Business Judgment and ESG

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New research suggests that legally non-binding statements from corporate leaders help predict corporate behavior, at least on the margin. This includes the Business Roundtable Statement committing to ESG principles. But subsequent ESG-oriented actions can often be explained better by prudent risk management considerations than proffered ethical reasoning. Thus, commitments to ESG might be viewed as signaling a particular approach to risk management rather than an ideologically driven willingness to sacrifice profitability.

Jens Dammann and Daniel Lawrence have made an important contribution to our collective understanding of non-binding pledges in corporate law.[1] In particular, they have helped corporate law scholars understand the extent to which a legally nonbinding commitment from corporate managers to Environmental, Social, and Governance (ESG) principles may help predict subsequent corporate behavior. Their finding that non-binding statements regarding intent may help investors predict subsequent corporate behavior supports the trend in Securities Regulation over the last several decades of providing safe harbors from liability for forward-looking statements that guide investors, but that may turn out to ultimately not prove true.[2]

Their recent study also provides cautiously optimistic evidence that CEOs who claim to consider the ethical implications and the effects of corporate actions on non-shareholder constituencies do run their firms differently from CEOs who make no such claims—at least on the margin. Some firms may try harder to avoid negative press coverage, may prepare well in advance for regulations or disruptions that may only later come into play, and may seek to do more to protect the corporation's reputation to avoid a costly backlash. This pragmatic approach may enable such CEOs to chart a more ethical course without undermining long-term shareholder value.

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1. *See generally* Jens Dammann & Daniel Lawrence, *CEO's Endorsements of Stakeholder Values: Cheap Talk or Meaningful Signal? An Empirical Analysis*, 49 J. CORP. L. 577, 585 (2024) (analyzing the correlation between signing the 2019 Business Roundtable Statement with ESG performance, likelihood to withdraw from the Russian market, and stock performance).

2. *See, e.g.*, Richard A Cazier, Kenneth J. Merkley & John S. Treu, *When are Firms Sued for Qualitative Disclosures? Implications of the Safe Harbor for Forward-Looking Statements*, 95 ACCT. REV. 31, 31 (2019) ("provid[ing] evidence relevant to the implications of safe harbor by examining whether the association between qualitative disclosures and subsequent litigation differs between forward-looking statements (FLS) and non-forward-looking statements (nFLS)"); Application of Safe Harbor for Forward-Looking Statements, 15 U.S.C. § 78u–5 (providing a safe harbor for certain forward-looking statements in the context of securities regulation).

Dammann and Lawrence *do not* provide evidence that corporations with civic-minded CEOs sacrifice corporate profits to promote non-shareholder interests—as government regulators and tax collectors might—but rather that such CEOs look for opportunities to choose the more stakeholder-friendly path when it is unclear which approach will provide the highest return to shareholders at the lowest risk. Indeed, it is unlikely that the U.S.'s baseline one-share, one-vote corporate governance regime, coupled with beneficial share ownership and de facto voting power that is highly concentrated in the hands of the wealthiest one to ten percent of households, would tolerate sacrifices of long-term corporate profits except under very limited conditions.[3] *Even if* shareholders care about how corporate negative externalities directly affect them, the most we are typically likely to see by way of self-regulation is decisions that may be questionable from an individual firm perspective, but that improve risk-adjusted returns to a typical diversified portfolio of investable assets.[4] Corporate directors who indicate that shareholder value is not a high priority are generally unlikely to retain their board seats.

The view that the 2019 Business Roundtable Statement on the Purposes of the Corporation does not call for sacrificing profits is supported by Dammann and Lawrence's study. They find evidence that abnormal returns around CEOs signing the Business Roundtable Statement were either not statistically significantly different from zero or were slightly positive.[5] The more conservatively estimated null result suggests that either: (1) the statement did not convey new information to investors about how signing firms were governed; or (2) that investors did not view an ESG orientation by management as likely to reduce shareholder returns. The small positive result arguably suggests that investors viewed signing the statement as a sign of managerial prudence, for example, above-average skill in public relations or risk management.[6]

3. *See* Michael Simkovic, *Natural Person Shareholder Voting*, 109 CORNELL L. REV. (forthcoming 2024) (manuscript at 4) (electronic copy at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4180982#) (presenting a model that suggests that if shareholders broadly care about their own welfare, including both externality exposures and profit shares, and corporations are governed according to the preferences of the shareholder voting majority, concentration of equity ownership leads to more corporate negative externalities, especially externalities that do not adversely affect the value of other assets).

4. *Id.* at 15 ("[F]inancial theory and empirical evidence increasingly suggest that investors make decisions based on how each investment affects the risks and returns to their overall portfolio, not the returns to each investment in isolation"); *see also* Jeffrey N. Gordon, *Systemic Stewardship*, 47 J. CORP. L. 627, 629 (2022) (stating that diversified investors "should focus on addressing systematic risks"). Some leading scholars argue against even this relatively modest approach to ESG that would incorporate portfolio externalities into corporate governance considerations. They instead favor a single-firm focus. Marcel Kahan and Edward Rock, *Systemic Stewardship with Tradeoffs*, 48 J. CORP. L. 497, 499 (2023) (arguing that diversified investors are unlikely to "have the ability and inclination" to effectively tackle systemic risk).

5. Dammann & Lawrence, *supra* note 1, at 577.

6. Multiple studies link higher ESG scores to lower systematic and idiosyncratic risk levels. *see infra* note 27 and accompanying text. Whether this leads to higher risk-adjusted returns is controversial. One contemporaneous study, cited by Dammann & Lawrence as a skeptical counterpoint to their work, is consistent with the Statement acting as a low-cost public relations effort. *See e.g. infra* note 27. Raghunandan and Rajgopal find that firms that signed the Business Roundtable Statement were more likely than otherwise similar firms to be cited for labor violations and had higher carbon emissions than otherwise similar firms in 2018 and 2020, the year before and after the Statement. Aneesh Raghunandan & Shivaram Rajgopal, *Do Socially Responsible Firms Walk the Talk?*, J. L. ECON (forthcoming) (manuscript at 2) (electronic copy at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3609056). The two studies, taken together, could be

There are several important findings in the Dammann & Lawrence study, which shows correlations between publicly traded U.S. firms' Refinitiv ESG ratings, whether those firms' CEOs signed the stakeholder-friendly 2019 Business Roundtable Statement on the Purpose of The Corporation, and whether those firms terminated their dealings in Russia after Russia's 2022 invasion of Ukraine.[7]

A relatively small percentage of firms, ~6%, (around 200[8] out of more than 3,000 publicly traded U.S. firms[9]) signed the Business Roundtable Statement during the studied period. The most important analysis in the paper, which shows that early signatories were more likely to withdraw from Russia, identifies 2.5% of the sample as early signatories.[10]

Dammann and Lawrence show that the firms that signed the Business Roundtable Statement were, on average, different from firms that did not sign. Firms that signed the Business Roundtable Statement were larger (measured by both assets and employees), were more profitable (measured by Return on Assets), and were less highly leveraged than firms that did not sign.[11] This is consistent with firms that are larger and more profitable and that employ more people having more to gain by managing reputational risks and having more resources to make long-term investments in risk mitigation.

Industry differences in signing rates make sense intuitively. For example, firms in mining (including oil & gas extraction) and manufacturing (which consume large quantities of energy and produce pollution), were unsurprisingly less likely than firms in many other industries to sign a pledge that promised, *inter alia*, to protect the environment.[12] By contrast, utilities were far more likely than most firms to sign the pledge. Utilities have been dramatically raising consumer electricity prices to help defray the costs of transitioning to environmentally friendly approaches to power generation and transmission.[13] By explaining that higher consumer prices—which lead to higher utility profits—are necessary as part of an overall program of promoting environmental protection, utilities can limit consumer and regulatory backlash.

Differences in corporate governance between signatories and non-signatories are more surprising, and therefore more informative, to corporate law scholars. Signatory firms' boards were not apparently any more entrenched against shareholder activism than non-signatories under conventional governance measures.[14] However, lower leverage levels at signatory firms are themselves arguably a sign of managerial power relative to

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consistent with ESG-oriented firms being willing to take actions that reduce risk and improve public relations with key constituents (i.e., are consistent with those constituent's views of ethical behavior), but not if the risks are low and if the required actions are very costly.

7. Dammann & Lawrence, *supra* note 1, at 577.

8. *Id.* at 598 tbl.2.

9. *Id.* at 604 tbl.7; 608 tbl.8.

10. *Id.* at 620 tbl.12. This is supported by additional data provided by Professor Dammann to the author.

11. *Id.* at 604 tbl.7.

12. Firms in natural resource extraction industries may also be compelled to operate in parts of the world where respect for human rights and workers' rights are not high priorities because those countries are where deposits of the required resources are located.

13. Dammann & Lawrence, *supra* note 1, at 600 tbl.4; Garrett Hering, *Skyrocketing Electricity Prices Test California's Energy Transition*, S&P GLOBAL (Feb. 26, 2024), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/skyrocketing-electricity-prices-test-california-s-energy-transition-80305308 [https://perma.cc/V5XK-2GN3].

14. Dammann & Lawrence, *supra* note 1 at 603 tbl.6.

investors (including creditors) because less leverage gives managers more flexibility to use internally generated cash flows as they see fit without returning to the capital markets for outside funding.[15] Less leverage also reduces the chances of a change in control through a bankruptcy or distressed sale of the firm, which often leads to senior management being replaced.[16] Diversified shareholders tend to prefer higher corporate leverage than managers, not only because some debt may reduce agency costs,[17] but also because debt payments create an interest deduction that reduces corporate tax liability and increases post-tax returns to investors.[18] Debt increases the chances of financial distress or bankruptcy,[19] but diversification protects investors against these risks. Diversification is far easier for *investors* than for managers.[20] Indeed, private equity sponsors can offer public shareholders a premium price at least in part because they are willing to put more leverage on firms than the managers of publicly traded firms.[21]

Signatories had higher average ESG scores than otherwise similar non-signatories in the year they signed, especially on environmental and employment / human rights measures.[22] They also had higher than average ESG scores in the years *before* they signed the Roundtable statement, as well as the years after. Thus, high ESG scores and signing the Business Roundtable Statement both describe something similar about firms that is relatively stable over time. It is not clear how much additional predictive power signing the Business Roundtable Statement offers about future corporate actions beyond what can be gleaned from firms' contemporaneous and previous ESG scores.[23] But even if the marginal predictive utility of signing the statement is low, the published statement and related publicity may be more salient than proprietary ESG scores located behind a paywall.

Dammann and Lawrence find evidence that signing the Business Roundtable predicts roughly a 2-percentage point increase in the probability of a firm withdrawing from Russia

15. A moderate amount of debt may also reduce agency costs by reducing financial slack and preventing imprudent expenditures of internally generated funds.

16. Douglas G. Baird & Robert K. Rasmussen, *Private Debt and the Missing Lever of Corporate Governance*, 154 U. PA. L. REV. 1209, 1211 (2006).

17. George G. Triantis, *Financial Slack Policy and the Laws of Secured Transactions*, 29 J. LEGAL STUD. 35, 35 (2000).

18. John R. Graham, *How Big Are the Tax Benefits of Debt?*, 55 J. FINANCE 1901,1903 (2000) (finding that publicly traded companies typically do not use as much debt as they should to maximize the tax benefits of debt without excessively increasing default risk).

19. Stewart C. Myers, *Determinants of Corporate Borrowing*, 5 J. FIN. ECON. 147, 148 (1977).

20. Michael Simkovic, *Limited Liability and the Known Unknown*, 68 DUKE L. J. 275, 278 (2018)

21. Shourun Guo, Edith S. Hotchkiss & Weihong Song, *Do Buyouts (Still) Create Value*?, 66 J. FINANCE 479, 480 (2011)

22. Dammann & Lawrence, *supra* note 1, at 615 tbl.9.

23. Dammann & Lawrence find evidence that signatory firms saw an increase in their ESG scores in subsequent years and argue that signing the Business Roundtable Statement provides information about future intent. However, previous studies have found that firms that have high ESG scores in a given year (relative to other firms in the same year) tend to see their scores increase in subsequent years. Matteo Benuzzi et al., *Chasing ESG Performance: How Methodologies Shape Outcomes*, SSRN (July 24, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4662257. Thus, it remains unclear how much new information an investor who already had access to recent ESG scores could learn upon hearing that the CEO of a firm had signed the Business Roundtable Statement. This could be tested empirically by seeing if the signature variable was still a significant predictor of subsequent corporate behavior in a model that included prior ESG scores as control variables.

after Russia's 2022 invasion of Ukraine.[24] They view this withdrawal as a credible demonstration of the firm's commitment to human rights. Their analysis controls for firm industry, size, and financial characteristics. However, it does not control for firms' previous ESG scores. This exclusion makes sense if high ESG scores and signing the BRT statement are essentially two ways of describing the same underlying firm characteristic and the variables would be collinear.

The analysis also does not control for the potential financial *cost* to firms of withdrawing from Russia after the 2022 invasion, which is likely to vary substantially across U.S. firms, instead treating withdrawal as a binary outcome variable. Exposure to Russia, unfortunately, is not easily determinable from many firms' public disclosures. However, at least in theory, publicly traded U.S. firms' exposure to Russia could be crudely estimated by analyzing abnormal stock returns around the time of Russia's invasion of Ukraine[25] and/or around the time when firms announced their withdrawal from or suspension of operations in Russia.[26] This estimated exposure could then be used to check whether firms that signed the Business Roundtable Statement were less exposed to Russia than substantially similar firms *even before* Russia invaded Ukraine in February 2022. If so, this would support the view that these ostensibly stakeholder-oriented firms excelled at protecting themselves from certain types of risk before they fully materialized.

Firms' decision to withdraw from Russia could be viewed not so much as a sign of a universal commitment to human rights or pacifism, neutrally applied regardless of national allegiances, but rather as an exercise in prudent risk management based on a greater ability

24. Dammann & Lawrence, *supra* note 1, at 620 tbl.12.

25. Abnormal returns would likely primarily reflect exposure to Russia, and not to Ukraine, since Russia's GDP was roughly 9.2 times Ukraine's GDP in 2021. YCHARTS, *Russia vs. Ukraine: An Economic Comparison*, Nasdaq (Mar. 4, 2022), https://www.nasdaq.com/articles/russia-vs.-ukraine%3A-an-economic-comparison [https://perma.cc/4TJJ-48ZQ]. However, returns could also reflect anticipated second or third-order effects on taxes, trade, migration, and public spending in Europe, the U.S., or Asia, or possibly even anticipation of subsequent withdrawals from Russia. It is difficult to precisely date the time when investors would have reacted to Russia's invasion of Ukraine. Officially, the 2022 invasion began on or around February 24, 2024. *Timeline: The Events Leading up to Russia's invasion of Ukraine*, REUTERS (Mar. 1, 2022), https://www.reuters.com/world/europe/events-leading-up-russias-invasion-ukraine-2022-02-28/ [https://perma.cc/F5VJ-68DP]. However, in November and December of 2021, the United States government publicly warned that Russia was massing troops on the border and that an invasion was reasonably likely. Julian Borger & Andrew Roth, *US Warns Russia has Plans for 'Large Scale' Attack on Ukraine*, THE GUARDIAN (Dec. 1, 2021), https://www.theguardian.com/world/2021/dec/01/us-warns-russia-plans-large-scale-attack-on-ukraine [https://perma.cc/8EW7-2KUP]. By February 11 or February 12, 2022, the U.S. government unambiguously stated that an invasion was imminent and that the United States would impose economic sanctions if Russia invaded. *See* Matthew Lee et al., *US Ramps up Ukraine Warning, Says Russia May Invade Any Day*, ASSOCIATED PRESS (Feb. 12, 2022), https://apnews.com/article/russia-ukraine-boris-johnson-joe-biden-europe-moscow-4d1e75eb68e1396bef885425c65039fb ("The Biden administration on Friday escalated dire warnings of a possibly imminent Russian invasion of Ukraine, saying it could happen at any moment"); Alberto Nardelli & Jennifer Jacobs, *U.S. Warns That Russia May Target Multiple Cities in Ukraine*, BLOOMBERG (Feb. 20, 2022), https://www.bloomberg.com/news/articles/2021-11-11/u-s-warns-europe-that-russian-troops-may-plan-ukraine-invasion [https://perma.cc/C6R6-LN23] (mentioning Russian denials of an invasion within a week of launching the invasion).

26. This latter estimate would only be available for firms that announced a withdrawal. A large negative reaction to the invasion and a much less negative stock market reaction to the withdrawal announcement would suggest that once the invasion started, the marginal effect on shareholders of the official corporate withdrawal was minimal. Minimal reaction to both the invasion itself and the withdrawal announcement would suggest that withdrawing firms had minimized their exposure to Russia before its invasion.

to predict future government actions in key markets such as the United States and Europe.[27] Once Russia started a war with Ukraine—a European country that was becoming a viable candidate for EU membership and possibly even NATO expansion—it became extremely likely that the U.S. and E.U. would at a minimum impose increasingly strict economic sanctions against Russia and that businessmen with ties to Russia would come under close scrutiny from Western intelligence and law enforcement agencies.[28] It also became plausible that Russia would take a harsh approach toward companies perceived to be beholden to U.S. or European foreign policy, possibly including seizure of assets, theft of intellectual property, and arrests of executives on espionage or other charges.[29]

Russia under its current leadership has a long history of engaging in such actions. Russia arrested businessmen with Western ties on questionable charges as early as 2003 and seized control of their firms.[30] Publicly traded Russian companies have long traded at much lower price-to-earnings ratios than their American and European counterparts, reflecting investor fears of managerial misconduct, tunneling of assets, and government interference.[31] Russia's longstanding reputation for severe corruption would make many foreign corporations reluctant to allow themselves to become dependent on the Russian market.[32] Russia's 1998 default on its sovereign debt has been followed by perennially

27. *See, e.g.*, Guido Giese et al., *Foundations of ESG Investing: How ESG Affects Equity Valuation, Risk, and Performance*, 45 J. PORTFOLIO MGMT. 69, 70 (2019) (finding that higher ESG scores predict lower idiosyncratic and systemic risk); Benjamin Hübel & Hendrik Scholz, *Integrating Sustainability Risks in Asset Management: The Role of ESG Exposures and ESG Ratings*, 12 J. ASSET MGMT. 52, 52 (2020) (finding similar results).

28. Nate Raymond, *Russian Businessman Convicted of U.S. Hack-and-Trade Charges*, REUTERS (Feb. 14, 2023), https://www.reuters.com/world/us/russian-businessman-convicted-us-hack-and-trade-charges-2023-02-14/ [https://perma.cc/W2AD-YLY5].

29. *See, e.g.*, Madeleine Speed & Courtney Weaver, *Ex-Carlsberg Executives Detained in Russia over Fraud Claims*, FIN. TIMES (Nov. 16, 2023), https://www.ft.com/content/145f2310-7222-4df9-9976-f268ed1f1eb2 (on file with the *Journal of Corporation Law*); Saabira Chaudhuri, *Russia Arrests Two Executives at Seized Carlsberg Unit on Fraud Charges*, WALL ST. J. (Nov. 16, 2023), https://www.wsj.com/world/russia/russia-arrests-two-executives-at-seized-carlsberg-unit-on-fraud-charges-45cde873 (on file with the *Journal of Corporation Law*) (framing charges as linked to geopolitical tension and not any wrongdoing of executives); Armani Syed, *Russia Arrests Dual U.S. Citizen on Accusations of Treason*, TIME (Feb. 20, 2024), https://time.com/6696617/russia-arrests-dual-citizen-treason/ [https://perma.cc/CYG3-VYN6] (connecting treason charges to geopolitical tension between the US and Russia).

30. *See, e.g.*, Greg Schneider, *Arrested Russian Businessman Is Carlyle Group Adviser*, WASH. POST (Nov. 9, 2003), https://www.washingtonpost.com/archive/business/2003/11/10/arrested-russian-businessman-is-carlyle-group-adviser/7e20a4a3-b67b-493e-bc4e-f05f63ec7ac5/ [https://perma.cc/E5U4-Z535] ("Because the billionaire is seen as a possible political rival to President Vladimir Putin, his arrest has unsettled the country's business community and worried foreign investors.").

31. For example, RSX, an ETF tracking leading Russian companies, has historically traded at a P.E. ratio of around 5. *See VanEck Russia ETF (RSX)*, YAHOO FIN., https://finance.yahoo.com/quote/RSX/ [https://perma.cc/F4Sq-3G9D] (showing a P.E. ratio of 4.31). By contrast, S&P500 ETFs such as SPY have generally traded at a P.E. ratio above 20 during the last decade, while U.S. energy ETFs such as XLE have generally traded at a P.E. ratio of around 8 to 12. *See S&P 500 PE Ratio - 90 Year Historical Chart*, MACROTRENDS, https://www.macrotrends.net/2577/sp-500-pe-ratio-price-to-earnings-chart [https://perma.cc/J4LV-E9MS] (showing change in PE ratio over time); *The Energy Select Sector SPDR® ETF (XLE)*, YCHARTS, https://ycharts.com/companies/XLE (last visited July 25, 2024) (listing 13.21).

32. Russia has ranked in the bottom quartile of countries on the "Corruption Perception Index" for more than a decade, meaning it is perceived to be among the 25% of countries with the worst corruption problems in

high interest rates and therefore high cost of capital for doing business in Russia. Russia has exceptionally low labor costs[33] and very low energy costs,[34] but locating productive capacity within Russia has long been risky and not particularly popular with U.S. firms.[35]

Russia's governance problems are compounded by longstanding geopolitical tensions with the U.S. and NATO. Even after the dissolution of the Soviet Union in the early 1990s, and before the 2022 invasion of Ukraine, Russia had tense relations with the United States and EU member states and acted aggressively toward former Soviet Republics drifting from Russia's sphere of influence toward Western alignment. In 2008 shortly after NATO considered an application by the former Soviet Republic of Georgia to join the NATO alliance, Russia invaded and occupied nearly 20 percent of Georgian territory.[36] In 2014, after a Ukrainian President who was abandoning an application to join the European Union in favor of closer economic integration with Russia was ousted from power, Russia invaded Ukraine and occupied Eastern Ukraine and Crimea.[37] Russia has also repeatedly violated the airspace and maritime space of smaller, weaker neighbors that did not have a NATO security guarantee, such as Sweden and Finland.[38] These countries were officially neutral before the 2022 Ukraine invasion, but in practice have been closer to NATO than to Russia for decades.[39]

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the world. *Corruption Perception Index Russia*, TRANSPARENCY INT'L., https://www.transparency.org/en/cpi/2023/index/rus (last visited July 25, 2024).

33. *Statistics on Labor Costs*, INT'L. LAB. ORG., (Jan 11, 2024), https://ilostat.ilo.org/topics/labour-costs/ [https://perma.cc/3D58-K5YM] (showing Russian labor costs at $0.03 an hour).

34. *Cost of Electricity by Country 2024*, WORLD POPULATION REV., https://worldpopulationreview.com/country-rankings/cost-of-electricity-by-country [https://perma.cc/A9VL-PKUV]

35. For example, U.S.-originating foreign direct investment in Russia in 2021 was roughly $12 billion, about the same as U.S. FDI in Poland and approximately one-fifteenth of U.S. FDI in Germany. *Balance of Payments and Direct Investment Position Data*, U.S. BUREAU OF ECON. ANALYSIS, https://www.bea.gov/international/di1usdbal. Poland had a GDP that was *half* that of Russia and had much higher labor costs and higher energy costs than Russia. G*DP (Current US$) - Poland, Russian Federation*, WORLD BANK GRP., https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=PL-RU [https://perma.cc/2BBT-JTJN]; *see supra* notes 33–34.

36. *Relations with Georgia*, NATO, https://www.nato.int/cps/en/natohq/topics_38988.htm#:~:text=Georgia%20is%20one%20of%20NATO's,goal%20of%20eventual%20NATO%20membership. [https://perma.cc/SWG5-PDMB]; Peter Dickinson, *The 2008 Russo-Georgian War: Putin's Green Light*, ATL. COUNCIL (Aug. 7, 2021), https://www.atlanticcouncil.org/blogs/ukrainealert/the-2008-russo-georgian-war-putins-green-light/ [https://perma.cc/5QBZ-W8VU].

37. Jonathan Masters, *Ukraine: Conflict at the Crossroads of Europe and Russia*, COUNCIL ON FOREIGN RELS. (last updated Feb. 14, 2023), https://www.cfr.org/backgrounder/ukraine-conflict-crossroads-europe-and-russia [https://perma.cc/T5QU-KQZ8].

38. *Armed Forces: Russia Hasn't Flown into Airspace More Than Usual*, RADIO SWEDEN (July 11, 2015), https://sverigesradio.se/artikel/6210148 [https://perma.cc/V64Q-XBMT] ("In the first half of 2015 there were nine violations of Swedish airspace rules. . . . the Armed Forces has reported incidents involving Russian military planes flying into Swedish airspace."). Finland and Sweden joined NATO in 2023 and 2024, respectively. Joseph Clark, *Pentagon Welcomes Sweden, Finland in Ceremony Marking NATO Anniversary*, DOD NEWS (Apr. 4, 2024), https://www.defense.gov/News/News-Stories/Article/Article/3731771/pentagon-welcomes-sweden-finland-in-ceremony-marking-nato-anniversary/ [https://perma.cc/8ACQ-NTEC].

39. Phelan Chatterjee, *How Sweden and Finland Went from Neutral to NATO*, BBC NEWS (July 11, 2023), https://www.bbc.com/news/world-europe-61397478 [https://perma.cc/7LT4-ZBRD].

In 2015, Russia fought a brutal war in Syria, using aerial bombardment and artillery and working with Iranian special forces to support the Syrian government against rebel groups backed by Turkey and the United States.[40] The Syrian civil war resulted in the deaths of over 500,000 Syrians and the displacement of millions of refugees as entire cities were leveled.[41] Russia succeeded in its goals of keeping a pro-Russian Syrian regime in power and maintaining naval base leases in Syria.[42]

Thus, Russia had a long track record of a hostile business climate, geopolitical tension with the United States and its allies, and disregard for human rights before Russia's 2022 invasion of Ukraine.

What this means is that firms with an ESG orientation, or simply a prudent approach to geopolitical risk management, would have had concerns about Russia long before the 2022 Ukraine invasion. These firms had time to prepare by insulating their supply chains from dependence on Russia. Such preparations would have made officially "withdrawing" from Russia in 2022 or 2023 easier for these firms because they would have started effectively withdrawing *sooner*. Thus, ESG-oriented firms may have found it *financially* less expensive to withdraw from Russia after 2022 than firms with a less holistic approach to risk management. Because information on the cost of withdrawing from Russia (i.e., exposure to Russia) is not readily available at the firm level, firms stood to benefit in terms of public relations by announcing a withdrawal after the Ukraine invasion even if they effectively withdrew earlier (or never entered).

Russia's 2022 invasion of Ukraine created a massive refugee crisis, resulted in the deaths of many thousands of people and the displacement of millions more, set back Ukrainian ambitions for EU membership, and disrupted global food and energy supplies.[43] The amount of attention it attracted was partly a function of its geopolitical and economic context, and not simply a function of the severity of human rights abuses. So far, the U.S. and European sources estimate that roughly 100,000 Ukrainians have died in the conflict,[44] compared to more than 500,000 Syrians who died in their civil war.[45] The fact that recent

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40. Nicole Grajewski, *The Evolution of Russian and Iranian Cooperation in Syria*, CTR. FOR STRATEGIC & INT'L. STUD. (Nov. 17, 2021), https://www.csis.org/analysis/evolution-russian-and-iranian-cooperation-syria [https://perma.cc/MR4E-35YU].

41. *Why has the Syrian War Lasted 12 Years?*, BBC NEWS (May 2, 2023), https://www.bbc.com/news/world-middle-east-35806229 [https://perma.cc/5HF2-4KZN]

42. *Assad Welcomes New Russian Bases in Syria After Putin Meeting*, AL JAZEERA (Mar. 16, 2023), https://www.aljazeera.com/news/2023/3/16/assad-will-welcome-new-russian-military-bases-in-syria [https://perma.cc/TUX6-WW3P].

43. *Ukraine Refugee Situation*, UNHCR, https://data.unhcr.org/en/situations/ukraine (last visited July 25, 2024) (listing 6.5 million refugees); Myroslava Gongadze, *Ukraine Sets Out on Long Path to EU Membership*, VOICE OF AMERICA (June 26, 2024), https://www.voanews.com/a/ukraine-sets-out-on-long-path-to-eu-membership/7675241.html [https://perma.cc/C43S-CJQT]; Caitlin Welsh, *Russia, Ukraine, and Global Food Security: A Two-Year Assessment*, CTR. FOR STRATEGIC & INT'L. STUD. (Feb. 27, 2024), https://www.csis.org/analysis/russia-ukraine-and-global-food-security-two-year-assessment [https://perma.cc/HB6E-UGZE].

44. Max Maldonado, *Russia's Invasion of Ukraine, Two Years Later*, PBS (Feb. 23, 2024), https://www.pbs.org/wgbh/frontline/article/ukraine-war-russia-second-anniversary/ [https://perma.cc/GFW4-4EDD].

45. Agence France Presse, *Syria War Death Toll Over 507,000, 13 Years On*, BARRON'S (Mar. 14, 2024), https://www.barrons.com/news/syria-war-death-toll-over-507-000-13-years-on-32a62fe9 [https://perma.cc/HG8V-B55S].

conflicts that were more deadly than Russia's invasion of Ukraine did not generate comparable corporate pledges to cease doing business with belligerents suggests that the corporate withdrawal dynamic is more complex than a simple concern for human rights.

Russia's 2022 invasion of Ukraine generated more hostility toward Russia in the United States and Europe than Russia's intervention in Syria, not necessarily because the Ukraine war was more deadly, but because Ukraine had the potential to become a member of the European Union and NATO within the foreseeable future. Syria did not have that potential. Georgia's candidacy was arguably less compelling than Ukraine's. Ukraine shares contiguous land borders and transportation links with four EU member states. Georgia is hundreds of miles east of the most eastern EU member states and has stronger economic ties to Asia than to Europe.[46] An attack on Ukraine therefore led to far more tension between Russia and the world's two leading economic blocks (the United States and the European Union) than anything Russia did in Syria or Georgia. The pressure on U.S. firms to withdraw from Russia in response to the Ukraine invasion therefore may reflect geopolitical considerations and prudent risk management at least as much as neutral, consistent concern for human rights.

ESG can perhaps better be understood through the lens of risk management rather than as a purer exercise of moral virtue.

46. EXTERNAL MERCHANDISE TRADE IN GEORGIA 2023 (PRELIMINARY RESULTS), NAT'L. STATS. OFF. OF GEOR. (2023), https://www.geostat.ge/media/59731/External-Merchandise-Trade-of-Georgia-in-2023.pdf [https://perma.cc/WZL2-LCGE].