October 5, 2021), pp. 87-89.

¹⁹² McTaggart, “Sanctions: The Canadian and International Architecture Background Paper,” Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019), p.6.

to look at foreign relations with other countries and what Canada's closest allies are doing on the sanctions file...¹⁹³

Nesbitt's concerns can be summarized as relating to a broader issue with lack of transparency in terms of how Canada chooses to sanction. This opaqueness of decision-making is what makes it difficult to determine why the *SEMA* is used rather than the *JVCFOA* in certain cases.

It can be inferred that during the process of considering sanctions, the *SEMA* or the *JVCFOA* might be chosen based on many different factors, including whether the circumstances/nature of the issue in question are systematic or isolated, the actors involved (e.g., if they want to target entities, this cannot be done with the *JVCFOA*), and whether they may want to add additional measures at present or at some time in the future (e.g., if they want to add import and export restrictions, this cannot be done with the *JVCFOA*).

The human rights violations that make up the listing criteria under the *SEMA* must be "gross and systematic human rights violations...committed in a foreign state".¹⁹⁴ Definitions for these terms are not specified to allow for a broader or more flexible interpretation and application as needed. This can also be perceived as problematic, as argued by Nesbitt:

Unfortunately, the tension with regard to how Canada has interpreted the phrase "threat to international peace and security" has not been resolved... Successive governments have not tended to explain *specifically* why a sanctioned country was deemed a threat to international peace and security. Nor does Canada release its legal opinions—or parts thereof—which otherwise would help explain how it came to determine that a country is a threat to international peace and security.¹⁹⁵

What can be determined by examining the legislation and usages is that the term 'gross' references the gravity and 'systematic' means widespread. The *SEMA* does not require specific, personal conduct that links the target with the human rights violation. The triggers for imposing the regulations are: (a) responsible for the act, (b) otherwise involved in the act, or (c) associated with

¹⁹³ Nesbitt, "Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act," *Ottawa Law Review* 48, no. 2 (March 1, 2017), p.559.

¹⁹⁴ *SEMA*, 4 (1.1)(c). Note on the Canadian sanctions' website, it notes sanctions are applied against persons '(i) responsible for, or complicit in, extrajudicial killings, torture or other gross violations of internationally recognized human rights but this specificity does not appear in the Act or regulations.

¹⁹⁵ Nesbitt, "Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act," *Ottawa Law Review* 48, no. 2 (March 1, 2017), p.524.

actors falling under (a) or (b). Support to targets in the form of supply or shipment of prohibited goods, provision of financial services or assistances, docking, landing and overflight are all restricted and prohibited activities under Article 2 of the *SEMA*. While a regulation can be made due to a linkage to human rights violations, it's possible to list individuals and entities in order to affect a change in behaviour to address those violations without establishing that direct link (e.g., by listing government officials without stating their specific crimes, etc.). This, however, makes the reasoning for the sanctions opaque, which can be problematic when it comes to delisting.¹⁹⁶

Unlike the *SEMA*, the listing criteria, or qualifying circumstances under which *JVCFOA* may be invoked against listed individuals, need not be systematic in nature and need not relate to broader circumstances in a particular country. In other words, individuals may be listed due to isolated incidents of egregious abuses or transnational incidents that are not connected to one state alone.¹⁹⁷ The *JVCFOA* may be used when a foreign national is responsible or complicit in internationally recognized human rights violations and in particular if those acts are committed against individuals who are seeking to expose illegal activities or corruption, or who are attempting to exercise, defend or promote human rights or freedoms. The *JVCFOA* may also be used when a foreign public official or an associate of such an official, is responsible for or complicit in ordering, controlling or otherwise directing acts of significant corruption, or supporting or sponsoring corruption. However, all listings thus far have been accompanied with narratives that refer to human rights abuses, with acts of corruption being additionally referred to in some cases.¹⁹⁸

In terms of evidence, GAC uses only publicly sourced evidence to list individuals and entities. There is no explicit threshold of evidence for listing in Canada. While the government is required to undergo due diligence and seek publicly sourced evidence, how much or of what quality is not specified.¹⁹⁹ So far, there has only been one case of a company pleading guilty to violating regulations under the *SEMA*, which means that in effect, Canadian sanctions specific case

¹⁹⁶ Ibid., pp. 559-560, "This lack of clarity in the law as written severely limits the signalling and deterrence functions of Canada's sanctions legislation because it is not clear the precise bases upon which certain countries are being sanctioned."

¹⁹⁷ "Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)," Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

¹⁹⁸ Ibid.

¹⁹⁹ Nesbitt, "Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act," *Ottawa Law Review* 48, no. 2 (March 1, 2017), pp. 559-560.

law does not yet exist.²⁰⁰ It is important to note, however, that a judicial review of a decision to deny a delisting application under the *JVCFOA* is currently underway, and may offer some additional guidance that could also apply in the *SEMA* context (Court File No. T-1079-20).

3.4.5: Delisting and Mistaken Identity

Under both the *SEMA* and *JVCFOA*, there are provisions that allow individuals to apply for delisting or mistaken identity. An application for a certificate of mistaken identity and an application for delisting are very different, since these mechanisms do not have the same intent.²⁰¹

An application for mistaken identity should only be made by an individual or entity whose name is similar or the same as the name of a listed person. This means they are not the actual desired target of the regulation (although theoretically, a designated individual could wrongly apply for a certificate under mistaken identity, but would be denied on the basis that they are found to be the desired target, not a mistaken person with the same or similar name). The Minister of Foreign Affairs may issue a certificate stating that the applicant is not the listed person, if this can be established.²⁰² Mistaken identity certificates do not result in a delisting, but rather offer individuals with the same or similar name as a listed person some protection from the possibility that they will face restrictions as a result of this similarity, such as during security checks or when travelling.

By contrast, an application for delisting is made by the listed person (or entity in the case of the *SEMA*), or a representative of that person or entity. They would apply to the Minister of Foreign Affairs to have their name/title removed from the schedule to the *SEMA* regulation or *JVCFOA*. The Minister must decide whether there are reasonable grounds to recommend to the GiC that the applicant's name be removed.²⁰³ This process may result in regulatory amendments to the regulations (removal of an individual or entity's name), while a certificate of mistaken identity would not affect the existing listing.

²⁰⁰ Lee Specialties pleaded guilty to violations under the Iran Regulations. See Michael Nesbitt's analysis; Nesbitt, "Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act," *Ottawa Law Review* 48, no. 2 (March 1, 2017), pp.529-535.

²⁰¹ McTaggart, "Sanctions: The Canadian and International Architecture Background Paper," Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019), pp.5-6.

²⁰² "Sanctions, International Humanitarian Law and the Humanitarian Space in the Canadian Perspective: An Interview with Elissa Golberg: International Review of the Red Cross" (Cambridge University Press, October 5, 2021), p.89.

²⁰³ *Ibid.*, p.89.

GAC requires a detailed description of the relevant circumstances and reasons supporting delisting and mistaken identity applications. In the case of mistaken identity, the application should include the applicant's contact information, and the name of the individual or entity for whom/which the applicant is claiming to have been mistaken.²⁰⁴ In the case of delisting, if there has been a material change in the applicant's circumstances since their last application was submitted, they may submit another application. Under the *SEMA*, within 30 days after the day on which the Minister receives the application for delisting (and it is not specified if via email or letter), the Minister must either issue the certificate, or, if it is determined that there has not been a material change in circumstances, must provide notice to the applicant of this determination.²⁰⁵

Both the *SEMA* and the *JVCFOA* (under section 8(2)) outline the possibility of delisting if there are reasonable grounds to do so, as determined by the Minister of Foreign Affairs and recommended to the Governor in Council.²⁰⁶ This is a very important mechanism as it allows for individuals and entities to be delisted if they change/adjust/cease the behaviour which made them the target of the sanctions to begin with. Without this mechanism of delisting, there would be no incentive to change or stop such behaviour. Nevertheless, de-listings are rare. There are names of deceased persons on the current list,²⁰⁷ for example, but these may be kept on the lists in order to continue to seize the assets of the deceased. There is also no requirement outlined in either legislation for the lists to be reviewed on a regular basis (e.g., monthly, annually), although there is a requirement for a review of both the *JVCFOA* and *SEMA* 5 years after the *JVCFOA* comes into effect (meaning before October 2022).²⁰⁸ This means that there is not necessarily active monitoring of whether individuals have changed/stopped their behaviour which could result in a delisting by the Government of Canada. As Nesbitt writes, "Canada does not explain why

²⁰⁴ "Listed Persons," Global Affairs Canada, Government of Canada. https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/listed_persons-personnes_inscrites.aspx?lang=eng, Accessed 10 July 2021.

²⁰⁵ Ibid.

²⁰⁶ "Special Economic Measures Act," Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>.; "Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)," Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

²⁰⁷ For example, Robert Gabriel Mugabe, former President of Zimbabwe, has been deceased since September of 2019, but remains on Canada's consolidated autonomous sanctions list and under the Zimbabwe regulations.

²⁰⁸ Special Economic Measures Act," Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), Section 9.

particular entities have been added or removed, as does the US and now the UK, or even why new sanctions are being levied.”²⁰⁹ Scott McTaggart does note, however, that “Either House is allowed to establish or designate a committee to review the *JVCFOA* sanctions list and make recommendations as to whether listed persons should be maintained or removed.”²¹⁰ It appears this has not occurred in practice. In one case, Canada did de-list Cristopher Figuera from the Venezuela regulations, but this was following the same decision by the US and the objective of this regulation notably says “to align with allies,” not necessarily from its own investigation.²¹¹ The only known processes of delisting is through an individual’s application for this, from following an ally’s decision to delist, or perhaps following the required review of the legislation.

3.4.6: Exemptions and exceptions process

Under both the *SEMA* and *JVCFOA*, there are certain provisions for exceptions to be made to the regulations attached to the Acts. The *SEMA* allows for certain activities or transactions to be made that are otherwise prohibited under the Act via a Ministerial permit.²¹² As outlined in Article 4(3) of the *SEMA*, this permit can be awarded for exceptional purposes, and the relevant purposes are to be outlined in each regulation. As a result, each regulation has a long and varying list of grounds, such as if funds are for repayment of a loan, a benefit under a federal or provincial pension fund, funds to obtain legal services, if held by a diplomatic mission, any transaction with any international organization with diplomatic status, with any United Nations agency, with the International Red Cross and Red Crescent Movement or with any entity that has entered into a grant or contribution agreement with the Department of Foreign Affairs, Trade and Development); and any transaction by the Government of Canada that is provided for in any agreement or arrangement between Canada and the targeted state.²¹³ What is considered a reason for issuing a

²⁰⁹ Nesbitt, “Canada’s ‘Unilateral’ Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada’s Special Economic Measures Act,” *Ottawa Law Review* 48, no. 2 (March 1, 2017), p.561.

²¹⁰ McTaggart, “Sanctions: The Canadian and International Architecture Background Paper,” Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019), p.6.

²¹¹ “Canadian Sanctions Related to Venezuela,” Global Affairs Canada, January 14, 2020, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/venezuela.aspx?lang=eng.

²¹² “Special Economic Measures Act,” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), article 5. *Note: certificates are granted in exceptional circumstances when certain activities are prohibited under the United Nations Act.*

²¹³ See section 4: Regulations for Belarus: “Canadian Sanctions Related to Belarus.” Global Affairs Canada.

permit under one regulation may not be an acceptable reason under another regulation, which can be difficult to follow or confusing as opposed to having the same grounds for a permit for all regulations outlined in the Act itself. However, as Elissa Goldberg of GAC explains, "... these exceptions are not the same for all countries sanctioned under *SEMA*, as Canada may assess that a narrower exception is warranted in light of a particular country situation, including if we consider that the risk of diversion of such aid is high."²¹⁴ While this is reasonable given the varying circumstances in which sanctions may be used, another challenge is that under some regulations, the exceptions are titled as such, whereas under other regulations, exceptions are listed under the sub-heading "non-application," or are found in a summarized format under the Gender-based analysis+ sections, making it difficult to identify the exceptions in each case.

Under the *JVCFOA*, there is no specific clause that deals with exceptions. However, a designated individual may apply to the Minister of Foreign Affairs in writing for a certificate to exempt property from the application of the order or regulation if the property is necessary to meet the reasonable expenses of the person and their dependents. No specific grounds for what may be considered "reasonable" are defined. Additionally, under the *JVCFOA*, the Minister may issue a general permit subject to any terms and conditions that are, in the opinion of the Minister, consistent with the Act and any order or regulations made under the Act.²¹⁵ All exceptions listed above under both the *SEMA* and *JVCFOA* pertain only to Canadians (in or outside of Canada), and individuals in Canada.

As previously mentioned under the "restrictions" section, under section 35 of the Immigration and Refugee Protection Act, the inadmissibility or "travel ban" is only applicable to foreign nationals and not to Canadians or permanent residents. Since inadmissibility does not apply to Canadian citizens, there is no need for an additional exception or for reliance on the right of return for Canadian citizens.

3.4.7: Enforcement and Penalties

²¹⁴ "Sanctions, International Humanitarian Law and the Humanitarian Space in the Canadian Perspective: An Interview with Elissa Golberg: International Review of the Red Cross" (Cambridge University Press, October 5, 2021), p.94.

²¹⁵ *Ibid.*, p.94.

The Minister of Foreign Affairs is responsible for the administration and enforcement of the *SEMA*. However, since GAC is not an investigative department and does not have enforcement “powers,” in practice, several other bodies are involved in enforcement.²¹⁶ GAC does not tell targets they have been listed, nor will it correspond with targets unless contacted and so advised by the Justice Department.

The Royal Canadian Mounted Police (RCMP) are responsible for investigations and arrests related to sanctions under both the *SEMA* and *JVCFOA*. The Canada Border Services Agency (CBSA) is responsible for ensuring any goods restricted under the *SEMA* are not imported or exported, and for ensuring that designated individuals under the *SEMA* and *JVCFOA* (who are automatically deemed inadmissible to Canada under Section 35 of the Immigration and Refugee Protection Act²¹⁷), do not travel to Canada. Finally, the Federal Public Prosecution Service of Canada is responsible for the prosecution of individuals under *SEMA* regulations.²¹⁸

Importantly, GAC will not provide any legal advice to the public when it comes to the application, interpretation, or specifics of the sanctions. As the website states, “Please be advised that GAC cannot provide legal advice to members of the public. For this reason, we cannot deliver an opinion as to whether or not a specific activity or transaction would contravene sanctions legislation. You should consider seeking legal advice in relation to an activity that may contravene a Canadian sanction law.”²¹⁹ This also means that the legal experts cannot seek guidance or confirmation from the Government of Canada.

While the sanctions website of GAC has improved in the past few years and there is now an autonomous consolidated sanctions list to consult, and a basic FAQ site,²²⁰ the website and consolidated list are not easily searchable, and persons and entities are not listed by alphabetical

²¹⁶ Charron, “Canada's Domestic Implementation of U.N. Sanctions: Keeping Pace?,” *Canadian Foreign Policy Journal* 14, no. 2 (2008): pp. 7-8. *Note: Charron offers an overview of how each of the relevant bodies are involved in sanctions enforcement.*

²¹⁷ Under the refugee and protection act Section 35 focuses on human rights but 35(e) mentions "being a person, other than a permanent resident, who is currently the subject of an order or regulation made under section 4 of the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)*" which suggests that individuals are inadmissible for human rights or corruption IF under *JVCFOA* .

²¹⁸ “A Coherent and Effective Approach to Canada’s Sanctions Regimes: Sergei Magnitsky and Beyond.” Committee Report No. 7 - FAAE (42-1) - House of Commons of Canada. Accessed January 28, 2021., pp.,28-30.

²¹⁹ See section on “Legal Advice” at the bottom of the page, “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

²²⁰ See “Canadian Sanctions.” Global Affairs Canada, November 9, 2021. https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/index.aspx?lang=eng.

order but rather by the order in which the Order in Council lists the targets. While recently, some educational outreach initiatives have been undertaken by GAC, these remain limited, and mostly focussed on educating on the differences between the *SEMA* and *JVCFOA* and the listings, without providing details or clarifications about triggers, qualifying circumstances, or how to interpret the meaning of particular language in regulations.

The lack of advice provided by the Government of Canada to the public and the challenges associated with the sanctions website means that a significant burden is placed on the public and private companies to interpret the meaning of the language in different regulations and to keep informed of new listings. This can be considered problematic for two reasons: first, because it places an undue burden on the public and private companies, and second, because it means there is a greater likelihood of failures to comply with existing sanctions. After all, application and enforcement of sanctions rests primarily with the banks, industries, and the public.

The latter point is particularly important because under both the *SEMA* and the *JVCFOA*, “Every person who wilfully contravenes or fails to comply with an order or regulation made under the *SEMA* (a) is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year, or to both; or (b) is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years.²²¹” The term “wilfully” does not mean that ignorance can be used as a defence for failing to comply.

According to the *JVCFOA*, a person who acts reasonably and in good faith to comply with the *JVCFOA*’s regulations is not liable in any related civil action. However, while this protection exists in relation to orders under section 4, section 7(3) refers to disclosures made in good faith and notes that no proceedings under the Act or civil proceedings will lie against a person for a disclosure made in good faith under subsection 7(1) or 7(2).²²² This only refers to the disclosure of information associated with the reporting requirements set out in section 7 and does not apply to broader compliance with the regulations of the Act. In other words, people who fail to comply

²²¹ “Special Economic Measures Act,” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>. Note: for contraventions of the *UNA* it is \$100,000 CA and 10 years.

²²² “Special Economic Measures Act,” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws-lois.justice.gc.ca/eng/acts/s-14.5/page-1.html>.

with sanctions despite acting in good faith are not actually protected against civil action, rather only those who acted in good faith while reporting are protected.

In terms of the penalties for failing to comply, there is no known reason, legal or otherwise, why those penalties under the *SEMA* and *JVCFOA* are so lenient relative to those under the United Nations Act, which carries a maximum financial penalty of \$100,000. The maximum penalty of \$25,000 under the *SEMA* and *JVCFOA* is, by contrast, quite low, and might reasonably be paid by a sanctions buster with no real financial harm incurred. This is problematic considering the purpose of such penalties is to raise the risks of non-compliance and therefore incentivize compliance with sanctions regulations.

3.5. Conclusion

The *SEMA* and the *JVCFOA* have fundamental differences in legislation that arguably make the *SEMA* the more attractive or useful tool to employ: The *SEMA* is more flexible than the *JVCFOA* and can apply to a wider range of cases because it includes four triggering requirements while the *JVCFOA* has only two, and because it allows for the targeting of states and entities while the *JVCFOA* does not. As a result of the wider range of targets available under the *SEMA* (the state, individuals, and entities), there are also more types of measures that can be applied than under the *SEMA*, aside from simply asset freezes and travel bans, such as embargoes and technical assistance prohibitions.²²³ This is not to say that the *JVCFOA* is not useful. Instead, it means that the *JVCFOA* may be useful, but only in a narrower range of cases, as its language is more restrictive. For example, it may be used only when human rights violations are gross, but not systematic, because if they are considered systematic, the *SEMA* should be used due to its inclusion of this term. The *JVCFOA* can also only be used to address what are deemed acts of *significant* corruption, and if there is no question that entities should also be targeted. Ultimately, the more frequent use of the *SEMA* may be explained by the greater flexibility of its use.

Aside from these limitations to the *JVCFOA*, there have also been broader challenges identified with both pieces of legislation and how information on sanctions is presented in Canada. First, there is an overall lack of consistency in the type of information provided to the public, and

²²³ “Types of Sanctions,” Global Affairs Canada, August 9, 2021, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/types.aspx?lang=eng.

a limitation to the information shared which makes enforcement and compliance challenging. While Canada's allies typically provide detailed information about why each targeted individual is being sanctioned, along with their full name, aliases, birthdates, and place of birth in an easily-searchable database, Canada provides little to no information and where it does provide information (birth dates, for example), this is inconsistent.

Other information and analyses included in the regulations are also often inconsistent (e.g., some regulations have sections on Gender-Based Analysis (GBA+) while others do not), made available in different places (i.e., sometimes information on reasons for sanctioning or who Canada is sanctioning with is included in the regulations, and other times only in the press releases), and information is either very general or very descriptive. For example, in some cases, exceptions to the regulations, considerations related to Gender-Based Analysis Plus, and specific information about how many individuals are listed under each triggering mechanism are elaborated upon, whereas in other cases, this information is scant, as was illustrated in various examples under the legal framework and usage section. These inconsistencies make it more difficult for the public and private companies to comply with sanctions and/or keep track of listings. While the consolidated autonomous sanctions list is available on the GAC webpage,²²⁴ it is not in alphabetical order, does not link to specific regulations so that individuals can easily check what they are being sanctioned for and does not always provide basic information such as date of birth. This is on top of the already-significant burden that is placed on the public to interpret the meaning of the legislation, as GAC will not provide any legal advice regarding the legislation, and much of its decision-making is subject to cabinet confidentiality and is therefore not available to the public.

Furthermore, by failing to explain which trigger individuals are listed for and failing to contact targets to notify them they are being sanctioned, Canada undermines the mechanisms to coerce a change in behaviour in its targets. At the same time, financial and other penalties such as jail time under both pieces of autonomous legislation are quite low in comparison to those under the UNA, which also undermines the risk of contravening sanctions.

Combined, these challenges have negative implications for Canadian foreign policy, as

²²⁴ Government of Canada, "Consolidated Canadian Autonomous Sanctions List." https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/consolidated-consolide.aspx?lang=eng, accessed 17 February 2022.

they limit, to some extent, Canada's ability to act efficiently and in coordination with its allies when applying sanctions, which was one of the impetuses for establishing both the *SEMA* and the *JVCFOA* to begin with.

Chapter 4: Implementation and Impact: How Canada has used its autonomous legislation

To better understand how Canada uses autonomous measures, and why Canada invokes the *SEMA* and *JVCFOA* legislation in particular cases, it is important to draw out any patterns from the pivot table and chronology of the listings found in Annex 1 and Annex 2 respectively.²²⁵ The most important factors to examine are the frequency of use, the triggering mechanisms, the allies with whom Canada sanctions and the timing, and finally, the objectives outlined in the regulations.

4. 1: Frequency

Between 2017-2021, the *SEMA* has been invoked 24 times (2 being to just switch or remove names). It was invoked once in 2017, twice in 2018, 6 times in 2019, 4 times in 2020, and 11 times in 2021. Venezuela was targeted 4 times (once to remove a name), with a total of 97 individuals listed, Belarus was targeted 6 times, with a total of 96 individuals and 12 entities listed. Ukraine was targeted 3 times, with a total of 96 individuals and 3 entities listed. Russia was listed a total of 4 times (once only to replace a name, another time to replace and add names), with a total of 38 individuals and 17 entities listed. Myanmar was targeted 4 times, with a total of 32 individuals and 14 entities listed. Nicaragua was targeted twice, with a total of 24 individuals listed. China was targeted 1 time, with a total of 4 individuals and 1 entity listed. Belarus was targeted most often, and Venezuela had the highest number of individuals listed, at 97 total, followed closely by Ukraine and Belarus at 96 individuals listed.

Since 2017, names have been added to the *JVCFOA* list 3 times (52 names the first time, in 2017, 1 addition in February 2018, and 17 additions in November 2018).²²⁶ In total, there have been 70 designated foreign nationals listed but the legislation has not been invoked since 29

²²⁵ *Pivot Table in Annex 1, listings in Annex 2.*

²²⁶ “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>; Public Works and Government Services Canada Government of Canada, “Regulations Amending the Justice for Victims of Corrupt Foreign Officials Regulations: SOR/2018-259,” Government of Canada, Public Works and Government Services Canada, Public Services and Procurement Canada, Integrated Services Branch, Canada Gazette, March 7, 2018, <https://gazette.gc.ca/rp-pr/p2/2018/2018-03-07/html/sor-dors25-eng.html>; “Regulations Amending the Justice for Victims of Corrupt Foreign Officials Regulations: SOR/2018-25,” Government of Canada, Public Works and Government Services Canada, Public Services and Procurement Canada, Integrated Services

November 2018. Individuals listed under the *JVCFOA* come from 5 different countries: Russia (30 individuals), Venezuela (19 individuals), Saudi Arabia (17 individuals), South Sudan (3 individuals), and Myanmar (1 individual). Each country was only targeted once (Russia, South Sudan and Venezuela at the same time, followed by Myanmar and then Saudi Arabia). The highest number of individuals came from Russia, with a total of 30 individuals targeted, the second highest from Venezuela with a total of 19 individuals targeted, followed by Saudi Arabia with 17 individuals targeted, then South Sudan at 3 individuals, and finally Myanmar with only 1 listed individual.

In summary, between 2017-2021, the *SEMA* was invoked 24 times while the *JVCFOA* was invoked 3 times, and 387 individuals were listed under the *SEMA*, while only 70 individuals have been listed under the *JVCFOA*. This means the *SEMA* has seen 5 times more names listed than the *JVCFOA* in the time span of 5 years, illustrating clearly that the *SEMA* is used more often than the *JVCFOA*. Aside from individuals, there were 47 entities listed under the *SEMA* and none under the *JVCFOA*, since targeting entities is not an option under the *JVCFOA* legislation.

4.2: Triggering mechanisms

The triggering mechanisms, or “reasons” for sanctioning outlined in the legislation explain under what circumstances Canada can invoke each piece of legislation. However, in practice, it is not always clear what triggering mechanism is being used since this is not always explicitly stated in regulations, and there may be more than one reason for listing individuals. For example, when the *JVCFOA* was first invoked in 2017, listing 30 individuals from Russia, 3 from South Sudan, and 19 from Venezuela all at one time, the regulations stated that “Fifty-two listed foreign nationals are found in the Schedule of the Regulations because the GiC is of the opinion that they are responsible for or complicit in at least one of the acts described below.”²²⁷ The list then outlines multiple reasons but does not explicitly say which individuals were listed for which reasons (or

Branch, Canada Gazette (Public Works and Government Services Canada, Government of Canada, March 7, 2018), <https://gazette.gc.ca/rp-pr/p2/2018/2018-03-07/html/sor-dors25-eng.html>.

²²⁷ “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

which triggering requirements). Therefore, half of the 30 individuals from Russia could be targeted due to violations of human rights, while the other half could have been listed for acts of corruption, but there is no concrete way of knowing which individuals were listed under what trigger.

The same issue applies for those listed under the *SEMA*, although the language in some regulations is more specific than in others under the *SEMA*. For example, in some regulations, the “background” section explicitly states that x number of individuals are being targeted for “gross and systematic human rights violations,” which makes the identification of the triggering requirement being used very clear. In other cases, the background section may make reference to human rights abuses, undermining of democratic norms, and corruption, without explicitly stating that this is considered a breach of international peace and security.

For this reason, the triggering mechanisms outlined in the table in Annex 1 are inferred, meaning that this research relies on the language present in each regulation. As illustrated below, the most common trigger used by Canada is gross (and systematic in the case of the *SEMA*) human rights violations, while the second most common trigger is a breach of international peace and security (which can also involve both human rights abuses and corruption). We also see that the case of Venezuela falls under one of the original triggering mechanisms of the *SEMA*, “An international organization of states or association of states, of which Canada is a member, has made a decision or a recommendation or adopted a resolution calling on its members to take economic measures against a foreign state.” Only under the *JVCFOA* do we find a group of individuals listed for gross human rights violations as well as acts of significant corruption. Some individuals under the *JVCFOA* may have been listed specifically for corruption and not for human rights abuses, but the regulations do not provide these details. Meanwhile, the *SEMA* has never been explicitly used to address corruption alone.

Table 2: Inferred triggering mechanisms

Breach of international peace and security (which can include both human rights abuses and corruption)	An international organization of states or association of states, of which Canada is a member, has made a decision or a recommendation or adopted a resolution calling on its members to take economic measures against a foreign state	Gross (and systematic, in the case of the <i>SEMA</i>) human rights violations:	Gross human rights violations and/or acts of significant corruption:
<ul style="list-style-type: none"> • <i>SEMA</i>, Myanmar, 2018 	<ul style="list-style-type: none"> • <i>SEMA</i>, Venezuela, 2017 • <i>SEMA</i>, Venezuela, 2018 	<ul style="list-style-type: none"> • <i>JVCFOA</i>, Myanmar, 2018 	<ul style="list-style-type: none"> • <i>JVCFOA</i>, Russia, 2017

<ul style="list-style-type: none"> • <i>SEMA</i>, Russia, 2019 • <i>SEMA</i>, Ukraine, 2019 • <i>SEMA</i>, Ukraine, 2020 • <i>SEMA</i>, Myanmar, 2021 • <i>SEMA</i>, Russia, 2021 • <i>SEMA</i>, Ukraine, 2021 • <i>SEMA</i>, Myanmar, 2021 	<ul style="list-style-type: none"> • <i>SEMA</i>, Venezuela, 2019 	<ul style="list-style-type: none"> • <i>JVCFOA</i>, Saudi Arabia, 2018 • <i>SEMA</i>, Nicaragua, 2019 • <i>SEMA</i>, Belarus, 2020 • <i>SEMA</i>, Belarus, 2020 • <i>SEMA</i>, Belarus, 2020 • <i>SEMA</i>, Russia, 2021 • <i>SEMA</i>, China, 2021 • <i>SEMA</i>, Belarus, 2021 • <i>SEMA</i>, Nicaragua, 2021 • <i>SEMA</i>, Belarus, 2021 • <i>SEMA</i>, Belarus, 2021 	<ul style="list-style-type: none"> • <i>JVCFOA</i>, South Sudan, 2017 • <i>JVCFOA</i>, Venezuela, 2017
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This illustrates that Canada most often sanctions to address gross human rights abuses or issues that affect the stability of the international community. When it comes to human rights abuses, there is also a clear distinction in language under the *SEMA* and *JVCFOA*. Since the *SEMA* is used to address gross and systematic human rights violations whereas the *JVCFOA* 's wording leaves out “systematic,” these Acts are not interchangeable, and there should be a clear choice of one over the other depending on whether the human rights-related action/event in question is considered systematic (i.e., connected to broader circumstances in the state) or not by decision-makers in the Government of Canada.

In practice, this choice between the legislation can become a bit confusing, because these decisions are subject to cabinet confidentiality, and the choice occurs on a case-by-case basis and is not always immediately intuitive or following clear patterns. For example, in the case of individuals from Saudi Arabia being sanctioned, the following justification is provided by the Government of Canada in its press release, “The sanctions target individuals who are, in the opinion of the Government of Canada, responsible for or complicit in the extrajudicial killing of journalist Jamal Khashoggi on October 2, 2018.”²²⁸ Since Canada chose to use the *SEMA* over the *JVCFOA* , a conscious choice was made to list these individuals for gross human rights violations, rather than listing them for gross and *systematic* human rights violations. This makes sense, given

²²⁸ Public Works and Government Services Canada Government of Canada, “Regulations Amending the Justice for Victims of Corrupt Foreign Officials Regulations: SOR/2018-259,” Government of Canada, Public Works and Government Services Canada, Public Services and Procurement Canada, Integrated Services Branch, Canada Gazette, March 7, 2018, <https://gazette.gc.ca/rp-pr/p2/2018/2018-03-07/html/sor-dors25-eng.html>.

that the murder of one individual is not “systematic.” By choosing the *JVCFOA* over the *SEMA*, the Government is also choosing not to sanction the state of origin of the crime, meaning that Saudi Arabia is not targeted along with the 17 listed individuals. This seems to imply that the crime in question is *not* connected to broader circumstances in the state but is rather an isolated incident. However, the *JVCFOA* regulation itself says the following [emphasis added]:

On October 2, 2018, Saudi national, Jamal Khashoggi, went to the Saudi consulate in Istanbul, Turkey, to attend to a private matter and did not re-emerge. In the weeks that followed Mr. Khashoggi’s disappearance, details have emerged that he was tortured and murdered, in what amounts to an extrajudicial killing, by a group of Saudi officials inside the Saudi consulate in Istanbul, **who were directed to do so by an additional public official located in Saudi Arabia.** Mr. Khashoggi was a well-known journalist and, in recent years, **an outspoken critic of the government of Saudi Arabia, including its poor record on human rights.**²²⁹

While the incident may be isolated insofar as the victim is now deceased and his murder was not directly connected to a string of other extrajudicial murders, this language clearly connects the murder of Khashoggi to broader circumstances in the state, begging the question why Canada chose to invoke the *JVCFOA* here rather than the *SEMA*. Here, it may be helpful to look at how Canada’s allies responded to the same incident. Indeed, the United States used its own Magnitsky legislation in this instance, and France, the UK, and Germany also imposed coordinated travel bans in response to the Khashoggi killing, also preferring not to sanction the state.²³⁰ Commentary on the United States’ use of the Global Magnitsky Act also states the following, “...the decisions appear designed to preserve a working relationship with the crown prince, the kingdom’s de facto leader, even though US intelligence concluded that he approved the operation to capture or kill Khashoggi.”²³¹ The article goes on to quote a senior Biden administration official who said, ““The aim is a recalibration (in ties) - not a rupture. That’s because of the important interests that we do share.””²³² This is to say that the use of sanctions can often become complicated by foreign policy considerations and relationships with the states of origin of crimes that are considered

²²⁹ Ibid.

²³⁰ Note: *France, the UK, and Germany did not have their own Magnitsky-style legislation at the time, but deliberately chose not to sanction the state, Saudi Arabia, and instead only sanctioned individuals deemed responsible.*

²³¹ Phil Stewart, “U.S. Imposes Sanctions, Visa Bans on Saudis for Journalist Khashoggi’s Killing,” Reuters (Thomson Reuters, February 26, 2021), <https://www.reuters.com/article/us-usa-saudi-khashoggi-sanctions-idUSKBN2AQ2QI>.

²³² Ibid.

sanctionable. This why horizontal sanctions may be preferable in some cases. As Clara Portela argues,

The blacklisting of individuals under a global horizontal list notably features the advantage of detaching individuals from their country of nationality, residence or activity. This entails political advantages as it can respond to disquieting developments without pointing the finger at the leadership of the country where the threat or condemned action originated.²³³

While Canada could potentially have invoked the *SEMA* under the “gross and systematic human rights abuses” trigger, the murder of one individual cannot truly be considered “systematic,” and sanctioning the state may have led to retaliatory sanctions or a breakdown in relations between Canada and Saudi Arabia. Additionally, it would have appeared a very bold move for Canada to impose sanctions on the state directly, while its more powerful ally, the US, and other allies all chose to avoid similar, more serious, measures. In other words, in this case, the use of the *JVCFOA* or “horizontal” measures was seen as advantageous because it did not require sanctioning Saudi Arabia or the Crown Prince directly, thus seemingly protecting Canada against potential retaliatory measures.

In another case, related to Russia, Canada has invoked the *SEMA* under the “breach of international peace and security” trigger, as well as the “gross and systematic human rights violation” trigger and has also used the *JVCFOA* against Russian individuals. The *JVCFOA* was designed specifically in reference to the Magnitsky killing and is therefore first used to directly address the events surrounding Magnitsky’s death, as outlined in the press release, “The Regulations include a list of foreign nationals who, in the opinion of the Governor in Council, are responsible for or complicit in the gross violations of Mr. Magnitsky’s human rights. The Regulations also list public officials, or their associates, responsible for or complicit in acts of significant corruption that Mr. Magnitsky sought to expose.”²³⁴ Similar to the case of the murder of Khashoggi, the *JVCFOA* is invoked to address the murder of a single individual, although it can be understood by the wording in the regulations that this one murder is also connected to broader circumstances in Russia, including systemic corruption.

²³³ Portela, “Horizontal Sanctions Regimes: Targeted Sanctions Reconfigured?,” *Research Handbook on Unilateral and Extraterritorial Sanctions*, 2021, p. 445.

²³⁴ “Justice for Victims of Corrupt Foreign Officials Regulations: SOR/2017/233,” Government of Canada, Public Works and Government Services Canada, Public Services and Procurement Canada, Integrated Services Branch, Canada Gazette, November 3, 2017, <https://canadagazette.gc.ca/rp-pr/p2/2017/2017-11-15/html/sor-dors233-eng.html>.

The *SEMA*, on the other hand, is used in two separate circumstances related to Russia. The first is to respond to Russia's illegal annexation of Crimea, which, logically, uses the breach of international peace and security trigger and includes targeting entities as well as individuals. The second is to respond to attacks against another specific individual, Russian opposition figure Alexey Navalny, using the gross and systematic human rights violation trigger, without targeting any entities.²³⁵ Following the pattern outlined above, one might reasonably expect Canada to have invoked the *JVCFOA* in the case related to Navalny, since the legislation has previously been used to respond to incidents affecting specific, individual victims (the Khashoggi and Magnitsky cases). However, the choice to use the *SEMA*, and therefore to classify this as "systematic" is deliberate, as illustrated by the wording in the *SEMA* regulation [emphasis added]:

In recent months, Russian opposition figure Alexey Navalny has been attacked with a chemical agent, subjected to a deeply flawed judicial process, and imprisoned for over two years on dubious grounds. While his case has been particularly egregious and received significant international attention, **his is not the only case of targeted repression by the Russian state. It is an example of Russia's deepening authoritarianism, a distinct pattern of behaviour** whereby the Russian government has attacked opposition figures and repressed internal dissent. International human rights organizations have noted that Russia's human rights record has continued to deteriorate in recent years.²³⁶

The Russian government has, "...demonstrated no willingness to address concerns raised repeatedly by the international community on the human rights situation as a whole in that country."²³⁷ The Government of Canada chose to connect the incidents affecting Navalny to the state of things in Russia as a whole, which was not done in the cases of Khashoggi or Magnitsky.

One might question whether Canada typically uses the same style of legislation as its allies, as was the case with the Magnitsky and Khashoggi killings. In fact, in practice, Canada always sanctions *with* allies (never unilaterally), but does not always use the same style of legislation as its allies, nor does it always follow *one* ally's choice of legislation. In other words, Canada's choice between the *SEMA* and the *JVCFOA* is not based on whether its allies use similar legislation.

²³⁵ "Canadian Sanctions Related to Russia," Global Affairs Canada, November 26, 2021, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/russia-russie.aspx?lang=eng.

²³⁶ "Regulations Amending the Special Economic Measures (Russia) Regulations: SOR/2021-48," Public Works and Government Services Canada, Government of Canada, March 31, 2021, <https://gazette.gc.ca/rp-pr/p2/2021/2021-03-31/html/sor-dors48-eng.html>.

²³⁷ *Ibid.*

Indeed, in the case of the poisoning and detention of Navalny, only the US also used its geographic legislation,²³⁸ thus linking the poisoning of Navalny to the state of Russia, while Canada's other key sanctioning ally, the EU, used its Magnitsky-style legislation.²³⁹ Similarly, in the case of the more recent sanctions related to the People's Republic of China, the US used its Magnitsky-style legislation,²⁴⁰ while Canada used the *SEMA* once again.²⁴¹

Particularly in the case of the People's Republic of China, one might wonder why Canada chose to use the *SEMA* rather than the *JVCFOA*, thus sanctioning the state directly, since Canada's relationship with China is both important from a trade perspective, and already arguably in crisis over the past few years. The tension between the two states have been high since Canada's arrest of China's Huawei Technologies chief financial officer, Meng Wanzhou in 2018, followed by China's arbitrary detention of Canadians Michael Spavor and Michael Kovrig for 1020 days,²⁴² and continuing with Canada's declaration in February 2021 that China is committing genocide against Uyghurs in Xinjiang.²⁴³ Even during these years, Canada has been reluctant to directly refer to China as an adversary, instead preferring to minimize conflicts to avoid further damage to its trade relationship.²⁴⁴ Why, then, would Canada take the risk of sanctioning China directly, while

²³⁸ "U.S. Sanctions and Other Measures Imposed on Russia in Response to Russia's Use of Chemical Weapons - United States Department of State," U.S. Department of State, March 2, 2021, <https://www.state.gov/u-s-sanctions-and-other-measures-imposed-on-russia-in-response-to-russias-use-of-chemical-weapons/>.

²³⁹ "Global Human Rights Sanctions Regime: EU Sanctions Four People Responsible for Serious Human Rights Violations in Russia" (Council of the European Union, March 2, 2021), <https://www.consilium.europa.eu/en/press/press-releases/2021/03/02/global-human-rights-sanctions-regime-eu-sanctions-four-people-responsible-for-serious-human-rights-violations-in-russia/>.

²⁴⁰ Nicole Gaouette, "US and Allies Announce Sanctions against Chinese Officials for 'Serious Human Rights Abuses' against Uyghurs," CNN (Cable News Network, March 23, 2021), <https://www.cnn.com/2021/03/22/politics/us-eu-china-uyghur-sanctions/index.html>. *Note, however, that outside of this collaboration with allies on human rights sanctions, the US has also used its geographic legislation to target China specifically with export and import restrictions.*

²⁴¹ "Canadian Sanctions Related to People's Republic of China," Global Affairs Canada, November 16, 2021, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/china-chine.aspx?lang=eng.

²⁴² Peter Xavier Rossetti, "The Detention of the Two Michaels: A Story on China's Human Rights Abuses," Amnesty International at the University of Toronto, accessed February 21, 2022, <https://amnesty.sa.utoronto.ca/2022/01/05/the-detention-of-the-two-michaels-a-story-on-chinas-human-rights-abuses/>.

²⁴³ Steve Scherer, "Canada's Parliament Passes Motion Saying China's Treatment of Uighurs Is Genocide," Reuters (Thomson Reuters, February 22, 2021), <https://www.reuters.com/article/us-china-canada-trudeau-idUSKBN2AM2KZ>.

²⁴⁴ See, for example, arguments for a new Canadian strategy regarding China: Gordon Houlden, "50 Years of Canada-China Relations: Complexity and Misperception," Canadian International Council: Behind the Headlines, accessed February 21, 2022, https://3mea0n49d5363860yn4ri4go-wpengine.netdna-ssl.com/wp-content/uploads/2020/11/Behind-the-Headlines_Gordon_Houlden.pdf.; Tsuyoshi Kawasaki, "Hedging against

its more powerful ally, the United States, only invoked its Magnitsky-style legislation,²⁴⁵ which does not directly target China as a whole? In this case, Canada also sanctioned one Chinese entity in coordination with the EU, US, and UK, which is not an option available under the *JVCFOA*. Indeed, the *JVCFOA* only allows for targeting of individuals, and not entities. Therefore, while Canada may have preferred to use the *JVCFOA* rather than the *SEMA*, in order to include **this same entity** as its allies in its sanctioning, Canada had to use the *SEMA* instead.

It is also useful to examine the case of Venezuela, as Venezuelans are targeted under both the *SEMA* and the *JVCFOA*, and there is an overlap of 3 individuals who are targeted under both pieces of legislation. In practice, GAC only “double-lists” individuals, (meaning listing them under two pieces of legislation), if they are being listed for two different triggers. However, as already stated, these triggers are not always clearly identified or disclosed, especially not at the level of the individual listings.²⁴⁶

The background of the situation on the GAC webpage states that Canada imposed sanctions under the *SEMA* against 40 individuals on 22 September 2017, including President Nicolas Maduro as well as other high-level officials of the National Constituent Assembly and the National Electoral Commission. According to the summary, these individuals were sanctioned for undermining democratic rights.²⁴⁷ Then, a little over a month later, on 3 November 2017, Canada imposed the first round of sanctions under the *JVCFOA*, which included 19 individuals from Venezuela. These individuals were sanctioned for being responsible for or complicit in gross violations of internationally- recognized human rights and/or significant acts of corruption.²⁴⁸ Once again, it is unclear which of the 19 individuals are listed under which trigger, meaning that some of the 19 individuals could be listed for violating human rights, some could be listed for significant acts of corruption, and others could be listed for both. The three individuals

China: Formulating Canada’s New Strategy in the Era of Power Politics,” *Canadian Foreign Policy Journal* 27, no. 2 (February 2021): pp. 175-193, <https://doi.org/10.1080/11926422.2021.1901755>.

²⁴⁵ Gaouette, “US and Allies Announce Sanctions against Chinese Officials for ‘Serious Human Rights Abuses’ against Uyghurs,” CNN (Cable News Network, March 23, 2021), <https://www.cnn.com/2021/03/22/politics/us-eu-china-uyghur-sanctions/index.html>.

²⁴⁶ Nesbitt, “Canada’s ‘Unilateral’ Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada’s Special Economic Measures Act,” *Ottawa Law Review* 48, no. 2 (March 1, 2017), p.559.

²⁴⁷ “Canadian Sanctions Related to Venezuela,” Global Affairs Canada, January 14, 2020, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/venezuela.aspx?lang=eng.

²⁴⁸ “Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law),” Justice Laws Website, Government of Canada (Legislative Services Branch, February 4, 2022), <https://laws.justice.gc.ca/eng/acts/J-2.3/>.

who were listed under both pieces of legislation in 2017 are President Nicolas Maduro Moros, Tareck Zaidan El Aissami Maddah (Vice President of Venezuela 2017-2018) and Gustavo Enrique Gonzalez Lopez (general-in-chief of the Venezuelan army), presumably because they have the most power and control over the circumstances in the state. In May 2018, Canada added an additional 14 Venezuelans to the *SEMA* list, and in April 2019, another 43 individuals were added (23 of the 43 individuals were already sanctioned by the US and/or the EU).²⁴⁹ None of the additions in 2018 or 2019 overlapped with those already listed under the *JVCFOA*.

Ultimately, there is a clear distinction between the individuals listed under the *SEMA* and the *JVCFOA* which relates to the triggering mechanisms in the legislation. Those listed under the *SEMA* are seen to undermine democratic norms and are listed under the “organization to which Canada belong requests use of economic measures” trigger, because the Lima Group recommended use of these measures, and the circumstances fall short of the threshold for the “breach of international peace and security” trigger. Those listed under the *JVCFOA* are seen to be responsible for human rights violations and/or corruption. The three individuals who are listed under both are seen to be responsible for both of these crimes, which cannot be captured under the *SEMA* because this non-descriptive trigger is used. It remains unclear, however, why these decisions have been made about each specific individuals’ complicity, and why there has been such a clear distinction made. As previously mentioned in Chapter 3, it would be useful if the Government of Canada identified which trigger each individual was being listed under— a recommendation which has already been made by Michael Nesbitt.²⁵⁰ This would communicate a much clearer message to the perpetrator what crimes Canada is aware of them committing or being complicit in, and therefore what behaviors need to change or stop in order to have their names de-listed. This is what helps to incentivize changes in behavior— the possibility of being de-listed.

Interestingly, one individual listed under the Venezuela regulations has been de-listed

²⁴⁹ “Canadian Sanctions Related to Venezuela,” Global Affairs Canada, January 14, 2020, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/venezuela.aspx?lang=eng.

²⁵⁰ Nesbitt, “Canada’s ‘Unilateral’ Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada’s Special Economic Measures Act,” *Ottawa Law Review* 48, no. 2 (March 1, 2017), pp.559-561.

following the US' decision to remove their own sanctions against him.²⁵¹ Cristopher Figuera was originally sanctioned by Canada on 15 April, 2019. As head of SEBIN (Bolivarian Intelligence Service) he oversaw the arbitrary detention of anti-regime demonstrators and political opponents and SEBIN was involved in torture and killings.²⁵² The US decided to de-list him after he openly supported the (failed) uprising of Maduro's opposition, Juan Guaido, which was meant to restore democracy. Canada cites the following actions as reasons for de-listing:

On May 1, 2019, Cristopher Figuera published a letter calling to end corruption, rebuild the country and "find new ways of doing politics," though notably, he did not explicitly recognize Guaidó as Interim President. Since April 30, 2019, he has also released videos calling on the military, and in particular Padrino Lopez, the Minister of Defense, to rebuild the country and end corruption.²⁵³

This example proves that triggering mechanisms matter. In this case, Figuera was listed under the "organization to which Canada belongs," trigger due to his leadership position as head of SEBIN, but not explicitly under a descriptive trigger, such as the human rights violations trigger. This presumably means that Canada's allies within the Lima Group removing these measures would be enough for Canada to de-list him, despite his additional involvement in human rights violations.

Finally, in the case of Canada's use of sanctions against Myanmar, both the *JVCFOA* and the *SEMA* have been invoked, and the triggering mechanisms used are not entirely intuitive. In February 2018, the *JVCFOA* was used for the second time ever against one individual, this time from Myanmar— Major General Maung Maung Soe, the individual in charge of military operations in the Rakhine State, and therefore deemed responsible for "gross violations of internationally recognised human rights committed against Rohingya individuals."²⁵⁴ It was unclear at the time why only one individual was listed as responsible for the human rights abuses against the Rohingyas. Several months later, in June 2018, the *SEMA* was invoked against

²⁵¹ "Regulations Amending the Special Economic Measures (Venezuela) Regulations: SOR/2019-106," Public Works and Government Services Canada, Government of Canada, May 1, 2019, <https://gazette.gc.ca/rp-pr/p2/2019/2019-05-01/html/sor-dors106-eng.html>.

²⁵² "Regulations Amending the Special Economic Measures (Venezuela) Regulations: SOR/2019-263," Public Works and Government Services Canada, Government of Canada, July 10, 2019, <https://gazette.gc.ca/rp-pr/p2/2019/2019-07-10/html/sor-dors263-eng.html>.

²⁵³ Ibid.

²⁵⁴ Public Works and Government Services Canada Government of Canada, "Regulations Amending the Justice for Victims of Corrupt Foreign Officials Regulations: SOR/2018-259," Government of Canada, Public Works and Government Services Canada, Public Services and Procurement Canada, Integrated Services Branch, Canada Gazette, March 7, 2018, <https://gazette.gc.ca/rp-pr/p2/2018/2018-03-07/html/sor-dors25-eng.html>.

Myanmar and seven individuals were listed, including Maung Maung Soe, now double listed under the *SEMA* and *JVCFOA*. In this case, the triggering mechanism is quite unclear, as the language in the regulation refers both to “human rights violations” (although not using the term “gross and systematic human rights violations” as is the exact wording of the *SEMA* ’s triggering mechanism) and then referring to this as an international crisis, but without stating this is a breach of international peace and security.²⁵⁵ However, since we are aware that GAC never double lists individuals unless it is under two different triggering mechanisms, it can be inferred that because Maung Maung Soe is listed for human rights violations under the *JVCFOA*, he must be listed for a different trigger (not gross and systematic human rights violations) under the *SEMA*, thus meaning that the *SEMA* trigger in this case is the “breach of international peace and security” trigger.

Advancing to February 2021, Canada invoked the *SEMA* to add nine individuals to its list. Despite extensive open- source data from global human rights organizations stating that this is an active genocide, involving extensive gross and systematic human rights violations, and the fact that Canada’s House of Commons unanimously voted to call the treatment of the Rohingyas as a genocide,²⁵⁶ Canada chose again to use the breach of international peace and security triggering mechanism, rather than the one for human rights violations. Indeed, the listed objective of these sanctions states, “To communicate a clear message to the Tatmadaw that Canada will not accept that actions **constituting a grave breach of international peace and security, resulting in a serious international crisis**, continue to take place with impunity and **total disregard of the will and democratic rights of the people of Myanmar.**”²⁵⁷ Canada invoked further sanctions against Myanmar using this same triggering mechanism under the *SEMA* in May and December of 2021, with the latter sanctions being imposed on December tenth, which is International Human Rights Day. The concern here is that Canada has repeatedly used a triggering mechanism which arguably does not accurately, or “best” represent the incidents occurring in Myanmar. Rather than

²⁵⁵ “Canadian Sanctions Related to Myanmar,” Global Affairs Canada, January 31, 2022, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/myanmar.aspx?lang=eng.

²⁵⁶ Amanda Connolly, “House of Commons Unanimously Votes to Call Myanmar Rohingya Killings a Genocide - National,” Global News, September 20, 2018, <https://globalnews.ca/news/4470455/canada-declares-myanmar-rohingya-genocide/>.

²⁵⁷ “Canadian Sanctions Related to Myanmar,” Global Affairs Canada, January 31, 2022, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/myanmar.aspx?lang=eng.

emphasizing the gross human rights violations against the Rohingya population, Canada's use of the grave breach of international peace and security trigger instead emphasizes Canada's concerns about democratic rights and its support for the democratic transition. Without employing the trigger related to human rights violations, individuals could conceivably be de-listed for changing their stance or behaviors related to this trigger, while continuing to commit or be complicit in human rights violations.

Each of these cases provide some insight into how Canada uses its autonomous measures and what the triggering mechanisms mean in practice, despite the limited information available from the Government of Canada. Canada's choice of particular triggering mechanisms is not always intuitive, and there is simply not enough information provided by the Government of Canada to understand the choice of triggering mechanisms at the level of individual listings. This can have serious implications, such as undermining the de-listing mechanism by making it unclear what individuals are listed for, or by only listing individuals for one of multiple crimes they are committing or are complicit in.

As already identified, the *SEMA* is more flexible when it comes to sanctioning because of its wider range of triggering requirements, and because it can be used to sanction entities and to impose embargoes and other measures. When it comes to sanctioning to address human rights violations, Canada has a choice between using the *SEMA*, for gross and systematic human rights violations, or the *JVCFOA*, for gross human rights violations that are not deemed "systematic." In practice, Canada uses the *SEMA* much more often to respond to human rights violations than the *JVCFOA*, and this is for different reasons in different cases.

In the case of sanctions against Belarus and the PRC, Canada has sanctioned entities and used broader measures such as embargoes against Belarus that are simply not available measures under the *JVCFOA* legislation. In other cases, Canada may be anticipating that sanctioning entities or applying broader measures might be necessary in the future, and therefore may be using the *SEMA* to ensure it has that option available in case the situation worsens. In the cases of Khashoggi and Magnitsky which involved the use of the *JVCFOA*, these incidents are not ongoing, because the victims in question are already deceased and murder is not systematic. However, in the case of Navalny, it is reasonable to argue that this situation is ongoing, and therefore may expand or worsen to the point where additional measures that are only available under the *SEMA* may be required.

It must be noted that these patterns are only observed and may not be definitive rules used by GAC when making decisions (and these decisions are subject to cabinet confidentiality). However, it may be useful to continue to study these patterns to see if they persist over time. Additionally, as argued by Michael Nesbitt, "... greater transparency by GAC in explaining why sanctioning decisions have been made would, even without a legislative change, go a long way to clarifying, and thus rectifying the process."²⁵⁸

4.3: Timing and alignment with allies

Like many decisions surrounding Canada's use of sanctions, the reasoning behind the timing of imposing sanctions is sometimes but not always clear. In many cases, sanctions are imposed in response to particular events or new developments in ongoing situations. For example, Canada imposed new sanctions against an additional 14 Venezuelans in May 2018 following the presidential elections,²⁵⁹ and also used sanctions to decry the rigged elections in Belarus in 2020.²⁶⁰ New sanctions against Russia and Ukraine (or individuals from both) related to the annexation of Crimea typically happen on the same day or a few days apart because the two regimes are intimately related. Most commonly, Canada imposes sanctions following its closest sanctioning allies or in tandem with them (i.e., on the same day), the latter of which helps to prevent asset flight or travel of targets by simultaneously closing gaps. Additionally, Canada and its allies will often impose sanctions together on commemorative occasions, such as in anticipation of or on International Anti-Corruption Day (9 December) and International Human Rights Day (10 December) each year.

Alignment with allies can be challenging for numerous reasons, including but not limited to the fact that each have differing pieces of legislation with different limitations, political sensitivities and national interests (e.g., not wanting to disrupt relations with particular states or

²⁵⁸ Nesbitt, "Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act," *Ottawa Law Review* 48, no. 2 (March 1, 2017), p.561.

²⁵⁹ "Canadian Sanctions Related to Venezuela," Global Affairs Canada, January 14, 2020, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/venezuela.aspx?lang=eng.

²⁶⁰ "Canadian Sanctions Related to Belarus," Global Affairs Canada, December 23, 2021, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/belarus.aspx?lang=eng.

leaders), legal, cultural, and historical differences, and philosophically different approaches to sanctioning, among others.

As discussed above, Canada does not always choose the same legislation or type of measures as its allies. However, the actions of its allies are very important when it comes to using autonomous measures. Andrea Charron's Canadian Sanctions Database and Paul Aseltine's work illustrates that there was at least some level of alignment with allies on **all** *SEMA* sanctions used between 1992-2015,²⁶¹ while Meredith Lilly and Delaram Arabi's analysis captures collaboration with allies on all autonomous sanctions imposed between 2017-2019 under the *SEMA* and *JVCFOA*.²⁶² The pivot chart in Annex 1 of this thesis shows that every time Canada has enacted autonomous sanctions between 2017-2021, it has been with at least one of its allies: the US, the UK, the EU, or more (e.g., Australia, or European countries on their own outside of the EU such as France or Germany).

For example, Canada has become highly invested in the case of Venezuela, evidenced by its involvement in the Lima Group²⁶³ and the establishment of the Canada-US Association on Venezuela in 2017, specifically designed to respond to the ongoing situation in Venezuela. As a result, Canada's sanctions against Venezuela are imposed in collaboration with the US, but also often align with Argentina, Colombia, Panama, Peru, the EU and Switzerland. Sanctions concerning Myanmar are always imposed with the EU, and more recently, with the UK and US. Sanctions against Russia, Ukraine, and most recently, China and Belarus, are typically imposed with all three of Canada's closest sanctioning allies, the US, EU, and UK. In contrast, sanctions against Nicaragua are only typically imposed in coordination with the US. As mentioned above, these alignments often have to do with political considerations and the national interests of each state.

²⁶¹ Charron, "The Canadian Sanctions Database" (Centre for Defence and Security Studies, University of Manitoba; Aseltine, "Canada's Sanctions Regimes: An Investigation into Canada's ...," accessed February 12, 2022, https://mspace.lib.umanitoba.ca/bitstream/handle/1993/30690/Aseltine_Paul.pdf?sequence=1.

²⁶² Lilly and Arabi, "Symbolic Act, Real Consequences: Passing Canada's Magnitsky Law to Combat Human Rights Violations and Corruption," *International Journal: Canada's Journal of Global Policy Analysis* 75, no. 2 (2020): p. 172.

²⁶³ The Lima Group is "an ad hoc grouping of countries in the hemisphere, including Canada, that are seeking a solution to the crisis in Venezuela." Signatories include: Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Honduras, Mexico, Panama, Paraguay, and Peru. Guyana, Saint Lucia, Belize, Bolivia and Haiti joined later. "Regulations Amending the Special Economic Measures (Venezuela) Regulations: SOR/2019-106," Public Works and Government Services Canada, Government of Canada, May 1, 2019, <https://gazette.gc.ca/rp-pr/p2/2019/2019-05-01/html/sor-dors106-eng.html>.

When examining the data available in the Canadian Sanctions Database and on the CanadianSanctionsMap webpage,²⁶⁴ as well as documented analysis by Meredith Lilly and Delaram Arabi,²⁶⁵ it is clear that sanctioning with allies is simply following a tradition— Canada never enacts its autonomous legislation without following the leads of, or acting in tandem with, one or more of its sanctioning allies. This is partly because of the objectives of its sanctions, to be discussed further below, (i.e., sometimes the core objective of the sanctions is to signal to allies or to align with allies to show solidarity), but also because this means Canada will not shoulder the burden of potential retaliations alone.

In the *SEMA* regulations and in press releases and background statements, Canada often (but not always) lists the allies or “like-minded states/partners” it is sanctioning with, and sometimes also explains how its listings/actions differ from these allies. In some cases, it states things like the following: “While the regulatory mechanisms for sanctions in Canada, the United States (U.S.) and the European Union (EU) are inherently different, the Regulations align with U.S. and EU sanction measures on Ukraine.”²⁶⁶ In other cases, it is a bit more timing- specific: “...the United States implemented additional sanctions since June 2019, with the latest round on June 9, 2021,” or numerically-specific, “...23 of the 43 individuals have already been sanctioned by the United States and/or the European Union.”²⁶⁷ Since this information is not always made available by the Government of Canada, determining which states Canada is sanctioning with often requires searching for those states’ original sources, press releases, or other articles.

Just because Canada is in “alignment” with allies, this does not mean that measures are exactly the same, or that the exact same individuals and entities are listed. While comparing exact listings comprehensively is outside of the scope of this study, a comparison of the convergence of

²⁶⁴ Charron, “The Canadian Sanctions Database” (Centre for Defence and Security Studies, University of Manitoba.; Canadian sanctions map as of 15 September. (past this date, the allies were removed from webpage).

²⁶⁵ Lilly and Arabi include a table outlining the partners Canada sanctioned with between 2017-2019 in Lilly and Arabi, “Symbolic Act, Real Consequences: Passing Canada’s Magnitsky Law to Combat Human Rights Violations and Corruption,” *International Journal: Canada's Journal of Global Policy Analysis* 75, no. 2 (2020): p. 172.

²⁶⁶ For example, this is stated regarding sanctions against Russia under the *SEMA* imposed on March 15, 2019. “Canadian Sanctions Related to Russia,” Global Affairs Canada, November 26, 2021, https://www.international.gc.ca/world-monde/international_relations-reactions-internationales/sanctions/russia-russie.aspx?lang=eng.

²⁶⁷ “Regulations Amending the Special Economic Measures (Venezuela) Regulations: SOR/2019-106,” Public Works and Government Services Canada, Government of Canada, May 1, 2019, <https://gazette.gc.ca/rp-pr/p2/2019/2019-05-01/html/sor-dors106-eng.html>.

listings between the *SEMA* and *JVCFOA* (each separately) with the EU Global Human Rights Regime, the UK Human Rights Sanctions Regime, and the US Magnitsky and Global Magnitsky Act was completed in August 2021. While this analysis does not compare Canada's allies' geographic legislation listings, it does provide some insights into the limitations of convergence, particularly between the Magnitsky-style horizontal legislation, albeit in early stages of adoption for the EU and UK (both adopted in 2020).

While the US and Canada have had 5 years to synchronize the use of their Magnitsky-style Legislation (and there is nothing legally preventing Canada from retroactively adding names), as of August 2021, they only shared 11 targets. Between the EU, US, UK, and Canadian Magnitsky-style legislation, only 1 individual name was shared (from Russia). Canada and the UK had the most in common between their Magnitsky lists with 36 targets, 17 of which are the individuals connected to the Khashoggi murder, and 19 from Russia. When comparing the *SEMA* with its allies' Magnitsky-style legislation, there were only 4 individuals and 1 entity (from China) listed by all four, which was done in public coordination. In terms of listings only shared between the *SEMA* and US Magnitsky or Global Magnitsky, there were only 16 individuals, the same number as names only shared between the *SEMA* and the *UKHRSR*. Despite the fact that Canada places importance on aligning sanctions with allies, in practice, there is not complete convergence of individuals and entities listed, which can pose a challenge by allowing for asset flight and other contravention by targets.

While there is likely more convergence of listings between Canada and its allies when examining all of its allies' geographic legislation, this analysis provides a good idea of the targets that Canada and its allies most often agree on sanctioning with autonomous measures. When it comes to non- autonomous sanctions, meaning multilateral sanctions agreed to by the UNSC, the majority of targets are African states (Central African Republic, Democratic Republic of the Congo, Libya, Mali, Somalia, South Sudan, Sudan, Zimbabwe), illustrating that these are the states the P5 could agree on sanctioning.²⁶⁸ The sanctions targets of the UNSC are a reflection of the interests of the P5, but the states *not* targeted provide just as much insight into these interests as

²⁶⁸ See Figure 1: "Geographic Distribution of Canadian Sanctions Regimes," in Scott McTaggart, "Sanctions: The Canadian and International Architecture Background Paper," Economics, Resources and International Affairs Division, Publication No. 2019-45-E, (November 19, 2019), p.8.

the states that *are* targeted. In the case of autonomous measures, the targets that Canada and its allies sanction are also a reflection of their individual and collective interests.

Canada, the US, the UK, and the EU seem to all align best (although not always perfectly), when targeting individuals/entities from Russia, China, Belarus, and in the specific Khashoggi case, the 17 individuals who were publicly listed as being involved in his murder (likely due to the extensive amount of open-source data available to the public to make decisions based on). Notably both China and Russia are P5 members of the UNSC, meaning that they have the power to veto any sanctions. Given this status, plus the close relationship between Russia and Belarus, UN sanctions are simply not an option to address any actions committed by these three states. Autonomous sanctions are the alternative for Canada and its like-minded allies— providing an avenue for addressing breaches of international peace and security, human rights violations, corruption, and other acts considered objectionable outside of the UN. The objectives of these regulations vary, however, and must be reviewed to determine what Canada is hoping to achieve by imposing sanctions in specific instances.

4.4: Objectives

There are many different objectives of sanctions outlined by the Government of Canada in *SEMA* and *JVCFOA* regulations, which help to explain what Canada is hoping to achieve by imposing sanctions, and why Canada chooses to respond to particular acts with sanctions. Some regulations under the *SEMA* may only have one or two objectives, while others may have multiple— up to four or five. Canada often uses the same or slightly tweaked wording for multiple regulations across different states, however, sometimes objectives with similar meanings are expressed with different language (another example of inconsistencies in how information on sanctions is presented). These patterns are explored further below. The most commonly- cited objectives between 2017-2021, in order from most frequently used to least, are:

- To align with allies or show solidarity with the actions of like-minded countries (cited 15 times under *SEMA*);
- To place or maintain pressure on a specific country/put pressure on the government to change its behaviour/to “raise costs,” (cited 13 times with slightly tweaked language for specific contexts under *SEMA*);
- To communicate a clear message to the Government of (x target country) that Canada will not accept that gross and systematic human rights violations continue to take place at the hands of the State with impunity (cited 9 times under *SEMA*);

- To signal Canada’s international condemnation of the individuals responsible (cited 6 times, 5 under *JVCFOA*, 1 under *SEMA*)
- To end impunity for those responsible for or complicit in these acts by denying such individuals the ability to store their wealth in Canada or otherwise use Canada and the Canadian financial system for their benefit (cited 6 times, 5 under *JVCFOA*, 1 under *SEMA*)
- To demonstrate Canada’s commitment to a particular policy (could mean to demonstrate to allies, Canadians, sanctions target(s) or all of the above), (cited 5 times under *SEMA*)
- To encourage progress with the negotiation process (cited 4 times under *SEMA*)
- To send a message to the members of the government that their anti-democratic actions have consequences/to impose consequences for ongoing disregard for human rights and the rule of law (cited 3 times under *SEMA*)
- To demonstrate to Canadians more broadly that the government is prepared to take action when regional norms of democratic good governance are flouted (cited 2 times under *SEMA*)
- To respond to ongoing anti-democratic actions (cited 2 times under *SEMA*)
- To send a clear message to “the region” on the importance Canada places on respect for democracy, rule of law and the ability of all people to participate in free and fair elections (cited once under *SEMA*)

There are also more context-specific objectives listed, particularly in the case of regulations made under the *SEMA* that include measures beyond targeting individuals or entities, such as import/export restrictions and embargoes. For example:

- *SEMA*, Russia, 2019; *SEMA* Ukraine 2019; “Signal to Russia that its most recent actions in the Kerch Strait, connected to its illegal annexation and ongoing occupation of Crimea, carry consequences and that Canada is willing to increase costs to Russia for the continued destabilization in Ukraine.”²⁶⁹
- *SEMA*, Myanmar, 2021; *SEMA*, Myanmar, 2021: “To communicate a clear message to the Tatmadaw that Canada will not accept that actions constituting a grave breach of international peace and security, resulting in a serious international crisis, continue to take place with impunity and total disregard of the will and democratic rights of the people of Myanmar.”²⁷⁰

In one case, the *SEMA* is invoked to remove an individual’s name from the regulations under Venezuela, with objectives stating, “to demonstrate that Canada’s sanctions are not intended to be

²⁶⁹ “Canadian Sanctions Related to Russia,” Global Affairs Canada, November 26, 2021, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/russie-russie.aspx?lang=eng.

²⁷⁰ “Canadian Sanctions Related to Myanmar,” Global Affairs Canada, January 31, 2022, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/myanmar.aspx?lang=eng.

permanent; and to send a clear message to members of the Maduro regime that Canada is willing to review the list of Venezuelan officials sanctioned as long as they support the return to democracy in Venezuela.”²⁷¹ In this case, the “objective” plays an important role in communicating a message that the Government of Canada is willing to negotiate and de-list names if behaviour does change, which further incentivizes that change in behaviour. Importantly, this was also done in alignment with the United States and other allies, and one of the listed objectives states as much, “to align with like-minded allies.”²⁷²

As shown above, there are only two objectives listed under the *JVCFOA*: to signal Canada’s international condemnation of the individuals responsible (i.e., to signal to allies and victims that Canada is on their side), and to end impunity for those responsible or complicit in these acts by denying them the ability to store their wealth in Canada (i.e., to prevent dirty money from circulating in Canada). This helps to explain further the Government’s interpretation of the utility of the *JVCFOA* — it is primarily used as a signalling, punitive, and preventative tool to ensure that Canada and its financial system are not a “safe haven” for criminal and suspected criminal actors. This concept is also captured by Meredith Lilly and Delaram Arabi in their analysis of the parliamentary debates that occurred prior to the adoption of the *JVCFOA*, “...some parliamentarians pointed to the importance of using sanctions for, “corrective action,” and for signalling to the broader community, but the majority pointed to the punitive function of imposing costs on those who behave with “impunity.”²⁷³

For the *SEMA*, however, there are a much wider range of possible objectives, which is logical given that the *SEMA* is designed to respond to a wider range of issues than the *JVCFOA*. In the case of the *SEMA*, Canada sanctions to align with allies or show solidarity, to place or maintain pressure on their targets, and to communicate or signal: *to their targets* that an action/behaviour is unacceptable; *to their allies and other states in the region* what Canada stands for; and *to Canadians* that Canada will not stand idly by in the face of certain actions/behaviours/violations. The frequent reference to these objectives illustrates that Canada

²⁷¹ “Regulations Amending the Special Economic Measures (Venezuela) Regulations: SOR/2019-106,” Public Works and Government Services Canada, Government of Canada, May 1, 2019, <https://gazette.gc.ca/rp-pr/p2/2019/2019-05-01/html/sor-dors106-eng.html>.

²⁷² Ibid.

²⁷³ Lilly and Arabi, “Symbolic Act, Real Consequences: Passing Canada’s Magnitsky Law to Combat Human Rights Violations and Corruption,” *International Journal: Canada's Journal of Global Policy Analysis* 75, no. 2 (2020): p. 45.; Canada, *House of Commons Debates*, 42nd Parliament, 1st Sess., 148, No. 181, (19 May 2017).

places importance on the optics of sanctioning and signalling Canada's intentions, beliefs, values, and alliances in the eyes of other states and domestically. This is not just an important part of sanctioning for Canada, but also of its broader foreign policy.

When examining objectives per state under the *SEMA*, changes in Canada's approach over time can sometimes be observed. For example, the first time Canada imposed sanctions against Belarus in 2021, one of the objectives stated "to put pressure on the Government of Belarus to change its behaviour," and then later in the same year when additional sanctions were imposed, the objective stated "to *increase* pressure on the Government of Belarus..."²⁷⁴ illustrating that the situation has worsened/become more serious and Canada is making its response more severe. This same wording is found in reference to Myanmar from the first to second time sanctions were imposed in 2021.²⁷⁵

Alignment with allies is a key objective of sanctions imposed against Venezuela, Belarus, Russia, Ukraine, and in 2021, Myanmar. It is unclear why this is not referenced in the regulations for Nicaragua or China, particularly since Canada acted in coordination with the US, EU, and UK to impose sanctions on Chinese individuals and entities. While there may be a particular reason for this, it is not clear, and therefore presents as another unexplained inconsistency in the language Canada uses on its sanctions webpage.

4.5. Conclusion

This chapter has sought to identify patterns in Canada's use of autonomous sanctions between 2017-2021. This was challenging due to the number of inconsistencies in use, but it is important to remember that inconsistency *is*, in itself, a pattern for Canada when it comes to sanctioning. Nossal's observations in 1992 about how Canada uses sanctions²⁷⁶ remain relevant in 2021—Canada does appear to employ sanctions quite often with the goal of signalling to allies, satisfying the expectations of members of a coalition, and to "feel good" about doing something to address a

²⁷⁴ "Canadian Sanctions Related to Belarus," Global Affairs Canada, December 23, 2021, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/belarus.aspx?lang=eng.

²⁷⁵ "Canadian Sanctions Related to Myanmar," Global Affairs Canada, January 31, 2022, https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/myanmar.aspx?lang=eng.

²⁷⁶ Nossal, *Rain Dancing: Sanctions in Canadian and Australian Foreign Policy* (Toronto: University of Toronto Press, 1994), *preface*, p.xiii.

serious problem. Nevertheless, there are some other clear patterns that are worth discussing further, including their implications for Canadian foreign policy broadly speaking.

First, the emerging preference to use the *SEMA* rather than the *JVCFOA* when responding to human rights violations. Second, that the most common triggers are gross and systematic human rights violations and breaches of international peace and security, whereas sanctions are rarely imposed to address corruption. Third, that the most frequently-cited objective of sanctions was to align with allies or signal to allies, and that Canada continues its tradition of never using autonomous sanctions unilaterally. Fourth, that Canada and its allies tend to all agree on targets and sanctions measures best when they concern Russia, China, and Belarus. The implications of these patterns and other findings will be discussed in detail in the final chapter.

Chapter 5: Canadian foreign policy implications

This thesis set out to better understand how Canada has used its autonomous sanctions measures, the *SEMA* and *JVCFOA* between 2017-2021, given that the *JVCFOA* was first adopted in 2017 at the same time that the *SEMA* was updated to allow for a wider application. As highlighted in Chapters 3 and 4 of this thesis, it was found that there are issues embedded within Canada's autonomous sanctions legislation that impact how Canada uses autonomous measures broadly speaking. Together, these challenges have significant implications for Canadian foreign policy, meaning how Canada interacts with other foreign states whether they be allies, competitors or adversaries, and how Canada responds to international incidents related to its national interests. This chapter examines the foreign policy implications of the issues with the legislation itself and the key findings from Chapter 4 regarding how Canada uses its autonomous measures. Finally, it offers some policy recommendations relative to these conclusions.

5.1: Identified challenges with Canada's autonomous sanctions legislation and practice

There are many aspects of the *SEMA* and *JVCFOA* legislation and how they were crafted that contribute to patterns in how Canada uses these autonomous measures. As illustrated throughout this thesis, in some cases, limitations to the legislation can inhibit Canada's choices when employing sanctions. For example, since the *JVCFOA* does not allow for sanctioning entities, Canada may need to use the *SEMA* rather than the *JVCFOA* even in cases where the *JVCFOA* is the better-suited tool in terms of its triggering mechanisms. At the same time, the limited amount of information provided on Canada's sanctions' targets and how to interpret the legislation creates challenges for the public and private sector businesses doing their best to comply.

As mentioned in Chapter 3, a number of these challenges with Canada's legislation have already been identified in the past, including in the very report resulting from the review of Canada's autonomous sanctions legislation that took place in 2017. As was discussed previously, the *JVCFOA* was adopted the same year that Canada was due to report on its existing legislation. This report, titled *A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond*, included 13 recommendations for improving Canadian legislation and

sanctions practice,²⁷⁷ many of which have been found to still be problematic in 2021. Aside from issues with the legislation, the report also cites challenges with how the Government of Canada, and GAC specifically, communicate information about Canada's sanctions that impact implementation and can also have a negative effect on Canada's cooperation and alignment with allies when using sanctions.

Following this report's publication in April 2017, Foreign Affairs Minister Chrystia Freeland responded in August of 2017, acknowledging some of the challenges identified in the report, but making few specific pledges to address them. Specifically, she acknowledged that the implementation of sanctions presents challenges, "... to private individuals and entities, who bear a significant compliance burden."²⁷⁸ She noted, "I have asked officials in GAC to work with other implicated department and agencies to examine the issues identified in the report."²⁷⁹ It is difficult to determine exactly how extensive these examinations were when it comes to the recommendations not acted upon. For example, recommendations 3 and 7 speak to the need for proper resourcing and reform of "structures responsible for [Canada's] sanctions regimes," and law enforcement agencies tasked with enforcement of sanctions,²⁸⁰ yet these agencies remain under resourced and under-informed when it comes to how to properly enforce sanctions.

Recommendation 12, which asked the Government of Canada to amend the *SEMA* to expand the triggering mechanisms to allow for use in response to gross human rights violations was implemented.²⁸¹ This change is what led to Canada having a choice between the *SEMA* and *JVCFOA* when sanctioning to address human rights abuses. Recommendation 13 was also acted upon, leading to an amendment of the Immigration and Refugee Protection Act that would

²⁷⁷ "A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond." Committee Report No. 7 - FAAE (42-1) - House of Commons of Canada. Accessed January 28, 2021.

²⁷⁸ "Response Letter to the Seventh Report of the Committee on Foreign Affairs and International Developed Entitled 'A Coherent Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond,'" Our Commons, July 17, 2017.

²⁷⁹ Ibid.

²⁸⁰ "A Coherent and Effective Approach to Canada's Sanctions Regimes: Sergei Magnitsky and Beyond." Committee Report No. 7 - FAAE (42-1) - House of Commons of Canada. Accessed January 28, 2021.

²⁸¹ Azoulay and MacKay, "Bill S-226: an Act to Provide for the Taking of Restrictive Measures in Respect of Foreign Nationals Responding for Gross Violations of Internationally Recognized Human Rights and to Make Related Amendments to the Special Economic Measures Act and the Immigration and Refugee Protection Act," accessed February 12, 2022.

designate all individuals listed by regulations under the *SEMA* as inadmissible to Canada (aside from Canadian citizens who have the ‘right to return’).²⁸²

One of Minister Freeland’s most significant pledges was in response to recommendation 5, which said “The Government of Canada should produce and maintain a comprehensive, public and easily accessible list of all individuals and entities targeted by Canadian sanctions containing all information necessary to assist with the proper identification of those listed.”²⁸³ This consolidated sanctions list of individuals and entities targeted under the *SEMA* was developed, and now also includes those individuals targeted under the *JVCFOA*.²⁸⁴ However, as discussed previously, the information listed about these targets is limited, with only a few names accompanied by aliases and birth dates. This recommendation’s implementation is also not as effective as it could have been, given that it was not accompanied by the implementation of recommendations 4 and 9, which suggest to “provide comprehensive, publically available, written guidance to the public and private sectors regarding the interpretation of sanctions regulations in order to maximize compliance,” and to “provide a clear rationale for the listing and delisting of persons under the Special Economic Measures Act and ensure that the information is easily accessible to the public through the GAC sanctions website,” respectively.²⁸⁵

The continued lack of guidance for the public and private sector means that even with a consolidated list of sanctions targets, compliance may be difficult. The lack of clear rationale for individual’s listings also continues to be criticized by Canadian sanctions experts, as this inhibits due process for the individuals in question, and also undermines the effectiveness of the sanctions by making the grounds for delisting unclear to the perpetrator.²⁸⁶ These challenges are further

²⁸² Ibid.; Martin, “Economic Sanctions under International Law: A Guide for Canadian Policy,” *Rideau Institute on International Affairs and the Human Rights Research and Education Centre*, November 28, 2021, p. 44.

²⁸³ “Response Letter to the Seventh Report of the Committee on Foreign Affairs and International Developed Entitled ‘A Coherent Approach to Canada’s Sanctions Regimes: Sergei Magnitsky and Beyond,’” *Our Commons*, July 17, 2017.

²⁸⁴ Government of Canada, “Consolidated Canadian Autonomous Sanctions List.”

https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/consolidated-consolide.aspx?lang=eng, accessed 17 February 2022.

²⁸⁵ “A Coherent and Effective Approach to Canada’s Sanctions Regimes: Sergei Magnitsky and Beyond.” Committee Report No. 7 - FAAE (42-1) - House of Commons of Canada. Accessed January 28, 2021.

²⁸⁶ See: Nesbitt, “Canada’s ‘Unilateral’ Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada’s Special Economic Measures Act,” *Ottawa Law Review* 48, no. 2 (March 1, 2017). Martin, “Economic Sanctions under International Law: A Guide for Canadian Policy,” *Rideau Institute on International Affairs and the Human Rights Research and Education Centre*, November 28, 2021, Andrea Charron and Erin Tramley, “Rethinking Sanctions: Important Questions for Canada to Consider,” Canadian International Council, accessed February 12, 2022, <https://thecic.org/rethinking-sanctions-important-questions-for-canada-to-consider/>; Andrea Charron, “Expert Roundtable on Canadian Economic Sanctions Oct 9-10 2019 Summary of

exacerbated by the issue identified in recommendation 8, which asks the Government of Canada to amend the *SEMA* to, “allow for an independent administrative process by which individuals and entities designated by these Acts can challenge that designation in a transparent and fair manner.”²⁸⁷ Since individuals must apply for delisting to the same Minister that oversees their listing to begin with, this process is often described as problematic and interfering with due process, along with the fact that listed individuals are not notified when they are listed.

Ultimately, while some positive changes have been made in the five-year time span following the publication of these findings and recommendations, many of the same issues remain prevalent in 2021 and have also impacted how the *JVCFOA* has been used in this timeframe.

5.2. Implications of Canada’s use of autonomous sanctions

Chapter four concluded by identifying four specific patterns in Canada’s use of autonomous measures that warranted further examination. First, the emerging preference to use the *SEMA* rather than the *JVCFOA* when responding to human rights violations was noted. Second, that the most common triggers are gross and systematic human rights violations and breaches of international peace and security, whereas sanctions are rarely imposed to address corruption. Third, that the most frequently-cited objective of sanctions was to align with allies or signal to allies, and that Canada continues its tradition of never using autonomous sanctions unilaterally. Fourth and finally, that Canada and its allies tend to all agree on targets and sanctions measures best when they concern Russia, China, and Belarus. These patterns will be discussed in reference to the associated Canadian foreign policy implications.

5.2.1. Preference to use the SEMA over JVCFOA in response to human rights violations

First, this thesis finds that since the *JVCFOA* was adopted in 2017, Canada has preferred to use the *SEMA* over the *JVCFOA* when responding to human rights violations, despite the fact that both

Findings and Recommendations,” Centre for Defence and Security Studies (SSHRC, the University of Manitoba’s Centre for Defence and Security Studies and Institute for Humanities, the Canadian Defence and Security Network and Carleton University, November 2019), https://umanitoba.ca/centres/media/Canadian-Economic-Sanctions-Workshop_finalreport_Nov-2019.pdf.

²⁸⁷ “A Coherent and Effective Approach to Canada’s Sanctions Regimes: Sergei Magnitsky and Beyond.” Committee Report No. 7 - FAAE (42-1) - House of Commons of Canada. Accessed January 28, 2021.

pieces of legislation can be used for this purpose. Chapter 4 sought to provide a few possible reasons why this may be the case, including the fact that the *SEMA* provides greater flexibility in terms of the measures that can be imposed, and because the *SEMA* can also target entities, whereas the *JVCFOA* cannot. Perhaps most importantly, the *SEMA* is to be used when human rights violations are gross and systematic, whereas the *JVCFOA* can be used to respond to more isolated incidents.

The fact that the *JVCFOA* has seemingly been left to the wayside when it comes to human rights violations in preference for the *SEMA* may simply be because of the trajectory of cases in the world and the limitations of the *JVCFOA*. It is potentially difficult to classify many incidences as isolated acts of human rights violations while ignoring broader circumstances in the states where these incidents are occurring that lead to or permit this type of act. For example, in the case of Russia, Canada may not have been comfortable using the *JVCFOA* and therefore describing the poisoning and detention of Navalny as an “isolated incident” given the broader open-source data available about what Canada calls the “deteriorating situation in Russia” as a whole.²⁸⁸ This may also explain why Canada chose to target Chinese nationals in connection to the human rights abuses against the Uyghur population using the *SEMA* rather than the *JVCFOA*. Canada is implicitly signalling that these human rights abuses are widespread, and therefore the *JVCFOA* is not the appropriate tool to address them.

Canada may be increasingly using the *SEMA* to address human rights abuses because its wording and use of the term “systematic” better describes what Canada believes is happening in the world currently, in various cases. While Canada’s tool of choice does not have foreign policy implications *per se*, the fact that the *JVCFOA* has remained unused in such a long time (presumably due to the trajectory of cases and the way its language is formulated) begs the question of whether the adoption of this legislation was entirely necessary, and whether it serves a clear purpose within Canadian foreign policy.

Canada’s lack of use of the *JVCFOA* in recent years appears to be well-noted by the

²⁸⁸ See, for example: “World Report 2021: Rights Trends in Russia,” Human Rights Watch, January 13, 2021, <https://www.hrw.org/world-report/2021/country-chapters/russia>.; “Russian Federation 2020 Report,” Amnesty International, accessed February 21, 2022, <https://www.amnesty.org/en/location/europe-and-central-asia/russian-federation/report-russian-federation/>.

Government of Canada, given that the latest Minister of Foreign Affairs Mandate Letter, issued in December 2021 for Minister Melanie Joly states the following, “Advance support for democracy and human rights as a core priority in Canada’s international engagement, including by: Continuing to support and implement Canada’s Magnitsky Law, the *Justice for Victims of Corrupt Foreign Officials Act*, and promote the adoption of similar legislation and practices globally.”²⁸⁹ It is therefore possible that Canada will commit to using the legislation more often in 2022, but it remains unclear whether there will be any changes made to improve the utility of the legislation in order to facilitate this.

Additionally, given that Canada’s allies the EU and UK only recently adopted their own, similar legislation,²⁹⁰ it will be interesting to see whether they, too, continue to rely mostly on traditional, geographic legislation when responding to the same incidents as Canada, or whether they are able to use their Magnitsky-style and otherwise thematic legislation more often. This may help Canada to determine whether the formulation of their own legislation is useful for the purpose of alignment with allies.

5.2.2. Most common triggers

This thesis also finds that Canada’s most common triggering mechanisms invoked between 2017-2021 are gross and systematic human rights violations, and breaches of international peace and security, whereas sanctions are rarely imposed to address corruption. It makes sense that Canada would use the triggers that it is most likely to align with allies on. For example, assuming an incident is serious enough that it constitutes a potential grave breach of international peace and security, it is likely that Canada’s closest sanctioning allies will also have an interest in addressing this incident. Since a key objective of many of Canada’s sanctions is to align with allies or signal solidarity with allies, it then also makes sense that Canada would frequently impose sanctions to address such threats.

At the same time, Canada and its allies share common foreign policy objectives and values,

²⁸⁹ “Minister of Foreign Affairs Mandate Letter To Minister Melanie Joly,” Prime Minister of Canada, December 16, 2021, <https://pm.gc.ca/en/mandate-letters/2021/12/16/minister-foreign-affairs-mandate-letter>.

²⁹⁰ “Press Release: EU Adopts a Global Human Rights Sanctions Regime,” Council of the European Union, December 7, 2020, <https://www.consilium.europa.eu/en/press/press-releases/2020/12/07/eu-adopts-a-global-human-rights-sanctions-regime/>; “UK Sanctions Relating to Global Human Rights,” Foreign, Commonwealth & Development Office, July 6, 2020, <https://www.gov.uk/government/collections/uk-global-human-rights-sanctions>.

including to promote human rights. Canada's stance on human rights violations is also typically seen as 'universal' among states like Canada, thus making the imposition of sanctions to address human rights abuses less controversial than, for example, sanctioning to address corruption, which is inherently political. Indeed, as Leslie Caldwell notes, "Fighting foreign corruption is not a service we provide to the global community, but rather a necessary enforcement action to protect our own national security interests and the ability of our U.S. companies to compete on a global scale."²⁹¹ Canada and its allies are acutely aware of the need to preserve the credibility of sanctions, and therefore sanctions to address corruption alone tend to be less common. As Anton Moiseienko writes,

As a political instrument, extraterritorial enforcement of anti-corruption could provoke resentment on behalf of foreign governments and instead of collaboration lead to a long-term stalemate between non-cooperative countries, which has been a characteristic feature of US–Russia relations in recent years.²⁹²

This point illustrates that there are additional risks when it comes to sanctioning to address corruption that states like Canada may be trying to avoid. Nevertheless, there may be more pressure in the future by Canada's allies to use sanctions to address corruption. One trend that could affect this change is the move towards further "horizontalization" of sanctions.²⁹³ Specifically, the UK has recently adopted thematic sanctions legislation to address corruption²⁹⁴ following its adoption of the human rights sanctions regime, and the EU is also considering the adoption of similar anti-corruption legislation.²⁹⁵ Canada has both the *JVCFOA* and the *FACFOA* that it can use to keep pace with allies if needed, so it is possible that this legislation will see more use in the future if allies begin using anti-corruption legislation more often albeit limited to individuals only.

²⁹¹ The United States Department of Justice, "Assistant Attorney General Leslie R. Caldwell Speaks at Duke University School of Law," Durham, NC, October 23, 2014, <https://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-speaks-duke-university-school-law>.

²⁹² Anton Moiseienko, *Corruption and Targeted Sanctions: Law and Policy of Anti-Corruption Entry Bans* (Leiden: Brill Nijhoff, 2019), p. 323.

²⁹³ See: Portela, "The Spread of Horizontal Sanctions," CEPS, July 5, 2019, <https://www.ceps.eu/the-spread-of-horizontal-sanctions/>.

²⁹⁴ "UK Sanctions Relating to Global Anti-Corruption," Foreign, Commonwealth & Development Office, April 26, 2021, <https://www.gov.uk/government/collections/uk-sanctions-relating-to-global-anti-corruption>.

²⁹⁵ "Corruption Must Be a Criterion for EU Sanctions, MEPs Are Set to Say," News, European Parliament, accessed February 21, 2022, <https://www.europarl.europa.eu/news/en/agenda/briefing/2021-07-05/9/corruption-must-be-a-criterion-for-eu-sanctions-meps-are-set-to-say>.

5.2.3. Alignment with allies

This thesis finds that Canada has continued its tradition of always sanctioning with at least one ally, but more often than not, with two or more allies. Canada's tendency and desire to sanction with allies is logical, given what sanctions experts know about sanctions effectiveness and what we know about Canadian foreign policy. First, it is well-established within the literature that sanctions employed in tandem, between multiple state actors, increases the "bite" of the sanctions for the targets in question, by imposing greater restrictions and limiting any loopholes that may exist.²⁹⁶ In theory, if multiple states impose sanctions using similar or the same measures simultaneously, a target will have a difficult time circumventing sanctions via other states (e.g., by putting their assets into another state or travelling to/through another state to get around travel restrictions). At the same time, multiple states publicly calling out a particular individual, entity, or state results in more wide-spread "naming and shaming" of the target, thus further increasing the reputational costs of continuing their behaviour.²⁹⁷ As a result, it is thought that sanctioning with allies will improve the effectiveness of sanctions because it not only places greater restrictions on the targets, but also increases the amount of naming and shaming of the targets—upping the costs of engaging in the prohibited action/behaviour.

Additionally, sanctioning with allies or through coordinated efforts increases the perception of legitimacy of these measures because multiple states, rather than just one, believes the actions of the target(s) in question warrant action on this scale.²⁹⁸ Finally, sanctioning with allies (and particularly in coalitions with more powerful states) helps to ensure smaller or less powerful states do not shoulder the burden of potential retaliatory actions or sanctions alone. These latter two points are particularly important for Canada as a self-titled "middle-power" state, with more to lose and less bargaining power than, for example, the United States as a larger power. This can explain why Canada has consistently chosen to impose sanctions with others rather than acting alone.

²⁹⁶ Drezner, "Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice," *International Studies Review* 13, no. 1 (2011), p.104.

²⁹⁷ See, for example, H. Purwanto, "The Concept of Shaming and Naming to Prevent the Financing of Terrorist Activities," *Russian Journal of Agricultural and Socio-Economic Sciences* 96, no. 12 (September 2019): pp. 3-10, <https://doi.org/10.18551/rjoas.2019-12.01>; Biersteker, "UN Targeted Sanctions as Signals: Naming and Shaming or Naming and Stigmatizing?" *The Politics of Leverage in International Relations*, 2015, 165–84.

²⁹⁸ See: Doxey, "Reflections on the Sanctions Decade and Beyond," *International Journal: Canada's Journal of Global Policy Analysis* 64, no. 2 (2009); Hufbauer et al., *Economic Sanctions Reconsidered*, 3rd ed. (Washington, DC: Peterson Institute for International Economics, 2007).

While this desire to sanction with allies can be positive, in that it means that Canada's values tend to match with those of its allies, it also may mean Canada is limited in some ways and pressured in others. For example, it is possible that in the future, Canada may be faced with situations where it wants to sanction a state or individual that only one of its partners agrees with but that its other partners are against. Theoretically, this could happen in relation to Hungary, where Canada and the US may wish to sanction the country in response to anti-democratic incidents,²⁹⁹ whereas the EU, Canada's other close sanctioning ally, may be against this because Hungary is a member of the EU. This would put Canada in a challenging position choosing between two of its closest sanctioning allies.

More likely, however, is a situation in which Canada faces greater pressure from its allies to enact sanctions in a wider range of cases—requiring a very flexible approach from Canada and a close attention to detail with regard to specific targets and when to delist in response to positive changes in behaviour. As has been noted, the use of sanctions has increased significantly in the past few years among Canada's allies, and this has also meant the adoption of more thematic sanctions legislation (also called horizontal sanctions legislation). Indeed, Canada has yet to adopt thematic legislation completely matching its allies, such as legislation to respond to specific types of threats like cybersecurity threats.³⁰⁰ This means Canada may lack the necessary tools to respond to the same types of threats as its allies in the future.

Additionally, as this style of legislation becomes increasingly popular, Canada may find that its own horizontal legislation (its Magnitsky legislation, the *JVCFOA*) is not designed in a way that allows Canada to keep pace with its allies—which, ironically, is one of the core reasons why Canada adopted the *JVCFOA* to begin with. This issue is particularly important given that Canada's *JVCFOA* does not allow for sanctioning entities.

At the same time, the aforementioned administrative challenges related to Canadian sanctions practice also pose challenges for alignment with allies. For example, failing to notify targets that they have been sanctioned by Canada, poor enforcement, and minimal financial

²⁹⁹ Laurenz Gehrke, "Hungary No Longer a Democracy: Report," POLITICO, May 11, 2020, <https://www.politico.eu/article/hungary-no-longer-a-democracy-report/>; "Hungary - Universal Periodic Review," Global Affairs Canada, November 12, 2021, https://www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/upr-epu/hungary-hongrie.aspx?lang=eng.

³⁰⁰ "Press Release: EU Imposes the First Ever Sanctions against Cyber-Attacks," Council of the European Union, July 30, 2020, <https://www.consilium.europa.eu/en/press/press-releases/2020/07/30/eu-imposes-the-first-ever-sanctions-against-cyber-attacks/>.

penalties for contravening sanctions may mean that Canada is initially viewed as a loop-hole in an otherwise tightly-knit set of restrictions imposed by Canada's allies. Nesbitt argues, for example,

Enforcement actions signal to Canada's partners—primarily the US and the European Union—that Canada is upholding its end of the bargain in a multilateral endeavour. It does a disservice to Canada's reputation as a reliable partner... if others see Canada as a laggard in enforcing its own (sovereign, unilaterally promulgated) laws. Unfortunately, Canada is indeed seen as a laggard in each of these areas.³⁰¹

Meanwhile, the lack of identifying information (i.e., aliases, date of birth, country of origin) listed on Canada's sanctions webpage may make it difficult to track where there is overlap between Canada and its allies. Other discrepancies remain between Canada and some of its allies, such as the fact that Canada's sanctions do not expire, meaning that Canada's lists may not be as up-to-date or in line with its allies' as would be preferable given Canada's strong commitment to such alignment.

Each of these issues becomes more problematic when examined next to another key finding of this thesis, which is that the most commonly-cited objective of Canada's autonomous sanctions was some variation of 'to align with allies,' or 'to signal to allies.' The purpose of these cited objectives is to explain the intention, purpose, or goal of the sanction's measures included in the particular regulation. In Canada's case, then, alignment with allies is not only a means to an end (i.e., a means to ensuring effectiveness of sanctions), but in many cases, it appears that alignment with allies or signalling to allies Canada's position on a particular issue is also one of the *end goals* of applying the sanctions. If one of the primary reasons that Canada imposes sanctions is to show its allies that it shares similar values, this may mean that the other objectives are secondary, or less important than simply enacting the sanctions. This is in line with Nossal's argument that Canada is interested in appearing to be doing something about a serious issue, but without robustly and consistently imposing sanctions in a way that *is* likely to meaningfully address these issues.³⁰² This behaviour also appears to confirm Lilly and Arabi's thesis that the *JVCFOA* was adopted primarily

³⁰¹ Nesbitt, "Canada's 'Unilateral' Sanctions Regime under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act," *Ottawa Law Review* 48, no. 2 (March 1, 2017)., p.528.

³⁰² Nossal, *Rain Dancing: Sanctions in Canadian and Australian Foreign Policy* (Toronto: University of Toronto Press, 1994)., *preface*, p., xiii.

for symbolic reasons.³⁰³ If one of the key reasons behind Canada's use of autonomous sanctions is to signal and align with allies, there are many adjustments it could make to its legislation and administrative approach to sanctioning to improve this cooperation. Recommendations to this end will be discussed further below.

5.2.4. Agreement with allies on targets

Fourth and finally, this thesis highlights that Canada and its allies tend to all agree on targets and sanctions measures best when they concern Russia (and Ukraine by extension regarding the Annexation of Crimea), China, and Belarus or individuals from these states. Canada's closest allies are primarily Western states and tend to be NATO allies, with its closest sanctioning allies being the United States, the European Union, and the United Kingdom. Given that an objective of many of Canada's sanctions regulations is to align with allies or to show support for allies' similar actions, sanctioning Russia and China with allies is a way for Canada to advance its foreign policy priorities in multiple avenues.

Russia and China are typically considered adversaries, or at minimum, competitors to Western states like Canada and its allies, and both states are seen as threats to NATO and are P5 members of the UNSC. As discussed, this last point means that UNSC sanctions are not an option, since both states have a veto power. The relationship between these two states and Canada and its allies is particularly emphasized in a world order that is changing to pit nationally minded states and globally-minded states like Canada against each other. In this context, it is in the best interest of Canada and its allies to unite against these states to apply autonomous sanctions in response to egregious human rights abuses or actions that are deemed likely to result in a breach of international peace and security, which may help to explain why Canada and its allies are so easily able to cooperate when sanctioning these states. This also explains why there may be less cooperation between Canada and its allies when it comes to targeting less powerful states, or states engaging in activities aside from human rights abuses and breaches of international peace and security. Indeed, it is intuitive that there might be less alignment between allies on sanctions targets when there is no foreign policy interest for certain states and/or no perceived threat to their own

³⁰³ Lilly and Arabi, "Symbolic Act, Real Consequences: Passing Canada's Magnitsky Law to Combat Human Rights Violations and Corruption," *International Journal: Canada's Journal of Global Policy Analysis* 75, no. 2 (2020): p. 164.

national interests (i.e., regarding less powerful or geographically relevant states to western countries). There also tends to be less alignment when it comes to sanctioning to address corruption, and particularly corruption alone, as discussed earlier in this chapter, since corruption is political, and political interests among states are likely to vary.

It is in the best interest of Canada and its allies to coordinate, as much as possible, the individual listings, measures, and timing of sanctions implementation to maximize effectiveness and to appear more united against a real or perceived collective threat. For Canada, it is particularly important to sanction with allies when targeting large powers like China and Russia to avoid being sole recipients of retaliatory measures. Several Canadian Members of Parliament have been targeted by retaliatory Russian sanctions in the past in response to Canada's sanctions related to the annexation of Crimea and related to the poisoning and detention of Alexei Navalny.³⁰⁴ China has also imposed retaliatory sanctions against Canadians in response to Canada's invocation of the *SEMA* against Chinese individuals related to human rights violations.³⁰⁵ Aside from this, China has also instituted an anti-sanctions law which authorizes the Chinese State Council to list individuals or entities engaged in 'discriminatory sanctions,' and to impose similar measures (i.e., asset freezes, travel bans, and 'other necessary measures').³⁰⁶ In summary, Canada has experienced, and is wary of triggering more extensive, retaliatory measures, and will therefore likely continue to sanction with allies against these larger powers.

Substantively, Russia's continued military build-up along the Ukraine border has triggered further discussions regarding coordinated sanctions among Canada and its allies.³⁰⁷ In this climate, it is expected that Canada and its allies will continue to strongly agree on sanctions measures when it comes to addressing Russia's actions related to Ukraine, especially because these actions in some ways reflect a similar approach taken by Russia prior to its illegal annexation of Crimea. Canada

³⁰⁴ "Moscow Bans Nine Prominent Canadians from Russia in Sanctions Response," Reuters, June 7, 2021, <https://www.reuters.com/world/moscow-response-sanctions-bans-nine-canadian-citizens-entering-russia-2021-06-07/>.

³⁰⁵ Hannah Jackson, "Garneau Slams China's Sanctions, Says They Are an 'Attack on Transparency' - National," Global News, March 27, 2021, <https://globalnews.ca/news/7723651/garneau-china-sanctions/>.

³⁰⁶ "Anti-Foreign Sanctions Law," Global Affairs Canada, June 29, 2021, https://www.tradecommissioner.gc.ca/china-chine/anti_foreign_sanctions_law-loi_anti_sanctions_etrang.aspx?lang=eng.

³⁰⁷ Andrea Shalal, "Swift off Russia Sanctions List, State Banks Likely Target -U.S., EU Officials," Reuters, February 11, 2022, <https://www.reuters.com/world/europe/swift-off-russia-sanctions-list-state-banks-likely-target-us-eu-officials-2022-02-11/>; "Russia Will Face 'Coordinated Sanctions' If Any Further Incursion into Ukraine: Trudeau - National," Global News, February 1, 2022, <https://globalnews.ca/news/8585126/house-of-commons-debate-ukraine-russia/>.

and its allies may also continue to see Belarus as a clear target because there are not only widespread human rights violations including challenges to democratic rights, but it is also a state deeply interwoven with Russia and geographically situated in a place of geopolitical importance—sharing borders with both Russia and Ukraine.³⁰⁸

There will likely also continue to be alignment in reference to China's ongoing genocide of the Uyghur population within its borders, due to the collective value of human rights among Canada and allies, but also in part due to the ongoing adversarial relationship between the United States, other allies of Canada's, and China. When it comes to other conflicts, it is difficult to tell how much coordination there will be, however, there are strong indications of increased collaboration between Canada and its allies in reference to sanctions against Myanmar as captured in the pivot table in Annex 1.

Importantly, however, alignment on broad foreign policy priorities with allies does not always translate to effective sanctions. To maximize effectiveness when sanctioning with allies, Canada and its allies would need to ensure that individuals and entities listed align as closely as possible, as well as the measures applied, and ideally at the same time as one another or announced in coordination to prevent asset flight or other forms of contravention. There are also improvements Canada could make to its legislation and administrative processes to ensure it is ready and able to keep pace with allies when targeting these larger powers. These recommendations will be laid out in the following and final section.

5.3: Policy-specific recommendations and areas for future research

The following policy recommendations have been formulated based on the findings of this thesis, existing research on the topic of Canadian sanctions, and recommendations from the 2017 report to the Standing Committee on Foreign Affairs that have yet to be implemented. These recommendations are all made to the Government of Canada and are divided into three sections: changes to the *SEMA* and *JVCFOA* legislation, administrative or legal, and

³⁰⁸Michael Kimmage, "Belarus and the Ukraine Trap," War on the Rocks, July 21, 2021, <https://warontherocks.com/2021/07/belarus-and-the-ukraine-trap/>.

outreach/education/communication. This thesis concludes by establishing potential areas for future research.

5.3.1 Changes to the SEMA and JVCFOA legislation

- The *JVCFOA* is narrow in scope and does not allow for targeting entities. It would be useful to enable the Government of Canada to list entities under the *JVCFOA*. This is because entities can facilitate human rights abuses, and in a case where the listing threshold of the *SEMA* is not met, but *is* met under the *JVCFOA* (e.g., if a human rights incident is isolated, and not in connection to broader circumstances in a state) there is currently no option to sanction entities in connection to such an incident.
- The *JVCFOA* 's preamble is highly Russia-focussed, which in some ways undermines the spirit of the legislation and one key element of it— the *JVCFOA* is meant to enable Canada to sanction individuals from any state and without any connection to the state of origin of their crime(s). It is recommended to remove the specific references to Russia from the preamble, and to make the name more reflective of all thematic applications of the legislation (including to address human rights abuses).
- The title of the *SEMA* still includes the term “economic,” which is outdated, as it references comprehensive, economic sanctions of the past. Currently, the types of measures available under the *SEMA* are wide-ranging. It is recommended to rename the *SEMA* to better reflect its purpose.
- Currently the financial penalties of the *SEMA* and *JVCFOA* are low in comparison to the *UNA*, which reduces the risk to perpetrators and sanctions busters. It is recommended to review why, if for any legal or other reason, these penalties remain low, and to increase the cost to perpetrators if deemed possible and useful.
- Currently there is no formal, ongoing review process of the sanctions lists. It is recommended to consider legislating more frequent reviews of the lists to ensure Canada is able to keep pace with allies and to de-list where applicable, and/or to implement expiration dates for regulations.

5.3.2. Administrative/legal

- Currently targets are not informed when they have been sanctioned, yet sanctions are most effective at the signalling and communication stage. The Government of Canada also does not list what the individual targets are being sanctioned for, meaning that the triggering mechanism invoked is not always clear. It is recommended to inform targets when they are sanctioned, and to list the specific triggering mechanism that applies (e.g., human rights violations).
- While some variation is inevitable, regulations terminology, definitions, and categories and their placements tend to be inconsistent. For example, sometimes definitions are part of the regulations, sometimes an interpretation is provided, sometimes a section on duty to determine and disclosure is included or application for certificates and exceptions are listed but in other cases not. It is recommended to streamline language and organize information on the GAC sanctions website so that information is easy to find and search, and so that sections within regulations are consistent and easy to compare with previous regulations.

5.3.3. Outreach/education/communication

- The Government of Canada does not provide advice to the public about how to interpret the *SEMA* and the *JVCFOA*, which can make compliance more difficult. It is recommended to engage in more public outreach and educational activities, and to provide more assistance to the public regarding interpretation. This could reasonably include a legal guide document available on the GAC sanctions webpage.
- Currently, it may be unclear to webpage viewers that inadmissibility to Canada (travel sanctions) apply in all cases. It is recommended that GAC add the inadmissibility icon to the sanction's webpage as applicable as they do for other measures.
- Currently, information available about targets in the Consolidated Autonomous Sanctions list online including names, aliases, and other identifying information is limited. While there may be compelling privacy concerns in some cases, where Canada aligns with allies in sanctioning, this personal information about targets is often already made public by Canada's allies. Therefore, it is recommended to make this information available wherever possible to facilitate better compliance.

5.3.4. Conclusion and Areas for future research

This thesis argues that Canada is currently not using its autonomous sanctions as effectively as it could and provides recommendations as to how Canada could adjust its legislation, website, and outreach activities to improve the state of its sanctions practice, particularly to advance cooperation with allies.

Further research should continue to monitor the patterns discussed above, particularly regarding how Canada uses its autonomous legislation and its choice between the legislation to determine whether the findings of this thesis remain true over time. Specifically, it would be interesting to see whether the Government of Canada continues to choose the *SEMA* over the *JVCFOA* when addressing human rights abuses, and whether the *JVCFOA* is invoked at all in 2022. Another area to monitor is the most common triggering mechanisms— will Canada start to sanction more to address corruption, or will it continue to focus on human rights abuses and what it perceives to be more widespread threats to international peace and security?

Additionally, it will be critical to monitor whether changes to the *SEMA* and *JVCFOA* legislation are made, and whether any of the recommendations listed above are also raised during the official review legislated to occur prior to October 2022. If the answer to the latter is yes, it will also be necessary to monitor any responses and follow-up actions to determine whether the Government is more, less, or similarly responsive to recommendations in comparison to those made in 2017.

Finally, future research could delve into the extent to which Canada's legislation aligns with or diverges from its closest sanctioning allies' and could further examine and compare specific listings under Canada's and its allies' legislation. This would help us to better understand the extent to which Canada is successful in *achieving* one of its key objectives of sanctions, which is to align with allies and/or signal solidarity, as well as to what extent Canada is maximizing potential effectiveness of sanctions (by aligning as closely as possible with allies).

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“U.S. Sanctions and Other Measures Imposed on Russia in Response to Russia's Use of Chemical Weapons - United States Department of State,” U.S. Department of State, March 2, 2021, <https://www.state.gov/u-s-sanctions-and-other-measures-imposed-on-russia-in-response-to-russias-use-of-chemical-weapons/>.

“World Report 2021: Rights Trends in Russia,” Human Rights Watch, January 13, 2021, <https://www.hrw.org/world-report/2021/country-chapters/russia>.

Annex 1: Use of the *SEMA* and *JVCFOA*

Table 3: Use of the *SEMA* and *JVCFOA* legislation between 2017- 2021.

	Date of <i>SEMA</i> and <i>JVCFOA</i> sanctions between Sept 2017- Dec 2021	Sanctions regime (<i>SEMA</i> or <i>JVCFOA</i>)	Targets (State, individual, or both)	Objective(s)	Triggering mechanism	Reason for imposing sanctions	Exceptions	Other sanctioning partners or unilateral
1	September 22, 2017	<i>SEMA</i>	Venezuela and 40 individuals from Venezuela	These measures are in accordance with the recommendations of the association between the governments of Canada and the United States.	Organization to which Canada is a member	Noting that the Venezuelan government is becoming more authoritarian, that Venezuelans are increasingly unable to exercise their rights, that the Venezuelan economy is continuing to deteriorate, and that the prospects for a democratic restoration appear low, the governments of the United States of America and Canada decided, in Ottawa, Ontario, on September 5, 2017, to form an association for the purpose of discussing and recommending measures to respond to the situation in Venezuela. The association met on September 5, 2017, and recommended that its members take measures to respond to the situation in	<ul style="list-style-type: none"> • Payments made by or on behalf of listed persons pursuant to contracts entered into prior to the coming into force of the Regulations, provided that the payments are not made to or for the benefit of a listed person; • Transactions necessary for a Canadian to transfer to a non-listed person any accounts, funds or investments of a Canadian held by a listed person on the day on which that person became listed; • Any dealings with a listed person required 	United States ³⁰⁹

³⁰⁹ Of these 40 persons, the United States has sanctioned 25 under the Venezuelan Executive Order 13692 and 1 under the Kingpin Act.

					<p>Venezuela and called upon its members to take economic measures against Venezuela and persons responsible for the current situation in Venezuela. The association further called upon its members to continue to monitor the situation and adjust measures as appropriate.</p> <p>Taken together, these actions represent a breakdown in constitutional order and a violation of regional and international norms of democratic governance.</p>	<p>with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with a person other than a listed person, and, and for enforcement and realization of security in respect of those loans, or payments by guarantors guaranteeing those loans;</p> <ul style="list-style-type: none"> • Any dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with a listed person before that person became a listed person, and for enforcement and realization of security in respect of those loans, or payments by guarantors guaranteeing those loans; • Pension payments to any person in Canada or any Canadian outside Canada; • Financial services required in order for a listed person to obtain 	
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							<p>legal services in Canada with respect to the application of any of the prohibitions in these Regulations;</p> <ul style="list-style-type: none"> • Any transaction in respect of any account at a financial institution held by a diplomatic mission, if the transaction is required in order for the mission to fulfill its diplomatic functions as set out in Article 3 of the Convention or, if the diplomatic mission has been temporarily or permanently recalled, when the transaction is required in order to maintain the mission premises; • Any transaction with any international organization with diplomatic status, with any United Nations agency, with the International Red Cross and Red Crescent Movement, or with any entity that has entered into a grant or contribution agreement with the Department of Foreign Affairs, Trade and Development; and 	
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							<ul style="list-style-type: none"> • A transaction by the Government of Canada that is provided for in any agreement or arrangement between Canada and Venezuela. 	
2	November 3, 2017	JVCFOA	30 individuals from Russia	<p>The main objectives of the Regulations are</p> <ul style="list-style-type: none"> • to signal Canada’s international condemnation of the individuals responsible for or complicit in the gross violations of internationally recognized human rights and acts of significant corruption that occurred in the case of Sergei Magnitsky and that continue to occur in Venezuela and in South Sudan; • to end impunity for those responsible for or complicit in these acts by denying such individuals the ability to store their wealth in Canada or otherwise use Canada and the Canadian financial system for their benefit; and 	Gross human rights violations/acts of significant corruption	<p>Fifty-two listed foreign nationals are found in the Schedule of the Regulations because the Governor in Council is of the opinion that they are responsible for or complicit in at least one of the acts described below:</p> <ul style="list-style-type: none"> • gross violations of internationally recognized human rights against Sergei Magnitsky, an individual who sought to expose illegal activities carried out by foreign public officials in Russia, or acts of significant corruption, or both 	<p>The <i>Justice for Victims of Corrupt Foreign Officials Act</i> permit Authorization Order allow the Minister of Foreign Affairs to issue to any person in Canada and Canadian outside Canada a permit to carry out a specified activity or transaction, or any class of activity or transaction, that is otherwise prohibited under the Act or under the Regulations. It also authorizes the Minister to issue a general permit to allow any person in Canada and any Canadian outside Canada to carry out a class of activity or transaction that is otherwise prohibited under the Act or under the Regulations.</p>	United States, United Kingdom, Estonia, Lithuania, and Latvia

				<ul style="list-style-type: none"> to establish a mechanism to list individuals in the future through amendments to the Regulations. 				
3	November 3, 2017	<i>JVCFOA</i>	3 individuals from South Sudan	<p>The main objectives of the Regulations are</p> <ul style="list-style-type: none"> to signal Canada’s international condemnation of the individuals responsible for or complicit in the gross violations of internationally recognized human rights and acts of significant corruption that occurred in the case of Sergei Magnitsky and that continue to occur in Venezuela and in South Sudan; to end impunity for those responsible for or complicit in these acts by denying such individuals the ability to store their wealth in Canada or otherwise use Canada and the Canadian financial system for their benefit; and 	Gross human rights violations and/or acts of significant corruption	<p>Fifty-two listed foreign nationals are found in the Schedule of the Regulations because the Governor in Council is of the opinion that they are responsible for or complicit in at least one of the acts described below:</p> <ul style="list-style-type: none"> gross violations of internationally recognized human rights against individuals who either sought to expose illegal activities carried out by foreign public officials or who sought to exercise, promote, or defend international rights and freedoms in Venezuela or South Sudan; or acts of significant corruption by public officials or their associates in Venezuela or South Sudan. 	<p>The <i>Justice for Victims of Corrupt Foreign Officials Act</i> permit Authorization Order allow the Minister of Foreign Affairs to issue to any person in Canada and Canadian outside Canada a permit to carry out a specified activity or transaction, or any class of activity or transaction, that is otherwise prohibited under the Act or under the Regulations. It also authorizes the Minister to issue a general permit to allow any person in Canada and any Canadian outside Canada to carry out a class of activity or transaction that is otherwise prohibited under the Act or under the Regulations.</p>	United States

				<ul style="list-style-type: none"> 3. to establish a mechanism to list individuals in the future through amendments to the Regulations. 				
4	November 3, 2017	<i>JVCFOA</i>	19 individuals from Venezuela	<ul style="list-style-type: none"> The main objectives of the Regulations are to signal Canada's international condemnation of the individuals responsible for or complicit in the gross violations of internationally recognized human rights and acts of significant corruption that occurred in the case of Sergei Magnitsky and that continue to occur in Venezuela and in South Sudan; to end impunity for those responsible for or complicit in these acts by denying such individuals the ability to store their wealth in Canada or otherwise use Canada and the Canadian financial system for their benefit; and 	Gross human rights violations/acts of significant corruption	<ul style="list-style-type: none"> gross violations of internationally recognized human rights against individuals who either sought to expose illegal activities carried out by foreign public officials or who sought to exercise, promote, or defend international rights and freedoms in Venezuela or South Sudan; or acts of significant corruption by public officials or their associates in Venezuela or South Sudan. 	The <i>Justice for Victims of Corrupt Foreign Officials Act</i> permit Authorization Order allow the Minister of Foreign Affairs to issue to any person in Canada and Canadian outside Canada a permit to carry out a specified activity or transaction, or any class of activity or transaction, that is otherwise prohibited under the Act or under the Regulations. It also authorizes the Minister to issue a general permit to allow any person in Canada and any Canadian outside Canada to carry out a class of activity or transaction that is otherwise prohibited under the Act or under the Regulations.	United States

				<ul style="list-style-type: none"> to establish a mechanism to list individuals in the future through amendments to the Regulations. 				
5	February 16, 2018	JVCFOA	1 individual from Myanmar	<p>The main objectives of the Regulations are</p> <ul style="list-style-type: none"> to signal Canada’s international condemnation of one of the individuals responsible for or complicit in gross violations of internationally recognized human rights against individuals who are seeking to obtain, exercise, defend or promote internationally recognized human rights and freedoms or who seek to expose illegal activities carried out by a foreign public official; and to end impunity for the individual responsible for or complicit in these acts by restricting dealings in property and freeze the assets 	Gross human rights violations	The Regulations amend the schedule to include Major General Maung Maung Soe, a Myanmar national and a high-level military official who was formerly the chief of the Western Command in Myanmar’s army in charge of military operations in Myanmar’s Rakhine State. In that capacity, Maung Maung Soe was responsible for overseeing military operations launched in northern Rakhine in both October 2016 and late August 2017, and is therefore, in the opinion of the Governor in Council, assessed to be responsible for these reported extrajudicial killings and other gross violations of internationally recognized human rights committed against Rohingya individuals in northern Rakhine.	The <i>Justice for Victims of Corrupt Foreign Officials Act</i> permit Authorization Order allow the Minister of Foreign Affairs to issue to any person in Canada and Canadian outside Canada a permit to carry out a specified activity or transaction, or any class of activity or transaction, that is otherwise prohibited under the Act or under the Regulations. It also authorizes the Minister to issue a general permit to allow any person in Canada and any Canadian outside Canada to carry out a class of activity or transaction that is otherwise prohibited under the Act or under the Regulations.	United States, European Union

				of listed foreign nationals.				
6	May 29, 2018	SEMA	Venezuela and 14 new individuals from Venezuela	The objectives of the <i>Regulations Amending the Special Economic Measures (Venezuela) Regulations</i> (the Regulations) are to respond to recent anti-democratic actions of the Maduro regime, namely the calling of the presidential elections in unacceptable conditions. The Regulations aim at sending a message to members of the Government of Venezuela that their anti-democratic actions have consequences, demonstrate to Canadians more broadly that the government is prepared to take action when regional norms of democratic good governance are flouted, and show solidarity with the actions of the like-minded countries in the hemisphere.	Organization to which Canada is a member	The new names identified for addition to the Schedule are directly linked to the regime's recent anti-democratic actions, particularly in relation to the presidential elections. Taking action against the persons listed in the Regulations will show members of the Government of Venezuela that their anti-democratic actions have consequences and also demonstrate more broadly that the Government of Canada is prepared to take action when regional norms of democratic good governance are flouted. These measures are in line with, and support the actions of like-minded countries in the hemisphere and globally.	Not listed in regulation.	United States, European Union, Switzerland, Panama

7	June 25, 2018	SEMA	Myanmar and 7 individuals from Myanmar	<ul style="list-style-type: none"> • Signal Canada’s international condemnation of the situation in Myanmar. • End impunity for the individuals responsible for, or complicit in, these acts. 	Gross human rights violations/ breach of international peace and security	<p>The seven individuals added to the Schedule of Regulations were directly linked to the military operations in northern Rakhine State in late August 2017, which included human rights violations against Rohingya civilians, such as infanticide, gang rape and other types of sexual violence, mass killings, as well as arson, at the hands of the Myanmar Army. These military operations further resulted in an ongoing humanitarian crisis, with more than 720 000 Rohingya refugees having fled into neighbouring Bangladesh. The listing signals Canada’s condemnation of individuals responsible for this international crisis and intent to end impunity for individuals who commit these acts. It also aligns with the European Union’s announcement to impose sanctions on the same list of individuals on June 25, 2018.</p>	<p>There are exceptions to the above-noted prohibitions, including</p> <p>(a) any activity engaged in under an agreement or arrangement between Canada and Burma;</p> <p>(b) any payment made by or on behalf of a designated person that is due under a contract entered into before the person became a designated person, provided that the payment is not made to or for the benefit of a designated person;</p> <p>(c) any goods made available, or services provided, to or by any of the following entities for the purpose of safeguarding human life, disaster relief, democratization, stabilization or providing food, medicine, medical supplies or equipment or development assistance:</p> <ul style="list-style-type: none"> • an international organization with diplomatic status, • a United Nations agency, • the International Red Cross and Red 	European Union
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							<p>Crescent Movement, or</p> <ul style="list-style-type: none"> • a non-governmental organization that has entered into a grant or contribution agreement with the Department of Foreign Affairs and International Trade or the Canadian International Development Agency; and <p>(d) any transaction necessary for a Canadian to transfer any existing accounts, funds or investments of a Canadian held with a designated person to a person other than a designated person.</p> <p>A separate <i>Special Economic Measures (Burma) Permit Authorization Order</i> made pursuant to subsection 4(4) of the <i>Special Economic Measures Act</i> authorizes the Minister of Foreign Affairs to issue to any person in Canada and any Canadian outside Canada a permit to carry out a specified activity or transaction, or any class of activity or transaction that is otherwise restricted or</p>	
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							prohibited pursuant to the Regulations.	
8	November 29, 2018	<i>JVCFOA</i>	17 individuals from Saudi Arabia	<p>The main objectives of the Regulations are</p> <ul style="list-style-type: none"> to signal Canada’s condemnation of the gross violations of internationally recognized human rights; and to seek an end to impunity for these violations. 	Gross human rights violations	In the opinion of the Governor in Council, 17 foreign nationals were responsible for, or complicit in the torture and extrajudicial killing of Jamal Khashoggi.	The <i>Justice for Victims of Corrupt Foreign Officials Permit Authorization Order</i> , which came into force on November 2, 2017, authorizes the Minister of Foreign Affairs to issue to any person in Canada and Canadian outside Canada a permit to carry out a specified activity or transaction, or any class of activity or transaction, that is otherwise prohibited pursuant to the Regulations, and issue a general permit to any person to carry out a class of activity or transaction that is otherwise prohibited pursuant to the <i>Justice for Victims of Corrupt Foreign Officials Regulations</i> .	United States, European Union, United Kingdom (retroactively)
9	March 15, 2019	<i>SEMA</i>	Russia and 25 individuals from Russia and 15 entities	<ul style="list-style-type: none"> Align with actions taken by international partners to underscore continued trans- 	Breach of international peace and security	Related to the illegal annexation of Crimea: Violation of International Peace and Security trigger	Not listed.	United States, European Union ³¹⁰

³¹⁰ While sanctions regulatory mechanisms of Canada, the United States and the EU are inherently different, a number of the proposed amendments will help align the sanctions listings on both Russia and Ukraine.

				<p>Atlantic unity in responding to Russia's actions in Ukraine.</p> <ul style="list-style-type: none"> • Maintain pressure on Russia to fully implement its Minsk commitments. • Demonstrate Canada's commitment to a policy of non-recognition of Russia's illegal annexation of Crimea. • Signal to Russia that its most recent actions in the Kerch Strait, connected to its illegal annexation and ongoing occupation of Crimea, carry consequences and that Canada is willing to increase costs to Russia for the continued destabilization in Ukraine. 		<p>The individuals and entities added to the schedules of the Russia and Ukraine Regulations are linked to Russia's illegal annexation and ongoing occupation of Crimea, and the continuing violation of Ukraine's sovereignty and territorial integrity. Russia continues to consolidate its illegal control over Crimea, including through the illegal construction of the Kerch Strait Bridge, which was partially opened in May 2018, and attempts to block and delay the passage of Ukrainian and foreign vessels through the Kerch Strait. Russia's aggressive actions of November 25, 2018, including the ramming, shooting, seizure of Ukrainian vessels, and detention of Ukrainian sailors were disproportionate and unacceptable. These actions further contribute to insecurity in Ukraine and destabilization of the region, and demonstrate a fundamental disregard by Russia for Ukraine's sovereignty. The listings signal Canada's strong condemnation of Russia's continued aggression in Ukraine. It has also been</p>	
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						determined that Canada’s Schedule 1 prohibitions under the Russia Regulations (which freeze assets and prohibits any dealings) on the entity JSC United Aircraft Corporation go beyond the sanctions actions of our like-minded partners, and in turn, have negatively affected the competitiveness of the Canadian civil aviation industry. This entity has been moved to Schedule 2 (no new debt financing greater than 30 days), which aligns Canada with the sanctions actions of our like-minded partners.		
10	March 15, 2019	SEMA	90 individuals from Ukraine and 1 entity	<ul style="list-style-type: none"> Align with actions taken by international partners to underscore continued trans-Atlantic unity in responding to Russia’s actions in Ukraine. Maintain pressure on Russia to fully implement its Minsk commitments. Demonstrate Canada’s 	Breach of international peace and security	The individuals and entities added to the schedules of the Russia and Ukraine Regulations are linked to Russia’s illegal annexation and ongoing occupation of Crimea, and the continuing violation of Ukraine’s sovereignty and territorial integrity. Russia continues to consolidate its illegal control over Crimea, including through the illegal construction of the Kerch Strait Bridge, which was partially opened in	Not listed.	United States, European Union ³¹¹

³¹¹ While sanctions regulatory mechanisms of Canada, the United States and the EU are inherently different, a number of the proposed amendments will help align the sanctions listings on both Russia and Ukraine. <https://gazette.gc.ca/rp-pr/p2/2019/2019-04-03/html/sor-dors71-eng.html>

				<p>commitment to a policy of non-recognition of Russia's illegal annexation of Crimea.</p> <ul style="list-style-type: none"> Signal to Russia that its most recent actions in the Kerch Strait, connected to its illegal annexation and ongoing occupation of Crimea, carry consequences and that Canada is willing to increase costs to Russia for the continued destabilization in Ukraine. 		<p>May 2018, and attempts to block and delay the passage of Ukrainian and foreign vessels through the Kerch Strait. Russia's aggressive actions of November 25, 2018, including the ramming, shooting, seizure of Ukrainian vessels, and detention of Ukrainian sailors were disproportionate and unacceptable. These actions further contribute to insecurity in Ukraine and destabilization of the region, and demonstrate a fundamental disregard by Russia for Ukraine's sovereignty. The listings signal Canada's strong condemnation of Russia's continued aggression in Ukraine.</p>		
11	April 15, 2019	SEMA	Venezuela and 43 individuals from Venezuela	<p>To:</p> <ul style="list-style-type: none"> respond to the ongoing anti-democratic actions of the Maduro regime; send a message to members of the Government of Venezuela that their anti-democratic 	Organization to which Canada is a member	<p>The individuals added to the Schedule of listed persons in the <i>Special Economic Measures (Venezuela) Regulations</i> are directly linked to the regime's antidemocratic actions, particularly in relation to repression, the use of force and censorship, and the control of public institutions</p>	<p>Canada has included exemptions in sanctions regulations and issues permits to allow the delivery of humanitarian assistance to provide some mitigation of the impact of sanctions on vulnerable groups.</p>	United States, European Union. ³¹²

³¹² These measures are in line with, and support the actions of like-minded countries in the hemisphere and globally; 23 of the 43 individuals have already been sanctioned by the United States and/or the European Union. In addition, Argentina, Colombia, Panama, Peru and Switzerland have also applied punitive measures against the Maduro regime.

				<p>actions have consequences;</p> <ul style="list-style-type: none"> • demonstrate to Canadians more broadly that the Government is prepared to take action when regional norms of democratic good governance are flouted; and • show solidarity with the actions of like-minded countries in the hemisphere 		<p>to personal benefit. Imposing additional sanctions will demonstrate to the Maduro regime that anti-democratic actions have consequences and, more broadly, that the Government of Canada is prepared to take action when regional norms of democratic good governance are flouted.</p>		
12	June 21, 2019	SEMA	Nicaragua and 9 individuals from Nicaragua	<ul style="list-style-type: none"> • to put pressure on the Government of Nicaragua to change its behaviour • to communicate a clear message to the Government of Nicaragua that Canada will not accept that gross and systematic human rights violations continue to take place at the hands of the State with impunity • to encourage progress with the negotiation process 	Gross human rights violations	The sanctions communicate a clear message that Canada will not accept that gross and systematic human rights violations continue to take place in Nicaragua at the hands of the State with impunity. As efforts to date have not convinced President Ortega to accept accountability for human rights violations nor to fully implement agreements stemming from the negotiation process with opposition groups, sanctions send an important message from Canada and encourage progress with the negotiations.	Section 3 does not apply in respect of <ul style="list-style-type: none"> • any payment made by or on behalf of a listed person that is due under a contract entered into before the person became a listed person, provided that the payment is not made to a listed person or to a person acting on behalf of a listed person; • any transactions necessary for a Canadian to transfer to a non-listed person any accounts, funds or 	United States ³¹³

³¹³ While the Regulations are not related to a work plan or commitment under a formal regulatory cooperation forum, they align with sanctions that have been taken by the United States in relation to Nicaragua. <https://canadagazette.gc.ca/rp-pr/p2/2019/2019-07-10/html/sor-dors232-eng.html>

							<p>investments of a Canadian held by a listed person on the day on which that person became a listed person;</p> <ul style="list-style-type: none"> • (c) any dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with any person other than a listed person, and for enforcement and realization of security in respect of those loans, or payments by guarantors guaranteeing those loans; • (d) any dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with a listed person before that person became a listed person, and for enforcement and realization of security in respect of those loans, or payments by 	
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							<p>guarantors guaranteeing those loans;</p> <ul style="list-style-type: none"> • (e) any benefit paid under the <i>Old Age Security Act</i>, the <i>Canada Pension Plan</i> or an Act respecting the <i>Québec Pension Plan</i>, CQLR, c. R-9, any superannuation, pension or benefit paid under or in respect of any retirement savings plan or under any retirement plan, any amount paid under or in respect of the <i>Garnishment, Attachment and Pension Diversion Act</i> or the <i>Pension Benefits Division Act</i>, and any other payment made in respect of disability to any person in Canada or any Canadian outside Canada; • (f) financial services required in order for a listed person to obtain legal services in Canada with respect to the application of any of the prohibitions set out in these Regulations; 	
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							<ul style="list-style-type: none"> • (g) any transaction in respect of any account at a financial institution held by a diplomatic mission, if the transaction is required in order for the mission to fulfill its diplomatic functions as set out in Article 3 of the Vienna Convention on Diplomatic Relations or, if the diplomatic mission has been temporarily or permanently recalled, when the transaction is required in order to maintain the mission premises; • (h) any transaction with any international organization with diplomatic status, with any United Nations agency, with the International Red Cross and Red Crescent Movement, or with any entity that has entered into a grant or contribution agreement with the Department of Foreign Affairs, Trade and Development; and • (i) a transaction by the Government of Canada that is 	
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							provided for in any agreement or arrangement between Canada and Nicaragua.	
13	June 25, 2019	SEMA	Removed 1 individual (Manuel Ricardo Cristopher Figuera) from Venezuela	<p>The objective of the <i>Regulations Amending the Special Economic Measures (Venezuela) Regulations</i> (the “Amending Regulations”) is to remove Manuel Ricardo Cristopher Figuera from the Schedule of listed persons in order to</p> <ul style="list-style-type: none"> • demonstrate that Canada’s sanctions are not intended to be permanent; • send a clear message to members of the Maduro regime that Canada is willing to review the list of Venezuelan officials sanctioned as long as they support the return to democracy in Venezuela; and • show solidarity with the actions of the United States. 	N/A	<p>The amendment to remove Manuel Ricardo Cristopher Figuera from the Schedule of listed persons in the <i>Special Economic Measures (Venezuela) Regulations</i> demonstrates to members of the Maduro regime that Canada will consider delisting other sanctioned Venezuelans as long as they support the return to democracy in Venezuela. The proposed amendment is consistent with actions taken by the United States further to discussions held within the context of the Canada-United States Association Concerning the Situation in Venezuela.</p> <p>While sanction imposition may entail certain costs to business in lost business opportunities, delisting will not create any additional costs, and will reduce the existing regulatory compliance burden of Canadian banks and financial institutions.</p>	N/A	United States

14	June 25, 2019	SEMA	1 individual from Russia replaced	<ul style="list-style-type: none"> To correct the misspelled name of the intended sanctions target, an individual who was involved in Russia's actions against Ukrainian vessels and personnel during the November 25, 2018, incident. Align with actions taken by international partners to underscore continued trans-Atlantic unity in responding to Russia's actions in Ukraine. 	N/A	N/A	N/A	United States
15	January 29, 2020	SEMA	6 individuals from Ukraine	<ul style="list-style-type: none"> Align Canada's actions with those taken by international partners to underscore continued trans-Atlantic unity in responding to Russia's actions in Ukraine; and Demonstrate Canada's commitment to a 	Breach of international peace and security	The individuals added to the schedule to the Ukraine Regulations are linked to Russia's illegal annexation and ongoing occupation of Crimea, and to the continuing violation of Ukraine's sovereignty and territorial integrity. Russia continues to consolidate its illegal control over Crimea, including through the organization and facilitation of illegitimate regional	Not listed.	United States, European Union ³¹⁴

³¹⁴ While the regulatory mechanisms for sanctions in Canada, the U.S. and the EU are inherently different, the Regulations align with U.S. and EU sanction measures on Ukraine. <https://gazette.gc.ca/rp-pr/p2/2020/2020-02-19/html/sor-dors15-eng.html>

				policy of non-recognition of Russia's illegal annexation of Crimea.		elections in the region in September 2019. These elections have not been recognized by Canada and other like-minded countries, nor are those elected individuals recognized as official representatives of the territory. These actions further contribute to the insecurity in Ukraine and the destabilization of the region by enforcing Russian laws and exercising Russian sovereignty on Ukrainian territory without the authorization of the Government of Ukraine. The listings signal Canada's strong condemnation of this ongoing Russian behaviour.		
16	September 28, 2020	SEMA	Belarus and 11 individuals from Belarus	<ul style="list-style-type: none"> To put pressure on the Government of Belarus to change its behaviour. To communicate a clear message to the Government of Belarus that Canada will not accept that gross and systematic human rights violations continue to take place at the 	Gross and systematic human rights violations	<p>(a) a person who has participated in gross and systematic human rights violations in Belarus;</p> <p>(b) a current or former senior official of the Government of Belarus;</p> <p>(c) an associate or family member of a person referred to in paragraph (a) or (b);</p> <p>(d) an entity owned, held or controlled, directly or indirectly, by a person referred to in paragraph (a),</p>	<p>4 Section 3 does not apply in respect of</p> <p>(a) any payment made by or on behalf of a listed person that is due under a contract entered into before the person became a listed person, provided that the payment is not made to a listed person or to a person acting on behalf of a listed person;</p>	United Kingdom ³¹⁵

³¹⁵ On September 29, 2020, Canada, in coordination with the United Kingdom, imposed sanctions against 11 Belarusian officials via the *Special Economic Measures (Belarus) Regulations* (the Regulations).

				<p>hands of the State with impunity.</p> <ul style="list-style-type: none"> To encourage progress towards a negotiated solution. 		<p>(b) or (c) or acting on behalf of or at the direction of a person referred to in paragraph (a), (b) or (c); or (e) a senior official of an entity referred to in paragraph (d).</p>	<p>(b) any transactions necessary for a Canadian to transfer to a non-listed person any accounts, funds or investments of a Canadian held by a listed person on the day on which that person became a listed person; (c) any dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with any person other than a listed person, and for enforcement and realization of security in respect of those loans, or payments by guarantors guaranteeing those loans; (d) any dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with a listed person before that person became a listed person, and for enforcement and realization of security in respect of those loans, or payments by guarantors guaranteeing those loans; (e) any benefit paid under the <i>Old Age Security Act</i>, the <i>Canada Pension</i></p>	
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							<p><i>Plan or an Act respecting the Québec Pension Plan, CQLR, c. R-9, any superannuation, pension or benefit paid under or in respect of any retirement savings plan or under any retirement plan, any amount paid under or in respect of the Garnishment, Attachment and Pension Diversion Act or the Pension Benefits Division Act and any other payment made in respect of disability to any person in Canada or any Canadian outside Canada;</i></p> <p>(f) financial services required in order for a listed person to obtain legal services in Canada with respect to the application of any of the prohibitions set out in these Regulations;</p> <p>(g) any transaction in respect of any account at a financial institution held by a diplomatic mission, if the transaction is required in order for the mission to fulfill its diplomatic functions as set out in Article 3 of the Vienna Convention on Diplomatic Relations or, if the diplomatic mission has been temporarily or</p>	
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							<p>permanently recalled, when the transaction is required in order to maintain the mission premises;</p> <p>(h) any transaction with any international organization with diplomatic status, with any United Nations agency, with the International Red Cross and Red Crescent Movement or with any entity that has entered into a grant or contribution agreement with the Department of Foreign Affairs, Trade and Development; and</p> <p>(i) a transaction by the Government of Canada that is provided for in any agreement or arrangement between Canada and Belarus.</p>	
17	October 14, 2020	SEMA	Belarus and 31 individuals from Belarus	<ul style="list-style-type: none"> To put pressure on the Government of Belarus to change its behaviour. To communicate a clear message to the Government of Belarus that Canada will not accept that gross and systematic human rights violations continue to take place at the 	Gross and systematic human rights violations.	Gross and systematic human rights violations.	Not listed.	United States, United Kingdom, European Union

				<p>hands of the State with impunity.</p> <ul style="list-style-type: none"> • To encourage progress towards a negotiated solution. • To align with actions taken by the European Union. 				
18	November 5, 2020	<i>SEMA</i>	Belarus and 13 individuals from Belarus	<ul style="list-style-type: none"> • To put pressure on the Government of Belarus to change its behaviour. • To communicate a clear message to the Government of Belarus that Canada will not accept that gross and systematic human rights violations continue to take place at the hands of the State with impunity. • To encourage progress towards a negotiated solution. • To align with actions taken by the European Union. 	Gross and systematic human rights violations.	As efforts to date have not convinced the Government of Belarus to accept accountability for human rights violations nor to fully implement agreements stemming from the negotiation process with opposition groups, sanctions send an important message from Canada and encourage progress with the negotiations.	Exemptions are included in the Regulations, including, among others, to allow for the delivery of humanitarian assistance to provide some mitigation of the impact of sanctions on vulnerable groups. The Minister of Foreign Affairs can also issue permits pursuant to the Order. As a result, these new sanctions are likely to have limited impact on the citizens of Belarus.	United States, United Kingdom, European Union
19	February 18, 2021	<i>SEMA</i>	Myanmar and 9 individuals from Myanmar	<ul style="list-style-type: none"> • To put pressure on the Tatmadaw to change its behaviour and reverse its actions; • To communicate a clear message to the Tatmadaw that Canada will not 	Breach of international peace and security.	<i>The Regulations Amending the Special Economic Measures (Burma) Regulations</i> (the amendments) add nine high-level Myanmar military officials to the schedule to the Regulations. (Under the	Exemptions are included in the Regulations, including an allowance for the delivery of humanitarian assistance to help mitigate the impact of sanctions on vulnerable groups. The Minister of Foreign Affairs can also issue permits	European Union

				accept that actions constituting a grave breach of international peace and security, resulting in a serious international crisis, continue to take place with impunity and total disregard of the will and democratic rights of the people of Myanmar.		grave breach of international peace and security trigger).	pursuant to the <i>Special Economic Measures (Burma) Permit Authorization Order</i> . Therefore, these new sanctions are likely to have limited impact on the citizens of Myanmar.	
20	March 21, 2021	SEMA	Russia and replacement of 2 individuals and 9 individuals from Russia	<ul style="list-style-type: none"> To communicate a clear message to Russia that Canada, along with its like-minded partners, will not accept that ongoing gross and systematic human rights violations continue to take place at the hands of the State with impunity; and To impose consequences on Russia for its ongoing disregard for human rights and the rule of law. 		Poisoning of Alexei Navalny: ongoing gross and systematic human rights violations	Exemptions are included in the Regulations, including to allow for the delivery of humanitarian assistance to provide some mitigation of the impact of sanctions on vulnerable groups. The Minister of Foreign Affairs can also issue permits pursuant to the <i>Special Economic Measures (Russia) Permit Authorization Order</i> . Therefore, these new sanctions are likely to have limited impact on the citizens of Russia.	United States, United Kingdom, European Union
21	March 21, 2021	SEMA	China (first time) and 4 individuals and 1 entity from China	<ul style="list-style-type: none"> To put pressure on the Government of the People's Republic of China to 	Gross and systematic human rights violations.	(a) a person who has participated in gross and systematic human rights violations in the People's Republic of China;	4 Section 3 does not apply in respect of (a) any payment made by or on behalf of a listed	United States, United Kingdom, European Union

				<p>change its behaviour;</p> <ul style="list-style-type: none"> • To communicate a clear message to the Government of the People's Republic of China that Canada stands with the international community in condemning the gross and systematic human rights violations at the hands of the State with impunity; • To raise the costs to the Chinese government of continuing the policies of repression against Uyghurs and other ethnic minorities in the XUAR. 		<p>(b) a current or former senior official of the Government of the People's Republic of China;</p> <p>(c) an associate or family member of a person referred to in paragraph (a) or (b);</p> <p>(d) an entity owned, held or controlled, directly or indirectly, by a person referred to in paragraph (a), (b) or (c) or acting on behalf of or at the direction of a person referred to in paragraph (a), (b) or (c); or</p> <p>(e) a senior official of an entity referred to in paragraph (d).</p>	<p>person that is due under a contract entered into before the person became a listed person, provided that the payment is not made to a listed person or to a person acting on behalf of a listed person;</p> <p>(b) any transactions necessary for a Canadian to transfer to a non-listed person any accounts, funds or investments of a Canadian held by a listed person on the day on which that person became a listed person;</p> <p>(c) any dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with any person other than a listed person, and for enforcement and realization of security in respect of those loans, or payments by guarantors guaranteeing those loans;</p> <p>(d) any dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with a listed person before that person became a listed person,</p>	
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							<p>and for enforcement and realization of security in respect of those loans, or payments by guarantors guaranteeing those loans;</p> <p>(e) any benefit paid under the <i>Old Age Security Act</i>, the <i>Canada Pension Plan</i> or the <i>Act respecting the Québec Pension Plan</i>, CQLR, c. R-9, any superannuation, pension or benefit paid under or in respect of any retirement savings plan or under any retirement plan, any amount paid under or in respect of the <i>Garnishment, Attachment and Pension Diversion Act</i> or the <i>Pension Benefits Division Act</i> and any other payment made in respect of disability to any person in Canada or any Canadian outside Canada;</p> <p>(f) financial services required in order for a listed person to obtain legal services in Canada with respect to the application of any of the prohibitions set out in these Regulations;</p> <p>(g) any transaction in respect of any account at a financial institution held by a diplomatic mission, if the transaction is required</p>	
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							<p>in order for the mission to fulfill its diplomatic functions as set out in Article 3 of the Vienna Convention on Diplomatic Relations or, if the diplomatic mission has been temporarily or permanently recalled, when the transaction is required in order to maintain the mission premises;</p> <p>(h) any transaction with any international organization with diplomatic status, with any United Nations agency, with the International Red Cross and Red Crescent Movement or with any entity that has entered into a grant or contribution agreement with the Department of Foreign Affairs, Trade and Development; and</p> <p>(i) a transaction by the Government of Canada that is provided for in any agreement or arrangement between Canada and the People's Republic of China.</p>	
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22	March 29, 2021	SEMA	Russia and 4 individuals from Russia and 2 entities	<ul style="list-style-type: none"> • Demonstrate Canada's commitment to a policy of non-recognition of Russia's illegal annexation of Crimea; and • Align with actions taken by Canada's international partners to underscore continued unity with these partners in responding to Russia's actions in Ukraine. 	Breach of international peace and security.	<p>The individuals added to Part 1 and the entities added to Part 2 of Schedule 1 of the Russia Regulations are linked to Russia's illegal annexation and ongoing occupation of Crimea, and to the continuing violation of Ukraine's sovereignty and territorial integrity. Russia continues to consolidate its illegal control over Crimea, including through the construction of a bridge and railway tracks linking Russia and the Russia-occupied Crimean peninsula. These actions further contribute to the insecurity in Ukraine and the destabilization of the region by enforcing Russian laws and exercising Russian sovereignty on Ukrainian territory without the authorization of the Government of Ukraine. This includes the forced and illegal military conscription of the residents of Crimea, human rights abuses, and disruptions to maritime traffic and trade in the Azov Sea through the Kerch Strait, among other actions. The listings signal Canada's</p>	Not listed.	United States, European Union ³¹⁶
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³¹⁶ The Regulations are not related to a work plan or commitment under a formal regulatory cooperation forum. While the regulatory mechanisms for sanctions in Canada, the United States (U.S.) and the European Union (EU) are inherently different, the Regulations align with U.S. and EU sanction measures on Russia.

						strong condemnation of this ongoing Russian behaviour.		
23	March 29, 2021	SEMA	2 entities from Ukraine	<ul style="list-style-type: none"> • Demonstrate Canada's commitment to a policy of non-recognition of Russia's illegal annexation of Crimea; and • Align with actions taken by Canada's international partners to underscore continued unity with these partners in responding to Russia's actions in Ukraine. 	Breach of international peace and security.	The entities added to the schedule to the Ukraine Regulations are linked to Russia's illegal annexation and ongoing occupation of Crimea, and to the continuing violation of Ukraine's sovereignty and territorial integrity. Russia continues to consolidate its illegal control over Crimea, including through the construction of a bridge and railway tracks linking Russia and the Russia-occupied Crimean peninsula. These actions further contribute to the insecurity in Ukraine and the destabilization of the region by enforcing Russian laws and exercising Russian sovereignty on Ukrainian territory without the authorization of the Government of Ukraine. This includes the forced and illegal military conscription of the residents of Crimea, human rights abuses, and disruptions to maritime traffic and trade in the Azov Sea through the Kerch Strait, among other actions. The	Not listed.	United States, European Union ³¹⁷

³¹⁷ The Regulations are not related to a work plan or commitment under a formal regulatory cooperation forum. While the regulatory mechanisms for sanctions in Canada, the United States (U.S.) and the European Union (EU) are inherently different, the Regulations align with U.S. and EU sanction measures on Russia.

						listings signal Canada's strong condemnation of this ongoing Russian behaviour.		
24	May 14, 2021	SEMA	Myanmar and 16 individuals from Myanmar and 10 new entities	<ul style="list-style-type: none"> To put additional pressure on the Tatmadaw to change its behaviour and reverse its actions; To communicate a clear message to the Tatmadaw, and those who support the Tatmadaw regime, that Canada will not accept that actions constituting a grave breach of international peace and security, resulting in a serious international crisis, continue to take place with impunity and total disregard of the will and democratic rights of the people of Myanmar; and To increase impact through alignment with actions taken by international partners. 	Breach of international peace and security.	The focus of the amendments is on specific individuals who are members of the Myanmar military (Tatmadaw), military-appointed high-level officials, and/or persons engaged in activities that have contributed to the grave breach of international peace and security that has occurred in Myanmar, rather than on Myanmar as a whole.	Exemptions are included in the Regulations, including, among others, to allow for the delivery of humanitarian assistance to provide some mitigation of the impact of sanctions on vulnerable groups. The Minister of Foreign Affairs can also issue permits pursuant to an Order. As such, these new sanctions are likely to have limited impact on the citizens of Myanmar.	United Kingdom, United States
25	June 21, 2021	SEMA	Belarus and 17 individuals from Belarus and 5 entities	<ul style="list-style-type: none"> To put pressure on the Government of Belarus to change its behaviour; To communicate a clear message to the 	Gross and systematic human rights violations.	The sanctions communicate a clear message that Canada will not accept that gross and systematic human rights violations continue to take	Exceptions are included in the Regulations, including, among others, to allow for the delivery of humanitarian assistance to provide some mitigation of	European Union, United Kingdom, United States

				<p>Government of Belarus that Canada will not accept that gross and systematic human rights violations continue to take place at the hands of the State with impunity; and</p> <ul style="list-style-type: none"> • To align with actions taken by our like-minded partners. 		place in Belarus at the hands of the State with impunity.	the impact of sanctions on vulnerable groups. The Minister of Foreign Affairs can also issue permits pursuant to the Order. As such, these new sanctions are likely to have limited impact on the citizens of Belarus.	
26	July 14, 2021	SEMA	Nicaragua and 15 individuals from Nicaragua	<ul style="list-style-type: none"> • To apply pressure on the Government of the Republic of Nicaragua to respect its constitutional and international human rights obligations. • To communicate a clear message to the Government of the Republic of Nicaragua that Canada stands with the people of Nicaragua and the international community in condemning the ongoing gross and systematic human rights violations committed with 	Gross and systematic human rights violations.	The sanctions communicate a clear message that Canada stands with the international community and its allies in condemning the gross and systematic human rights violations which continue to take place in Nicaragua at the hands of the State, with impunity.	Exceptions are included in the Regulations, including, among others, to allow for the delivery of humanitarian assistance to provide some mitigation of the impact of sanctions on vulnerable groups. The Minister of Foreign Affairs can also issue permits pursuant to the <i>Special Economic Measures (Nicaragua) Permit Authorization Order</i> . As such, these new sanctions are likely to have limited impact on the citizens of Nicaragua.	United States ³¹⁸

³¹⁸ While the amendments are not related to a work plan or commitment under a formal regulatory cooperation forum, they align with actions taken by like-minded partners. For example, the United States implemented additional sanctions since June 2019, with the latest round on June 9, 2021. <https://gazette.gc.ca/rp-pr/p2/2021/2021-07-21/html/sor-dors175-eng.html>

				<p>impunity at the hands of the State.</p> <ul style="list-style-type: none"> • To raise the costs to the Nicaraguan government of continuing the policies that erode democracy in Nicaragua and deny fundamental human rights of the people of Nicaragua. • To send a clear message to the region on the importance Canada places on respect for democracy, rule of law and the ability of all people to participate in free and fair elections. 				
27	August 6, 2021	SEMA	Belarus: import and export restrictions (insurance and reinsurance, petroleum products, potassium chloride)	<ul style="list-style-type: none"> • To increase pressure on the Government of Belarus through the imposition of broad economic sanctions to change its behaviour. • To communicate a clear message to the Government of Belarus that Canada will not accept that gross and systematic human rights 	Gross and systematic human rights violations.	These sectors are being targeted due to their importance to the Belarusian economy and Aleksander Lukashenko's administration, thereby increasing pressure on the Government of Belarus to change its behaviour and cease gross and systematic human rights violations that continue to take place at the hands of the State with impunity.	Exceptions are included in the Regulations, including, among others, to allow for the delivery of humanitarian assistance to provide some mitigation of the impact of sanctions on vulnerable groups. The Minister of Foreign Affairs can also issue permits pursuant to the Order. As such, these new sanctions are likely to have limited	United States, United Kingdom, European Union ³¹⁹

³¹⁹ While the amendments are not related to a work plan or commitment under a formal regulatory cooperation forum, they align with actions taken by like-minded partners. <https://canadagazette.gc.ca/rp-pr/p2/2021/2021-08-18/html/sor-dors184-eng.html>

				<p>violations continue to take place at the hands of the State with impunity.</p> <ul style="list-style-type: none"> To align with actions taken by our like-minded partners. 			<p>impact on the citizens of Belarus.</p>	
28	December 2, 2021	SEMA	Belarus and 24 individuals from Belarus and 7 entities	<p>Regulations do not contain a section outlining “objectives.”</p>	Gross and systematic human rights violations.	<p>As the world prepares to celebrate International Human Rights Day next week and remembering that the Universal Declaration on Human Rights outlines the fundamental rights and freedoms to which all people are entitled, Canada demands an end to these human rights violations. The Belarusian regime, led by Aleksandr Lukashenko, has failed to seek accountability for past or current violations, demonstrating its ongoing complicity in perpetrating them. Since the last time Canada imposed sanctions, in August 2021, the situation has continued to deteriorate. Arbitrary arrests continue, and there are undue restrictions on the rights to freedom of expression, peaceful assembly, and</p>	<p>The above-noted prohibitions do not apply to the following activities or transactions:</p> <ul style="list-style-type: none"> payments made by or on behalf of a listed person pursuant to contracts entered into prior to the coming into force of the Regulations, provided that the payments are not made to a listed person or to a person acting on behalf of a listed person; transactions necessary for a Canadian to transfer to a non-listed person any accounts, funds or investments of a Canadian held by a listed person on the day on which that person became listed; 	United States, European Union, United Kingdom. ³²⁰

³²⁰ These actions were taken in coordination with the European Union, United Kingdom and United States. https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/belarus.aspx?lang=eng

					<p>freedom of association. It has also been made clear that the Lukashenko regime is orchestrating irregular migration across its borders with the EU, coming at a great cost to the region's stability.</p> <p>Despite calls from the international community to immediately cease these aggressive acts, the Lukashenko regime has shown no sign of stopping. This is why Canada and its partners have decided to take meaningful steps to hold the regime accountable.</p>	<ul style="list-style-type: none"> • dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with any person other than a listed person, and for enforcement and realization of security in respect of those loans, or repayments by guarantors guaranteeing those loans; • dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with a listed person before that person became a listed person, and for enforcement and realization of security in respect of those loans, or repayments by guarantors guaranteeing those loans; • pension payments to any person in Canada or any Canadian outside Canada; 	
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							<ul style="list-style-type: none"> • financial services required in order for a listed person to obtain legal services in Canada with respect to the application of any of the prohibitions set out in these Regulations; • transactions in respect of accounts at financial institutions held by diplomatic missions, provided that the transaction is required in order for the mission to fulfill its diplomatic functions under the Vienna Convention on Diplomatic Relations, or transactions required in order to maintain the mission premises if the diplomatic mission has been temporarily or permanently recalled; • transactions with any international organization with diplomatic status, agencies of the United Nations, the International Red Cross and Red Crescent Movement, or with any entity that has entered into a 	
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							<p>grant or contribution agreement with Foreign Affairs, Trade and Development Canada; and</p> <ul style="list-style-type: none"> • transactions by the Government of Canada that are provided for in any agreement or arrangement between Canada and Belarus. 	
29	Dec 10, 2021	SEMA	Myanmar and 4 entities from Myanmar	<p>To put additional pressure on the Tatmadaw to change its behaviour, including to immediately and genuinely engage with ASEAN-led peace efforts, immediately halting violence, initiating inclusive peace dialogues, and granting unrestricted humanitarian access.</p> <p>To communicate a clear message to the Tatmadaw, and those who support the Tatmadaw regime, that Canada will not accept that actions constituting a grave breach of international peace and security, resulting in a serious international crisis, are taking place with impunity and total disregard for the will and</p>	Breach of international peace and security.	<p>Despite condemnation by the international community, repeated calls to halt violence, and efforts led by the Association of South East Asian Nations (ASEAN) to engage the regime in inclusive dialogues toward peace, the Tatmadaw have not altered the course. Violence is in fact escalating while alleged gross human rights abuses are steadily rising. The situation constitutes an ongoing grave breach of international peace and security and worsening serious domestic, regional and international crisis. Escalating violence, severe human rights violations, humanitarian impacts on the most vulnerable, spillover into neighbouring countries hosting those fleeing violence, and the lack of</p>	<p>Exemptions are included in the Regulations, including, among others, to allow for the delivery of humanitarian assistance to provide some mitigation of the impact of sanctions on vulnerable groups. The Minister of Foreign Affairs can also issue permits pursuant to the Order. As such, these new sanctions are likely to have limited impact on the citizens of Myanmar.</p>	United States, United Kingdom

				democratic rights of the people of Myanmar. To align with actions taken by international partners.		tangible movement toward peace merit further coercive action.		
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Annex: 2: Chronological order of use

Table 4: Use of the SEMA in chronological order between 2017-2021.

- SEMA invoked 22 times (2 times being to just switch or remove names).

Year	Date	Country	# of individuals/entities
2017	September 22	Venezuela	40 individuals
2018	May 29	Venezuela	14 individuals
	June 25	Myanmar	7 individuals
2019	March 15	Russia	25 individuals, 15 entities
	March 15	Ukraine	90 individuals, 1 entity
	April 15	Venezuela	43 individuals
	June 21	Nicaragua	9 individuals
	June 25	Venezuela	Removed 1 individual
	June 25	Russia	Replaced 1 individual
2020	January 29	Ukraine	6 individuals
	September 28	Belarus	11 individuals
	October 14	Belarus	31 individuals
	November 5	Belarus	13 individuals
2021	February 18	Myanmar	9 individuals
	March 21	Russia	9 individuals, replaced 2 individuals
	March 21	China	4 individuals, 1 entity
	March 29	Russia	4 individuals, 2 entities
	March 29	Ukraine	2 entities
	May 14	Myanmar	16 individuals, 10 entities

	June 21	Belarus	17 individuals, 5 entities
	July 14	Nicaragua	15 individuals
	August 6	Belarus	Export/import restrictions
	December 2	Belarus	24 individuals, 7 entities
	December 10	Myanmar	4 entities

Table 5: Use of the JVCFOA in chronological order between 2017-2021.

- JVCFOA used 3 times to list 70 names from 5 different countries (Russia, South Sudan, Venezuela, then Myanmar, then Saudi Arabia).

Year	Date	Country	# of individuals
2017	November 3	Russia	30 individuals
	November 3	Venezuela	19 individuals
	November 3	South Sudan	3 individuals
2018	February 16	Myanmar	1 individual
	November 29	Saudi Arabia	17 individuals

Table 6: Use of both the SEMA and JVCFOA in chronological order (together) between 2017-2021.

Year	Date	SEMA or JVCFOA	Country	# of individuals/entities
2017	September 22	SEMA	Venezuela	40 individuals
	November 3	JVCFOA	Russia	30 individuals
	November 3	JVCFOA	Venezuela	19 individuals
	November 3	JVCFOA	South Sudan	3 individuals
2018	February 16	JVCFOA	Myanmar	1 individual
	May 29	SEMA	Venezuela	14 individuals
	June 25	SEMA	Myanmar	7 individuals
	November 29	JVCFOA	Saudi Arabia	17 individuals
2019	March 15	SEMA	Russia	25 individuals, 15 entities
	March 15	SEMA	Ukraine	90 individuals, 1 entity

	April 15	SEMA	Venezuela	43 individuals
	June 21	SEMA	Nicaragua	9 individuals
	June 25	SEMA	Venezuela	Removed 1 individual
	June 25	SEMA	Russia	Replaced 1 individual
2020	January 29	SEMA	Ukraine	6 individuals
	September 28	SEMA	Belarus	11 individuals
	October 14	SEMA	Belarus	31 individuals
	November 5	SEMA	Belarus	13 individuals
2021	February 18	SEMA	Myanmar	9 individuals
	March 21	SEMA	Russia	9 individuals, replaced 2 individuals
	March 21	SEMA	China	4 individuals, 1 entity
	March 29	SEMA	Russia	4 individuals, 2 entities
	March 29	SEMA	Ukraine	2 entities
	May 14	SEMA	Myanmar	16 individuals, 10 entities
	June 21	SEMA	Belarus	17 individuals, 5 entities
	July 14	SEMA	Nicaragua	15 individuals
	August 6	SEMA	Belarus	Export/import restrictions
	December 2	SEMA	Belarus	24 individuals, 7 entities
December 10	SEMA	Myanmar	4 entities	

Annex: 3: Objectives

- **Align with allies or show solidarity with the actions of like-minded countries**
 1. *SEMA*, Venezuela, 2017
 2. *SEMA*, Venezuela, 2018
 3. *SEMA*, Russia, 2019
 4. *SEMA*, Ukraine, 2019
 5. *SEMA*, Venezuela, 2019
 6. *SEMA*, remove individual from Venezuela, 2019

7. *SEMA*, correct misspelled name from Russia, 2019
8. *SEMA*, Ukraine, 2020
9. *SEMA*, Belarus, 2020
10. *SEMA*, Belarus, 2020
11. *SEMA*, Russia, 2021
12. *SEMA*, Ukraine, 2021
13. *SEMA*, Myanmar, 2021
14. *SEMA*, Belarus, 2021
15. *SEMA*, Belarus, 2021

- **Place or maintain pressure on the country, put pressure on the government to change its behaviour, or “raise costs.”**

1. *SEMA*, Russia, 2019: “Maintain pressure on Russia to fully implement its Minsk commitments.”
2. *SEMA*, Ukraine, 2019: “Maintain pressure on Russia to fully implement its Minsk commitments.”
3. *SEMA*, Nicaragua, 2019: “to put pressure on the Government of Nicaragua to change its behaviour.”
4. *SEMA*, Belarus, 2020: “To put pressure on the Government of Belarus to change its behaviour.”
5. *SEMA*, Belarus, 2020: “To put pressure on the Government of Belarus to change its behaviour.”
6. *SEMA*, Belarus, 2020: “To put pressure on the Government of Belarus to change its behaviour.”
7. *SEMA*, Myanmar, 2021: “To put pressure on the Tatmadaw to change its behaviour and reverse its actions.”
8. *SEMA*, China, 2021: “To put pressure on the Government of the People's Republic of China to change its behaviour.”
9. *SEMA*, Myanmar, 2021: “To put additional pressure on the Tatmadaw to change its behaviour and reverse its actions.”
10. *SEMA*, Belarus, 2021: “To put pressure on the Government of Belarus to change its behaviour.”
11. *SEMA*, Nicaragua, 2021: “To apply pressure on the Government of the Republic of Nicaragua to respect its constitutional and international human rights obligations; To raise the costs to the Nicaraguan government of continuing the policies that erode democracy in Nicaragua and deny fundamental human rights of the people of Nicaragua.”
12. *SEMA*, Belarus, 2021: “To increase pressure on the Government of Belarus through the imposition of broad economic sanctions to change its behaviour.”
13. *SEMA*, China, 2021: “To raise the costs to the Chinese government of continuing the policies of repression against Uyghurs and other ethnic minorities in the XUAR.”

- **Communicate a clear message to the Government of x target country that Canada will not accept that gross and systematic human rights violations continue to take place at the hands of the State with impunity**

1. *SEMA*, Nicaragua, 2019
2. *SEMA*, Belarus, 2020

3. *SEMA*, Belarus, 2020
4. *SEMA*, Belarus, 2020
5. *SEMA*, Belarus, 2021
6. *SEMA*, Nicaragua, 2021
7. *SEMA*, Belarus, 2021
8. *SEMA*, Russia, 2021: “To communicate a clear message to Russia that Canada, along with its like-minded partners, will not accept that ongoing gross and systematic human rights violations continue to take place at the hands of the State with impunity.”
9. *SEMA*, China, 2021: “To communicate a clear message to the Government of the People's Republic of China that Canada stands with the international community in condemning the gross and systematic human rights violations at the hands of the State with impunity.”

- **Signal Canada’s international condemnation of the individuals responsible**

1. *JVCFOA*, Russia, 2017
2. *JVCFOA*, South Sudan, 2017
3. *JVCFOA*, Venezuela, 2017
4. *JVCFOA*, Myanmar, 2018
5. *SEMA*, Myanmar, 2018
6. *JVCFOA*, Saudi Arabia, 2018

- **End impunity for those responsible for or complicit in these acts by denying such individuals the ability to store their wealth in Canada or otherwise use Canada and the Canadian financial system for their benefit (and for the first 3: to establish a mechanism to list individuals in the future)**

1. *JVCFOA*, Russia, 2017
2. *JVCFOA*, South Sudan, 2017
3. *JVCFOA*, Venezuela, 2017
4. *JVCFOA*, Myanmar, 2018
5. *SEMA*, Myanmar, 2018
6. *JVCFOA*, Saudi Arabia, 2018

- **Demonstrate Canada’s commitment to a particular policy (could mean demonstrate to allies, or to Canadians, to the sanction target(s), or all of the above).**

1. *SEMA*, Russia, 2019 (policy of non-recognition of Russia’s illegal annexation of Crimea)

2. *SEMA*, Ukraine, 2019 (policy of non-recognition of Russia's illegal annexation of Crimea)
 3. *SEMA*, Ukraine, 2020, (policy of non-recognition of Russia's illegal annexation of Crimea)
 4. *SEMA*, Russia, 2021, (policy of non-recognition of Russia's illegal annexation of Crimea)
 5. *SEMA*, Ukraine, 2021, (policy of non-recognition of Russia's illegal annexation of Crimea)
- **Encourage progress with the negotiation process**
 1. *SEMA*, Nicaragua, 2019
 2. *SEMA*, Belarus, 2020
 3. *SEMA*, Belarus, 2020
 4. *SEMA*, Belarus, 2020
 - **Send a message to the members of the government that their anti-democratic actions have consequences or to impose consequences for ongoing disregard for human rights and the rule of law.**
 1. *SEMA*, Venezuela, 2018
 2. *SEMA*, Venezuela, 2019
 3. *SEMA*, Russia, 2021
 - **Demonstrate to Canadians more broadly that the government is prepared to take action when regional norms of democratic good governance are flouted**
 1. *SEMA*, Venezuela, 2018
 2. *SEMA*, Venezuela, 2019
 - **Respond to ongoing anti-democratic actions**
 1. *SEMA*, Venezuela, 2018
 2. *SEMA*, Venezuela, 2019
 - **Send a clear message to “the region” on the importance Canada places on respect for democracy, rule of law and the ability of all people to participate in free and fair elections.**
 1. *SEMA*, Nicaragua, 2021

Annex: 4: States and their sanction objectives under *SEMA*

Venezuela:

2017: (invoked once, invoked JVCFOA as well)

- Align with allies or show solidarity with the actions of like-minded countries

2018: (invoked once)

- Respond to ongoing anti-democratic actions;
- Align with allies or show solidarity with the actions of like-minded countries;
- Send a message to the members of the government that their anti-democratic actions have consequences;
- Demonstrate to Canadians more broadly that the government is prepared to take action when regional norms of democratic good governance are flouted

2019: (invoked twice, once to sanction, once to remove name):

- Same as 2018.

Belarus:

2020 (invoked three times):

- Align with allies or show solidarity with the actions of like-minded countries;
- Put pressure on the Government of Belarus to change its behaviour;
- Communicate a clear message to the Government of Belarus that Canada will not accept that gross and systematic human rights violations continue to take place at the hands of the State with impunity;
- Encourage progress with the negotiation process.

2021 (invoked three times):

- Align with allies or show solidarity with the actions of like-minded countries;
- Communicate a clear message to the Government of Belarus that Canada will not accept that gross and systematic human rights violations continue to take place at the hands of the State with impunity;
- To put pressure on the Government of Belarus to change its behaviour; *then within the same year:* To increase pressure on the Government of Belarus through the imposition of broad economic sanctions to change its behaviour.

Russia:

2019 (invoked twice, once to correct misspelled name):

- Align with allies or show solidarity with the actions of like-minded countries;
- Maintain pressure on Russia to fully implement its Minsk commitments;
- Demonstrate Canada's commitment to its policy of non-recognition of Russia's illegal annexation of Crimea;

2020: (used JVCFOA, not SEMA)

2021: (invoked twice):

- Align with allies or show solidarity with the actions of like-minded countries
- Communicate a clear message to Russia that Canada, along with its like-minded partners, will not accept that ongoing gross and systematic human rights violations continue to take place at the hands of the State with impunity;
- Demonstrate Canada's commitment to its policy of non-recognition of Russia's illegal annexation of Crimea;
- Send a message to the members of the government that their anti-democratic actions have consequences or to impose consequences for ongoing disregard for human rights and the rule of law.

Ukraine:

2019: (invoked once):

- Align with allies or show solidarity with the actions of like-minded countries;
- Maintain pressure on Russia to fully implement its Minsk commitments;
- Demonstrate Canada's commitment to its policy of non-recognition of Russia's illegal annexation of Crimea.

2020: (invoked once):

- Align with allies or show solidarity with the actions of like-minded countries;
- Demonstrate Canada's commitment to its policy of non-recognition of Russia's illegal annexation of Crimea

2021: (invoked once):

- Same as 2020.

People's Republic of China:

2021: (invoked once):

- Put pressure on the Government of the People's Republic of China to change its behaviour;
- Raise the costs to the Chinese government of continuing the policies of repression against Uyghurs and other ethnic minorities in the XUAR;
- Communicate a clear message to the Government of the People's Republic of China that Canada stands with the international community in condemning the gross and systematic human rights violations at the hands of the State with impunity.

Nicaragua:

2019: (invoked once):

- Encourage progress with the negotiation process;
- Communicate a clear message to the Government of Nicaragua that Canada will not accept that gross and systematic human rights violations continue to take place at the hands of the State with impunity;

- Apply pressure on the Government of the Republic of Nicaragua to respect its constitutional and international human rights obligations;
- Raise the costs to the Nicaraguan government of continuing the policies that erode democracy in Nicaragua and deny fundamental human rights of the people of Nicaragua.

2021: (invoked once):

- Communicate a clear message to the Government of Nicaragua that Canada will not accept that gross and systematic human rights violations continue to take place at the hands of the State with impunity;
- Apply pressure on the Government of the Republic of Nicaragua to respect its constitutional and international human rights obligations;
- Raise the costs to the Nicaraguan government of continuing the policies that erode democracy in Nicaragua and deny fundamental human rights of the people of Nicaragua;
- Send a clear message to “the region” on the importance Canada places on respect for democracy, rule of law and the ability of all people to participate in free and fair elections.

Myanmar:

2018 (invoked once, JVCFOA used once as well):

- Signal Canada’s international condemnation of the individuals responsible;
- End impunity for those responsible for or complicit in these acts by denying such individuals the ability to store their wealth in Canada or otherwise use Canada and the Canadian financial system for their benefit. *Note that Myanmar is the only state sanctioned under the SEMA to have this language from the JVCFOA applied to it. This is because 1 individual from Myanmar was listed under the JVCFOA around the same time in 2018. This language is not seen again in 2021.*

2021: (invoked three times)

- Align with allies or show solidarity with the actions of like-minded countries;
- Put pressure on the Tatmadaw to change its behaviour and reverse its actions; *then within the same year:* To put *additional* pressure on the Tatmadaw to change its behaviour and reverse its actions;
- Communicate a clear message to the Tatmadaw that Canada will not accept that actions constituting a grave breach of international peace and security, resulting in a serious international crisis, continue to take place with impunity and total disregard of the will and democratic rights of the people of Myanmar.