
SINO-AMERICAN SANCTIONS CONVERGENCE?

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“Even if now, in obedience to the general law of decay, we should ever be forced to yield, still it will be remembered that we held rule over more Hellenes than any other Hellenic state, that we sustained the greatest wars against their united or separate powers, and inhabited a city unrivalled by any other in resources or magnitude. These glories may incur the censure of the slow and unambitious; but in the breast of energy they will awake emulation, and in those who must remain without them an envious regret.”

– *Funeral Speech of Pericles for the Athenian War Dead, as reported in THUCYDIDES, THE HISTORY OF THE PELOPONNESIAN WAR* (Richard Crawley trans., 2003)

“Even where all the positive data seem to preclude it, the relationship of rivalry moves irresistibly toward reciprocity and identity.”

– *René Girard, “The Underground Critic”, in René Girard, To Double Business Bound: Essays on Literature, Mimesis, and Anthropology* (1978)

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ABSTRACT

The People's Republic of China is rapidly constructing a new regime for economic and diplomatic sanctions. With its Anti-Foreign Sanctions Law (AFSL) and related legislation, Beijing has taken a step towards legally formalizing the means of pressure it uses against states, organizations, or individuals seen as threatening its core interests. Meanwhile, various informal coercive measures also continue to be employed. While questions remain about their scope and future uses, Beijing has especially extolled AFSL sanctions as countermeasures to U.S. interference.

This Article undertakes a detailed examination of the new Chinese sanctions framework, its historical origins, and its role in Beijing's broader construction of what it calls "foreign-related rule of law." It also argues that China's overall economic sanctions trajectory is ultimately best viewed less as countering U.S. practices than as an emulation of them. An overview of the modern history of China's informal sanctions (ranging from boycotts to disguised trade restrictions) contextualizes the emerging regime as but the latest step in a general pattern of convergence in uses of economic pressure by China and the United States, which predates the AFSL. In turn, this dynamic of imitation and socialization in sanctions usage may indicate a phenomenon of "mimetic unilateralism," in which acts of coercion are used less to pursue specific rational aims than as performative indicia of great power status. While the concrete effects of unilateral coercive measures may vary, they nonetheless serve to inhibit more productive forms of engagement.

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I. INTRODUCTION

China’s permanent representative to the United Nations, Zhang Jun, used part of his time during an April 24, 2023 meeting of the UN Security Council to denounce unilateral economic sanctions. Using more vivid language than usual, but echoing positions frequently expressed by Chinese diplomats and officials, Zhang stated that sanctions are:

like a rampaging monster constantly creating and aggravating humanitarian crises, violating the basic rights of women and children, hindering the development and progress of countries, especially small and medium-sized countries, and causing immense damage to the harmony and stability of international relations.¹

Six days before, meanwhile, the Ministry of Commerce of the People’s Republic of China (“PRC”) had announced details of its own robust sanctions package targeting the U.S. arms manufacturers Raytheon and Lockheed Martin along with their corporate leadership.²

¹ Security Council, *Overview of Security Council Meeting Records*, at 20, U.N. Doc. S/PV.9308 (Apr. 24, 2023), <https://www.securitycouncilreport.org/un-documents/document/s-pv-9308.php> [<https://perma.cc/QEC8-E3MD>]; *see also* Press Release, Security Council, Amid Strained Multilateral System, States Must Recommit to United Nations Charter Obligations, Prioritize Human Rights, Secretary-General Tells Security Council, U.N. Press Release SC/15263 (Apr. 24, 2023), <https://press.un.org/en/2023/sc15263.doc.htm> [<https://perma.cc/ASG4-FCVF>]. Such critiques of unilateral sanctions have been a common feature of Beijing’s commentary on the alleged U.S. pursuit of “hegemony” in the international order. *See also* Press Release, Security Council, Divisive Political Tactics Must Not Be Allowed to Endanger Social Cohesion in Bosnia and Herzegovina, High Representative Tells Security Council, U.N. Press Release SC/15279 (May 10, 2023) [hereinafter U.N. Press Release SC/15279], <https://press.un.org/en/2023/sc15279.doc.htm> [<https://perma.cc/CL76-RQ9A>].

² Huizhong Wu, *China Reveals New Details of Raytheon, Lockheed Sanctions*, AP NEWS (Apr. 18, 2023, 11:23 AM), <https://apnews.com/article/china-sanctions->

Earlier in the month, the U.S. Ministry of Foreign Affairs had announced that the Ronald Reagan Presidential Library and the Hudson Institute, a conservative think tank in Washington, D.C., were sanctioned for “providing a platform and convenience to Taiwan separatist activities.”³ Around the same time, a W.T.O. panel was formed for the European Union’s challenge against China’s de facto embargo on trade with Lithuania, also due to the latter’s Taiwan policies.⁴

In an unrelated diplomatic spat with South Korea at the beginning of the year concerning coronavirus-related travel restrictions, meanwhile, China imposed a sudden travel ban on South Koreans and transit passengers only entering the country to catch connecting flights.⁵ Similarly, China has imposed a wide range of economic restrictions in recent years upon foreign states, individuals, organizations, or industries, usually based on alleged actions harming the state’s sovereignty or constituting unwarranted interference into its internal affairs.⁶ As with U.S. sanctions targeting Chinese entities and others around the globe, Beijing’s own moves were accompanied by briefly stated reasons and lacked possibilities for any robust legal review, whether via domestic or global institutions.⁷

weapons-sales-taiwan-lockheed-raytheon-e6503f62d8aa8fa8cf9205252e7bff5f
[<https://perma.cc/T83N-FL3L>].

³ Huizhong Wu, *China Sanctions Reagan Library, Others over Taiwanese President Tsai’s U.S. Trip*, PBS (Apr. 7, 2023, 5:19 PM), <https://www.pbs.org/news-hour/world/china-sanctions-reagan-library-others-over-tiawnese-president-tsais-u-s-trip> [<https://perma.cc/Z3MR-46AK>].

⁴ Note by the Secretariat, *China—Measures Concerning Trade in Goods*, WTO Doc. WT/DS610/9 (panel composed Apr. 19, 2023).

⁵ See Soo-Hyang Choi & Albee Zhang, *China Halts Short-Term Visas in South Korea, First Response to COVID Curbs*, REUTERS (Jan. 10, 2023, 5:49 AM), <https://www.reuters.com/world/asia-pacific/chinas-embassy-south-korea-halts-issue-short-term-visas-2023-01-10/> [<https://perma.cc/8GJ7-4AJE>].

⁶ See, e.g., Gary Clyde Hufbauer & Euijin Jung, *China Plays the Sanctions Game, Anticipating a Bad US Habit*, PETERSON INST. FOR INT’L ECON. (Dec. 14, 2020, 7:00 AM), <https://www.piie.com/blogs/china-economic-watch/china-plays-sanctions-game-anticipating-bad-us-habit> [<https://perma.cc/QZT8-AELP>]; Francesca Ghiretti, *How China Imposes Sanctions: A Guide to the Evolution of Beijing’s New Policy Tool*, MERCATOR INST. FOR CHINA STUD. (June 6, 2023), <https://www.merics.org/en/report/how-china-imposes-sanctions> [<https://perma.cc/PK83-ZCK3>]; EUR. PARLIAMENT, *CHINA’S ECONOMIC COERCION: EVOLUTION, CHARACTERISTICS AND COUNTERMEASURES* (Nov. 2022), [https://www.europarl.europa.eu/Reg-Data/etudes/BRIE/2022/738219/EPRS_BRI\(2022\)738219_EN.pdf](https://www.europarl.europa.eu/Reg-Data/etudes/BRIE/2022/738219/EPRS_BRI(2022)738219_EN.pdf) [<https://perma.cc/H73K-5PF5>].

⁷ On the general absence of genuine due process for U.S.-imposed sanctions, see generally Perry S. Bechky, *Sanctions and the Blurred Boundaries of International Economic Law*, 83 MO. L. REV. 1, 30 (2018) (noting “heightening due process and

There is, however, one especially prominent distinction between the U.S. coercive measures that PRC diplomats criticize and those of Beijing itself. While the former are called sanctions (in Chinese, *zhicai*), the latter are technically deemed “counter-sanctions” (*fan-zhi*).⁸ Indeed, the legislation under which the sanctions were issued is officially titled the Anti-Foreign Sanctions Law (“AFSL”), passed by the Standing Committee of the National People’s Congress (“NPCSC”) on June 10, 2021. This law envisions a wide range of potential punitive actions in response to acts of “foreign states, organizations, or individuals . . . that compromise [China’s] sovereignty, security, or development interests.”⁹ The legislation, along with other relevant administrative measures, empowers various departments of the PRC government—and especially the Ministry of Foreign Affairs and the Ministry of Commerce—to wield economic coercion authorized by a domestic statutory delegation of broad and loosely defined powers, which are very unlikely to be limited by courts.¹⁰ The AFSL

other concerns” arising from rapidly increasing use of sanctions); Anton Moiseenko, *Due Process and Unilateral Targeted Sanctions* in CHARLOTTE BEAUCILLON (ED.), RESEARCH HANDBOOK ON UNILATERAL AND EXTRATERRITORIAL SANCTIONS, 405-423 (2021); see also Desirée LeClercq, *Rights-Based Sanctions Procedures*, 75 ADMIN. L. REV. 1, 105 (2023); Allison Lofgren, *Balancing Liberty and Security: A Proposal for Amplified Procedural Due Process Protections in the U.S. Sanctions Regime*, 31 WM. & MARY BILL RTS. J. 235 (2022). For an argument that bilateral investment treaties (“BITs”) and other international agreements could provide grounds for asserting due process challenges to some impositions of sanctions, see Tom Ruys and Cedric Ryngaert, *Secondary Sanctions: A Weapon Out of Control? The International Legality of, and European Responses to, US Secondary Sanctions*, 89 BRIT. Y.B. INT’L L. 1 (2020).

⁸ Zhonghua renmin gongheguo fan waiguo zhicai fa (中华人民共和国反外国制裁法) [Anti-Foreign Sanctions Law] (promulgated by the Standing Comm. Nat’l People’s Cong., June 10, 2021) 2000 STANDING COMM. NAT’L PEOPLE’S CONG. GAZ. 1041 (China) [hereinafter AFSL].

⁹ *Id.* art. 15.

¹⁰ In the run-up to the AFSL’s adoption, the Ministry of Commerce issued Bukekao Shiti Qingdan Guiding (不可靠实体清单规定) [Provisions on the Unreliable Entity List] (promulgated by the Ministry of Commerce, Sept. 19, 2020, effective Sept. 19, 2020), Ministry of Commerce Order No. 4, 2020 [hereinafter UEL]. It also issued Zuduan Waiguo Falü yu Cuoshi Budang Yuwai Shiyong Banfa (阻断外国法律与措施不当域外适用办法) [Rules on Blocking Unjustified Extraterritorial Application of Foreign Legislation and Measures] (promulgated by the Ministry of Commerce, Jan. 1, 2021, effective Jan. 1, 2021) [hereinafter Blocking Regulation]. Although the Provisions allow that a “foreign entity may apply for its removal from the Unreliable Entity List,” this does not involve a judicial hearing. Chinese courts exert highly limited judicial review of government action, outside of relatively narrowly-confined procedures of administrative law. For a helpful overview, see Wei Cui, Jie Cheng & Dominika Wiesner, *Judicial Review of Government Actions in*

and closely related laws and rules form a key aspect of Beijing's broader push to develop a comprehensive approach to what it calls "foreign-related rule of law" (*shewai fazhi*). This has been defined as a Chinese system of foreign relations law, advancing goals of resilience amidst "international struggle."¹¹

In many of these respects, China's new and still-evolving sanctions regime echoes that of its most important rival in global affairs. Like the United States' sanctions, which are primarily empowered by the 1977 International Emergency Economic Powers Act ("IEEPA") and a set of other relevant statutes,¹² Chinese sanctions under the AFSL have emerged as a versatile tool with vanishingly few built-in restraints or limitations. Despite considerable differences between the United States' and China's measures in their legal architecture, motivations (for example, unlike U.S. legislation, China's does not authorize imposing sanctions for human rights violations), and modes of use, their points of similarity are also significant. Like designations by the Office of Foreign Assets Control ("OFAC") under IEEPA, for example, sanctions instituted by State Council organs appear poised to escape even the usual modes of limited review available for ordinary agency actions and decisions.¹³ While the scope of administrative

China, China Perspectives, China Perspectives, 2019 CHINA PERSPS. 35, 35-36 (2019).

¹¹ For an analysis of recent discourse on the concept of "foreign-related rule of law," see, e.g., Moritz Rudolf, *Politburo Whisperer on Advancing "Foreign-Related Rule of Law"*, NPC OBSERVER (Dec. 18, 2023, 3:15 PM), <https://npcobserver.com/2023/12/china-politburo-foreign-related-rule-of-law/> [<https://perma.cc/X56K-AKVK>] (noting that "while [foreign-related rule of law] focuses on domestic Chinese law, it also corresponds to the PRC's increasing willingness to participate in the formulation of international rules as well as to contribute to and lead global governance reform"); see also Huang Huikang, *Cong Zhanlüe Gaodu He Quanqiu Shijiao Renzhi He Tuijin Shewai Fazhi Jianshe* [Understanding and Advancing the Development of Foreign-Related Rule of Law from a Strategic Height and a Global Perspective], 5 FAZHI XIANDAIHUA YANJIU [LAW & MODERNIZATION] 37, 53-54 (2022) (describing the foreign-related rule of law as "enhancing the rule of law in matters involving foreign parties" but also as "effectively defending against external challenges and risks").

¹² In addition to the IEEPA, 50 U.S.C. § 1701 *et seq.* (1977), these include the Trading With the Enemy Act ("TWEA"), 50 U.S.C. § 4301 *et seq.* (1917), the Sergei Magnitsky Rule of Law Accountability Act of 2012, Pub. L. No. 112-208, 126 Stat. 1496 (2012), the Global Magnitsky Human Rights Accountability Act, 22 U.S.C. Ch. 108 (2016), and the Countering America's Adversaries Through Sanctions Act ("CAATSA"), Pub. L. No. 115-44, (2017), among others.

¹³ On OFAC's broad discretion, see, e.g., LeClercq, *supra* note 7 at 117 (noting that "[b]eyond broad regulatory parameters, neither Congress nor the President regulates OFAC's procedures. Consequently, OFAC enjoys significant discretion to self-regulate. It offers public guidelines suggesting possible eligibility criteria,

review in China has increased over recent decades, the sanctions regime represents a countercyclical phenomenon—albeit one also on display in a number of specific areas where “security”-based rationales have circumscribed the role of courts.¹⁴

China’s sanctions are, as mentioned, justified on the basis of “sovereignty, security, and development interests,” thus comprising a narrower range of potential motivations than U.S. sanctions.¹⁵ Yet each of these categories is also susceptible to capacious and flexible readings. Most notably, the measures taken since the AFSL’s adoption in 2021 have demonstrated a willingness to expand these categories to encompass conduct only indirectly connected with any specific or identifiable threat.¹⁶ In that sense, they appear to continue an earlier legacy of Chinese informal sanctioning practices which preceded the AFSL legislation, and which also included coercive measures to punish a broad range of vaguely defined “unfriendly” actions.¹⁷

It remains to be seen whether this de facto sanctions activity outside the scope of the legislation will also continue; Beijing’s conduct since 2021 has sent mixed messages in this regard.¹⁸

standards, designations, and penalties. It promulgates its own rules without subjecting them to the APA’s notice-and-comment procedures” and proposing a more robust form of administrative due process for the imposition of sanctions).

¹⁴ For a useful discussion of these trends, see Juan Wang & Sida Liu, *Ordering Power Under the Party: A Relational Approach to Law and Politics in China*, 6 *ASIAN J. L. & SOC’Y* 1, 8 (2019).

¹⁵ AFSL, *supra* note 8, art. 1, 15.

¹⁶ For example, the sanctions measures against multiple actors related to Taiwan targeted conduct ranging from concrete actions, such as arms sales, to more abstract forms of support such as personal meetings or hosting of Taiwanese official visits. *See supra* notes 3-4 and accompanying text.

¹⁷ For an overview of China’s initial uses of the AFSL (which also briefly raises but does not comprehensively address the issue of coexisting, alternative forms of sanctioning), see Ghiretti, *supra* note 6. For a discussion of China’s pre-AFSL practices of informal state sanctioning in the name of countering interference or preserving national security, see *infra* Part II.B.

¹⁸ Suggesting continuity, for example, were China’s extensive restrictive measures taken against Lithuania after it permitted the opening of a representative office for “Taiwan” (rather than “Taipei”). These began in November and December 2021, several months after the enactment of the AFSL, and made no reference to the legislation. *See, e.g.*, Matthew Reynolds & Matthew P. Goodman, *China’s Economic Coercion: Lessons from Lithuania*, CTS. FOR STRATEGIC & INT’L STUD. (May 6, 2022) <https://www.csis.org/analysis/chinas-economic-coercion-lessons-lithuania> [<https://perma.cc/SLG8-LKP3>]. On the other hand, developments suggesting an intention to ramp down the use of informal punitive trade policies included the recent termination of duties and other measures targeting the Australian wine industry, which were originally implemented to punish Australia for security cooperation with the U.S. and former Prime Minister Scott Morrison’s call for “a global inquiry into

Several ongoing developments suggest a future trajectory of increased weaponization of economic relations among major powers, China included. Recent years have seen China's relations with both the United States and the European Union increasingly typified by mutual accusations of economic coercion, with the latter exploring agendas of "de-risking" or even "de-coupling."¹⁹ Meanwhile, ostensibly "defensive" or "preventive" measures taken on this basis are often interpreted as acts of hostility by their targets, justifying further retaliation.²⁰ In this sense, competition in the economic realm seems to have come to more closely resemble the dynamics of the traditional "security dilemma" in international relations scholarship—the phenomenon whereby steps taken by State A to maximize its own security create risks to the security of State B, which then responds in kind, leading to further responses by State A, etc., and ultimately causing escalation of hostilities and a greater possibility of destructive conflict.²¹

the origins and early handling of coronavirus" (which Beijing viewed as being motivated by geopolitical hostility). *See, e.g.*, Keira Wright & Ben Westcott, *China Scraps Tariffs on Australian Wine as Relations Improve*, BLOOMBERG (Mar. 28, 2024, 4:25 AM) <https://www.bloomberg.com/news/articles/2024-03-28/china-scraps-tariffs-on-australian-wine-as-relations-improve>.

¹⁹ For a critique of the increasingly ubiquitous strategic aim of "derisking" in today's Western policy discourse on China, *see, e.g.*, Paul Gewirtz, *Words and Policies: "De-risking" and China Policy*, BROOKINGS (May 30, 2023), <https://www.brookings.edu/articles/words-and-policies-de-risking-and-china-policy/> [https://perma.cc/9N83-ULC2].

²⁰ For example, the Biden administration's decisions to impose tariffs and other restrictions on Chinese electric vehicles on the grounds of both commercial and ostensible "security concerns" (due to their connected features) was portrayed in Chinese state media as a protectionist attempt to suppress a burgeoning Chinese industry and maintain U.S. economic hegemony. *See, e.g.*, Zhu Jiang, *Meiguo Chaozuo "Zhongguo Diandong Qiche Weixielun" Fen Ji Bu? Jie Kai Shishi Zhenxiang*, CHINA DAILY.COM (Apr. 24, 2024), <https://china.chinadaily.com.cn/a/202404/24/WS66288eeba3109f7860ddac43.html> [https://perma.cc/F7GP-9DTE].

²¹ *See* John H. Herz, *The Security Dilemma in International Relations: Background and Present Problems*, 17 INT'L RELS. 411, 412 (2003) (arguing that "the explanation [for aggressive policies by states] must be seen in the anarchic nature of a system of units without any higher authority offering protection from interference with their existence and independence. Thus there [is] a need to provide oneself with the means of protection, causing suspicion and fears, armament races, and war."). While it is especially associated with the Realist school of thought, the basic notion of the security dilemma is widely shared across many strands of international relations theory. Different scholars have proposed distinct accounts of the concept and its implications (as well as genuine potential to be overcome). *See, e.g.*, CONSTRUCTIVISM AND INTERNATIONAL RELATIONS: ALEXANDER WENDT AND HIS CRITICS 75 (Stefano Guzzini & Anna Leander eds., 2013) ("The starting point of anarchy and the security dilemma can be found in all sections of the classical

Sanctions, whether formal or informal, may play an important part in such dynamics. To an even greater degree than trade wars, punitive measures of economic coercion represent a “securitization” of the economic realm that puts long-term cooperative relations in jeopardy.²² Meanwhile, the establishment of institutional regimes for the imposition of such securitization measures raises the prospect of a negative feedback loop, in which great power rivals develop competing transnationally coercive administrative states compromising their obligations under international law.²³ In this Article, I refer to such emulative rivalry with the term “mimetic unilateralism.” By this, I refer to one particular manifestation within domestic administration and foreign relations law of forms of interaction usually discussed in international relations literature under the umbrella term of socialization.²⁴ I argue that a shift towards more entrenched tools of economic coercion, including via flexible/permissive domestic administrative rule-sets mirroring those of strategic rivals, may comprise one important form of “negative socialization” imperilling future cooperation.²⁵

tradition. . . . What distinguished “realism” is a further assumption. . . . Whereas, in principle, an “idealist” position would not exclude the possibility of the international system becoming “domesticated” . . . realism would insist that . . . [w]e are bound by and will inevitably return to the security dilemma in one guise or another.”).

²² On the notion of “securitization” as generally applied in international relations scholarship see, e.g., BARRY BUZAN, OLE WÆVER & JAAP DE WILDE, *SECURITY: A NEW FRAMEWORK FOR ANALYSIS* 23-24 (1998) (noting that “[s]ecuritization can . . . be seen as a more extreme version of politicization . . . meaning the issue [so designated] is presented as an existential threat, requiring emergency measures and justifying actions outside the normal bounds of political procedure”). For a critical appraisal of this paradigm, see, e.g., *id.* at 29 (arguing that “security should be seen as a negative, as a failure to deal with issues as normal politics”); cf. Ken Booth, *Security and Emancipation*, 17 *REV. INT’L RELS.* 4, 313, 319 (1991) (arguing that true security “can only be achieved by people and groups if they do not deprive others of it”).

²³ Cf. Devika Hovell, *Unfinished Business of International Law: The Questionable Legality of Autonomous Sanctions*, 113 *AJIL UNBOUND* 140, 144 (2019) (noting that “controversy continues to surround the lawfulness of . . . ‘unilateral coercive sanctions.’”).

²⁴ See, e.g., Carol Atkinson, *Constructivist Implications of Material Power: Military Engagement and the Socialization of States, 1972–2000*, 50 *INT’L STUD. Q.* 509, 512 (2006) (describing the “socialization process” as comprising “three level[s]: (1) individuals acquire new ideas; (2) coercion, incentives, and persuasion aid in institutionalizing these ideas in the underlying political structure of the state; and (3) once institutionalized, these new ideas/identity of the state influence the material and ideational structure of international society.”).

²⁵ Cf. Brandon Yoder & Kyle Haynes, *Endogenous Preferences, Credible Signaling, and the Security Dilemma: Bridging the Rationalist–Constructivist Divide*, *AM. J. POL. SCI.*, 2024, at 1, 2, 13-14 (arguing that “states’ interactions might

This Article begins, in Part II, by assessing the historical background of economic coercion in China, as well as the main forms of economic statecraft that have defined its articulation prior to the adoption of the new legislative regime. The origins of economic sanctions in China are explored, in particular, in relation to the popular notions of *dizhi* and *dihuo*—i.e., “resistance” and “resistance against products”—which indicated patriotic boycotts against imperialist powers during China’s era of subjection to foreign control.²⁶ As China’s official sanctions practices today continue to invoke local precedents and ideas to justify its legitimacy, an appreciation for this conceptual genealogy and its more recent transformations would be crucial for any “thick description” of the socialization dynamics being elucidated.²⁷ While elucidating the many important distinctions between informal, non-state-organized *dizhi* and newer, state-dominated sanctions practices, this Article nonetheless shows how the former have provided key intellectual and symbolic resources for the latter.

The Article then, in Part III, examines the convergence of China’s sanctions system to more closely resemble that of the United States. As this Part will argue, U.S. sanctions have helped to inspire China’s increasing use of tools of economic coercion tools both through example and through the direct application of such tools to China itself. Drawing on relevant literature on the comparative law of sanctions, this Part elucidates both the traditional exceptionalism of the United States in the arena of sanctions and the extent to which its influence has come to penetrate other jurisdictions. As will also be shown, China is not alone in developing a new openness towards using tools of economic coercion to assert and defend its great power status, as well as in displaying the impact of the U.S. example in doing so.

endogenously shape their identities and domestic structures, and thus alter their basic preferences for or against cooperative outcomes”; that “exclusion from international economic exchange . . . can . . . provoke negative socialization”; and that, in U.S.-China relations specifically, “[aggressive] measures could trigger unwanted hostility spirals through negative socialization”).

²⁶ See, e.g., GUANHUA WANG, IN SEARCH OF JUSTICE: THE 1905–1906 CHINESE ANTI-AMERICAN BOYCOTT 69 (2001) (“In Chinese, a boycott is [most] often called *dizhi* [which is sometimes] (translated as ‘merchants’ strikes’ or ‘cessation of business’ and was usually literally, ‘resistance’) or *dihuo* (resistance against products).”).

²⁷ On “thick description” in cultural anthropology, see CLIFFORD GEERTZ, THE INTERPRETATION OF CULTURES 7-9 (1973) (describing thick description as entailing attention to “piled-up structures of inference and implication” in social behavior, and noting that “most of what we need to comprehend a particular event, ritual, custom, [or] idea . . . is insinuated as background information before the thing itself is directly examined”).

Upon this basis, Part IV develops the concept of “mimetic unilateralism” to describe how the imitative growth of unilateral economic sanctions regimes—and, by extension, other forms of transnational administrative authority exercised by a claimant to great power status—may constitute a special form of socialization in the realm of interstate legal relations. Based on its track record so far, the turn to institutionalized unilateral economic coercion by an “arriving” great power like China appears to be shaped less by the rational calculation of costs and benefits in particular strategic situations than by a general predisposition towards emulation of a successful rival. In order to assess the degree to which this may be case, Part IV applies insights from rational choice theory, as well as various strains of social and political philosophy, to the phenomenon of imitative economic sanctioning.

Legalized regimes for unilateral economic boycotts and sanctions may be attractive targets of mimetic borrowing due to features including (1) their utility as a defensive tool for states pursuing strongly risk-averse behavioral strategies, which seek to preserve their interests amidst anticipated defections from the non-securitization of commerce by rivals; (2) their value in replacing a high-cost decision-making process (such as multilateral institutionalism) with a low-cost alternative (imitating the unilateral enforcement of norms by a prestigious role model); (3) their role as signaling membership in a dominant status group, e.g., the “great power club”;²⁸ and (4) their function on level of cultural symbolism within domestic society as a form of shared sacrifice and “costly signaling” that promotes in-group cooperation.²⁹ Each of these factors may contribute to the idiosyncratic forms of socialization that can occur via unilateral sanctions. These factors may also be further strengthened by the specific “social

²⁸ For work exploring the notion of “great power status” and its attainment as a motivating factor of China’s behavior in the international system, see, e.g., Beverley Loke, *Unpacking the Politics of Great Power Responsibility: Nationalist and Maoist China in International Order-Building*, 22 EUR. J. INT’L RELS. 847 (2016) (“Emerging from its identity as a revolutionary great power with revisionist goals, responsibility [for China] was thus framed in terms of injecting a more explicit normative agenda in what it perceived to be an unjust international order.”); Shunji Cui & Barry Buzan, *Great Power Management in International Society*, 9 CHINESE J. INT’L POL. 181 (2016).

²⁹ Cf. Eric A. Smith & Rebecca Bliege Bird, *Costly Signaling and Cooperative Behavior*, in MORAL SENTIMENTS AND MATERIAL INTERESTS: THE FOUNDATIONS OF COOPERATION IN ECONOMIC LIFE 115, 137-39 (Herbert Gintis, Samuel Bowles, Robert Boyd & Ernst Fehr eds., 2005) (noting that “evidence that . . . self-sacrificial bravery is a primary avenue to male status enhancement in small-scale societies is substantial” and that sacrificial behavior can “send[] honest signals of commitment to common goals”).

semantics” through which the interface of state authority and economics has been imagined in China.³⁰

Finally, Part V will assess broader global implications of the shift towards increased use of unilateral coercive measures among great powers. In particular, it will explore the question as to what degree China’s assertion of transnational legal authority may come to still further resemble that of the United States, in and beyond the realm of unilateral economic sanctions. Meanwhile, the implications of a general securitization of economic relations carried out through the administrative form of sanctioning will also be discussed. The possibility will also be explored that the burgeoning great power unilateralism described in this Article may come to facilitate certain forms of intensified plurilateralism (e.g., regional or ideological blocs with intra-group cooperation and shared competitive strategies in the use of economic sanctions vis-a-vis other blocs).³¹ Early signs that such a shift might be underway will also be assessed. It is particularly notable in this regard that, with its increasing application of security restrictions, tariffs, and coalition-based strategies to China, the United States itself seems to be emulating China’s own informal economic coercion practices, suggesting a two-way mimetic relationship.

The Conclusion suggests that there is a need to envision analogues to arms control and détente, applied in the military context during U.S.-Soviet Cold War, to the emerging Sino-U.S. geo-economic rivalry. Such approaches may help prevent particularly dangerous forms of escalation and contribute to more genuinely effective “de-risking” agendas, not only for the United States, but for the global community as a whole. A more humane turn for an international system increasingly defined by escalatory lawfare, security paranoia, and geo-economic conflict might, as one possible launching point, begin

³⁰ Clifford Geertz, *Deep Play: Notes on the Balinese Cockfight*, 134 *DAEDALUS* 4, 56, 83-84 (2005) (describing the Balinese cockfight tradition as an example of a cultural form whose “social semantics” may “reflect . . . what [a] culture’s ethos and . . . private sensibility . . . look like when spelled out externally in a collective text”). Boycotts and unilateral sanctions, too, may be analyzed not just as material practices but also as cultural forms involving the embodiment of ethical and affective dispositions in a particular society.

³¹ On incipient plurilateral competition dynamics in international economic law, see, e.g., Robert Basedow, *The WTO and the Rise of Plurilateralism—What Lessons Can We Learn from the European Union’s Experience with Differentiated Integration?*, 21 *J. INT’L ECON. L.* 411 (2018) (“The World Trade Organisation (WTO) may develop into a ‘club of clubs’. . . . The rise of plurilateralism creates opportunities and risks. Plurilateralism may reinvigorate world trade and modernise the WTO. But it may also fragment the global trade regime and disenfranchise countries.”).

with recognizing the intersubjective character of economic and diplomatic coercion practices.

II. THE BACKGROUND OF CHINA'S NEW SANCTIONS REGIME

A. *China in the Modern History of Economic Coercion*

Understanding China's recent rise as a systemically important user of sanctions necessitates an appreciation for its own unique historical experience as, at various times, either target or advocate of the practice. The relationship between state-imposed sanctions and civil society-led boycotting and related forms of activism is a crucial conceptual issue and is also closely imbricated with Chinese examples.³² Moreover, as the United States has emerged as the world's most prolific user of sanctions since the end of its international strategy of neutrality or "isolationism" at the beginning of the 1940s, and has embraced this role with increased intensity in recent decades, it has often pursued and articulated this self-chosen role as *ne plus ultra* sanctioner in direct connection with its shifting foreign policy stances towards China.³³ Therefore, a better understanding of China's historical experience of sanctioning is a useful foundation for a discussion of both the phenomenon itself and, more obviously, China's own recent trajectory in relation to it. However, the resulting question of when to start such a historical account poses problems that should be addressed at the outset.

For millennia, Chinese rulers of both centralized imperial dynasties and competing polities during periods of dispersal in interstate

³² For an insightful recent discussion of how examples of Chinese anti-imperialist boycotts both reflected and helped to inspire global conversations around the use of economic pressure to rethink world order, see J. Benton Heath, *Economic Sanctions as Legal Ordering*, MICH. J. INT'L L. (forthcoming 2024) (paper on file with the author). For additional insightful discussions of how popular economic coercion has been linked with colonialism, especially as a tool of resistance, see, e.g., Håkan Thörn, *The Meaning(s) of Solidarity: Narratives of Anti-Apartheid Activism*, 35 J. SOUTHERN AFR. STUD. 417 (2009); Sean F. McMahon, *The Boycott, Divestment, Sanctions Campaign: Contradictions and Challenges*, 55 RACE & CLASS 65 (2014).

³³ Unaccountably ill-remembered in the West today is the U.S. trade embargo on China after the Communist victory of 1949, which was the first major instance of intensive sanctions implementation for the express purposes of regime change. See Xin-zhu J. Chen, *China and the US Trade Embargo, 1950-1972*, 13 AM. J. CHINESE STUD. 169 (2006); SHU GUANG ZHANG, *ECONOMIC COLD WAR: AMERICA'S EMBARGO AGAINST CHINA AND THE SINO-SOVIET ALLIANCE, 1949-1963* (2001).

systems used economic coercion.³⁴ These practices often had a carrot-and-stick character, involving the conferral of rewarding trade relationships to pliant and friendly regimes, while denying the benefits of trade to either hostile states or those viewed as likely threats or corrupting influences.³⁵ During periods of central administration, the facilitation of commerce was closely tied to aim of preserving imperial *dignitas*. From the Chinese perspective, this goal generally involved subsuming trade under the rubric of so-called “tribute” relations, which entailed symbolic gift exchange between the Chinese Emperor and lesser “subject” rulers in principle legitimized by his validation.³⁶ Trade could also be constrained, however, either based on considerations of prestige and legitimacy or in order to address potential security threats, with the Ming “sea ban” as a famous example.³⁷

Most often, trade was simply treated as one aspect of a comprehensively “managed” relationship with both ideological and *Realpolitik* characteristics.³⁸ The Qing Dynasty institution of the Lifanyuan, or “Office for the Administration of Outlying Regions,” for example,

³⁴ For a brief discussion of instances in which imperial dynasties implemented trade restrictions to accomplish specific political and security goals, see, for example, *Gudai De Jingji Zhicai*, SOHU (Dec. 20, 2016, 8:51 AM) https://www.sohu.com/a/122039290_485176 [<https://perma.cc/DT66-B9EB>].

³⁵ *Id.*

³⁶ For a collection of classic studies on traditional China’s foreign relations, including their economic dimension in the form of the “tribute system,” see THE CHINESE WORLD ORDER: TRADITIONAL CHINA’S FOREIGN RELATIONS (John King Fairbank ed., 1968). For a discussion of subsequent critical re-evaluations of the tribute system, see Zhang Feng, *Rethinking the ‘Tribute System’: Broadening the Conceptual Horizon of Historical East Asian Politics*, 2 CHINESE J. INT’L POL. 545, 549, 563 (2009) (describing how Fairbank’s elaboration of the tribute system “became the main organizing concept of the study of East Asian diplomatic history,” but arguing that it failed to capture certain aspects of China’s long history of regional foreign relations, including how “early Ming rulers frequently demanded tributary relations for reasons other than but as important as prestige and legitimation, namely those of security on the frontier”); cf. Peter C. Perdue, *The Tenacious Tributary System*, 24 J. CONTEMP. CHINA 1002, 1009 (2015) (“[T]he terminology and practices of *gong* [tribute] adapted to local situations in order to facilitate trade and diplomacy. . . . Whatever ‘cosmological bluster’ the emperor and his advisors engaged in, his counterparts attached their own meanings to it.”).

³⁷ See, e.g., James Kai-sing Kung & Chicheng Ma, *Autarky and the Rise and Fall of Piracy in Ming China*, 74 J. ECON. HIST. 509, 514 (2014) (noting that “[s]ome suggest the [Ming] emperor banned trade to avoid coastal unrest due to interactions between the Chinese and the foreigners [and] [o]thers see the ban as reflecting an imperial preference for an autarkic economy and a policy that followed the Confucian ideology of ‘putting agriculture before business’”).

³⁸ See, e.g., Perdue, *supra* note 36, at 1006 (noting that “tribute was a convenient rubric for trade”).

was tasked with managing all aspects of relations between the central government and continental peoples, such as Mongols, Tibetans, and Russians, including setting procedures for officially approved trade with the Chinese interior.³⁹ Lifanyuan officials took various “sanctioning” actions, including restricting trade between China and Russia to suppress smugglers on either side; preventing spillover effects of commerce from strengthening unfriendly rulers among the Mongol peoples; disciplining inadequate displays of deference from the Russian side (such as emulation of Qing imperial office titles or failure to provide the proper Russian government seal for official letters of introduction); and curbing Han Chinese migration into “outer” zones beyond effective central administration.⁴⁰

Situational and strategic curbs on trade were imposed by Chinese rulers in many other contexts, of course. The Qing policy on maritime trade with Western peoples shifted considerably over time, eventually settling on the “Canton” system that restricted valid commerce to the port of Canton (Guangzhou), and put it under provincial management.⁴¹ The overthrow of this managed trade system, more than the specific issue of the Qing prohibition on opium, became the key motivating factor behind the British military intervention now remembered as the First Opium War, which forced a loosening of the Qing trade regime.⁴² By the late 1850s, Britain’s pro-free trade foreign policy aligned with the regional interests of the French and Russian Empires, as well as a less directly interventionist United States, to prompt the 1856-1860 course of war and diplomacy usually referred to as the Second Opium War.⁴³ The culmination of this second conflict marks the point when the Chinese polity lost its ability to carry out independent economic policy including limiting trade, prohibiting specific

³⁹ See Jia Jianfei, *Qingchao Dui Zhongya Zhu Bu De Zhengce Tanxi: Yi 1759-1864 Nian Wei Zhongxin* [A Study of the Qing Dynasty’s Policy Towards Central Asia’s Various Kingdoms: Focusing on the Years 1759-1864], 1 SHEHUI KEXUE JIKAN [SOC. SCI. J.] 153 (2018).

⁴⁰ *Id.*

⁴¹ See, e.g., Manuel Perez-Garcia & Lei Jin, *The Economic “Micro-Cosmos” of Canton as a Global Entrepôt: Overseas Trade, Consumption and the Canton System from the Kangxi to Qianlong Eras (1683–1795)*, 19 ATL. STUD. 384 (2022).

⁴² See generally STEPHEN R. PLATT, *IMPERIAL TWILIGHT: THE OPIUM WAR AND THE END OF CHINA’S LAST GOLDEN AGE* (2019).

⁴³ See ROBERT NIELD, *CHINA’S FOREIGN PLACES: THE FOREIGN PRESENCE IN CHINA IN THE TREATY PORT ERA, 1840–1943*, at 4 (2015).

goods, setting tariffs, and even allocating the customs revenue that it was allowed to excise.⁴⁴

Modified versions of this enforced “free” (or, rather, coercively liberalized but carefully micromanaged) trade regime imposed under the multilateral treaty regime of 1860 persisted past the end of the Qing Dynasty, through most of the subsequent 1912-1949 “Republican Era,” albeit with significant transformations.⁴⁵ Subsequent multilateral treaty regimes de facto imposed on the Chinese side included the so-called Boxer Protocol of 1901 and the Nine Power Treaty arrangement of the 1921 Washington Naval Conference, each of which established or renewed limits on the economic autonomy of the Chinese state.⁴⁶ Strategies involving the application of economic pressure in order to achieve national objectives were rendered largely unavailable to government authorities and instead could only be exercised at the level of political activism and coordination within civil society. Practices of boycotting goods and services from states engaged in aggression against China, or mistreating Chinese subjects and citizens overseas, became popular *causes célèbres* by the turn of the twentieth century.⁴⁷

The concept of the boycott—in Chinese, *dizhi* (a word used to refer generally to “resistance,” but becoming closely associated with mass boycotts)—became important in the context of Chinese political economy in the last years of the Qing Dynasty and into the subsequent Republican Era.⁴⁸ Such practices were first widely used to target U.S. firms and products in connection with discriminatory U.S. policies of Chinese Exclusion.⁴⁹ Campaigns were also waged against British interests in connection with episodes of intervention or coercion.⁵⁰ At times, “Western goods” (*yanghuo*) were targeted in the effort to promote national economic resilience and counteract the extreme

⁴⁴ RYAN MARTÍNEZ MITCHELL, RECENTERING THE WORLD: CHINA AND THE TRANSFORMATION OF INTERNATIONAL LAW 33-37 (2022).

⁴⁵ *Id.* at 140 (citing contemporary views among both Chinese nationalist and European socialist intelligentsia to this effect).

⁴⁶ *Id.* at 139-40; see also CHARLES G. FENWICK, INTERNATIONAL LAW 499-500 (3d ed. 1952).

⁴⁷ See WANG, *supra* note 26 at 2-5.

⁴⁸ See *id.* at 17, 32, 69.

⁴⁹ Jane Leung Larson, *Articulating China's First Mass Movement: Kang Youwei, Liang Qichao, the Baohuanghui, and the 1905 Anti-American Boycott*, 33 TWENTIETH-CENTURY CHINA 4, 26 (2007).

⁵⁰ See, e.g., MING K. CHAN, LABOR AND EMPIRE: THE CHINESE LABOR MOVEMENT IN THE CANTON DELTA, 1895-1927 (1975).

dependence of Chinese markets on foreign imports and investment.⁵¹ Indeed, on occasion the targets of *dizhi* campaigns were chosen by activists for economic and geopolitical reasons; a foreign firm's anti-competitive use of market share and proprietary technology, for example, could become the basis for organized attempts to boycott its products and promote insurgent domestic competitors.⁵² While such efforts had mixed success, they did factor into the considerations of foreign governments.⁵³

Central political authorities had complex and shifting relationships with *dizhi* activism. On the one hand, such activism could be useful for the application of pressure against foreign states and economic interests and as an expression of nascent nationalist sentiment.⁵⁴ On the other hand, popular boycotts produced risks of volatility in those same interstate relationships, as well as the possible conversion of foreign-targeted activism into collective action against domestic or international targets.⁵⁵ Indeed, it was in part one such movement, beginning with a protest campaign over foreign control of China's railway system and then evolving into a generalized rebellion, that provided the proximate cause for the wave of unrest that brought about

⁵¹ See C. L. Bouve, *The National Boycott as an International Delinquency*, 28 AM. J. INT'L L. 19, 26 (1934) (noting that 1924-1925 anti-British boycotts had "reduced the sales of certain classes of British goods to about a third of the normal").

⁵² For a brief popular account in Chinese of one such campaign (focused on a business/political activism initiative to overturn the British Lever Brothers firm's domination of the Shanghai soap market) see *Min Guo Shiqi, Yanghuo Chongji Guonei Shichang, Ci Ren De Zuofa Shi Dizhi Yanghuo De Zhengque Caozuo*, SOHU (Sept. 21, 2020, 10:06 AM) https://www.sohu.com/a/419781238_583794 [<https://perma.cc/8BQJ-DDDN>].

⁵³ See, e.g., HC Deb (10 Feb. 1926) (191) (cols. 1008-12) (Foreign Secretary Austen Chamberlain stating that "[h]is Majesty's Government are giving careful and constant attention to the serious problems arising out of the anti-British strike and boycott in South China"); *id.* (Labor MP David Kirkwood stating "I would just like to ask another question of the Foreign Secretary: is he prepared to go to war to force the Chinese to buy British goods?").

⁵⁴ ZHANG CUNWU, GUANGXU SA-YI NIAN ZHONG-MEI GONGYUE FENGCHAO [THE STORM IN 1905 OVER THE SINO-AMERICAN LABOR TREATY] 243 (1966) (describing the motivation of the movement as being "to secure the independence and integrity of national sovereignty, and to maintain the dignity and equality of the national position") (cited in WANG, *supra* note 26, at 4-5); *but see* WANG, *supra* note 26, at 8 (arguing that focusing purely on nationalism "obscures rather than illuminates the origins and mobilization of the movement . . . [in part because] [m]any other ideas, some of them quite traditional, also animated the rank and file").

⁵⁵ WANG, *supra* note 26, at 8 (arguing that "the boycott represented [a] kind of collective action based not only on new ideas but on a spectrum of structural change [in Chinese social relations]").

the final dissolution of the Qing regime in 1911-1912.⁵⁶ For the Guomindang, which came to power by the late 1920s and derived some of its legitimacy from its association with anti-colonial protests and boycott actions, such practices became problematic once the party came to power.⁵⁷ Although continuing to support some efforts, Nationalist authorities often found themselves behind the curve with regards to activism being organized within civil society.⁵⁸ Opinion within the party was also often mixed, with some favoring the pursuit of stabilized relations with foreign powers and others promoting a more assertive course.⁵⁹

The insurgent Communist Party was far more committed to boycott and strike actions, associating this stance with ideological rationales grounded in Marxian political economy and international socialist solidarity, as well as with nationalist and anti-imperialist motives.⁶⁰ Meanwhile, however, the Chinese state under the Guomindang (1928-1949) was closely involved with the development of sanctions practices at the interstate level. Chinese representatives at the League of Nations and in international law organizations were major advocates for the development of the League's provisions for economic sanctions against states committing aggression.⁶¹ Moreover, alongside Italy's 1935 invasion of Ethiopia, the Japanese annexation of China's north-eastern region of Manchuria in 1932 via the creation of the Manchukuo "puppet state" prompted one of the greatest League deliberations over its sanctions provisions.⁶² Both Chinese officials abroad and private intellectuals and activists during the 1930s and early 1940s were frequent advocates for the application of sanctions or other forms of pressure to dissuade Japan from maintaining its occupation of Manchuria or further interventions.⁶³ The League's ultimate failure to

⁵⁶ See, e.g., Mary Backus Rankin, *Nationalistic Contestation and Mobilization Politics: Practice and Rhetoric of Railway-Rights Recovery at the End of the Qing*, 28 MOD. CHINA 315 (2002).

⁵⁷ Mark Selden, *Labor Unrest in China, 1831-1990*, 18 REVIEW (FERNAND BRAUDEL CTR.) 69 (1995).

⁵⁸ *Id.* at 75 ("Under Guomindang and warlord rule after 1927 . . . corporatist policies . . . contributed to the lull in strike activity . . . the vortex of revolutionary struggle shifted to the countryside and the peasant movement.").

⁵⁹ Cf. Kuo Tai-Chun, *A Strong Diplomat in a Weak Polity: T. V. Soong and Wartime US-China Relations, 1940-1943*, 18 J. CONTEMP. CHINA 219, 228-30 (2009).

⁶⁰ See HANS J. VAN DE VEN, FROM FRIEND TO COMRADE: THE FOUNDING OF THE CHINESE COMMUNIST PARTY, 1920-1927 (1991).

⁶¹ See MITCHELL, *supra* note 44, at 128-41.

⁶² *Id.* at 266-70.

⁶³ *Id.* at 168-69.

coordinate strong collective sanctions in either the Ethiopian or Manchurian cases destroyed the credibility of the prohibition on aggression contained in its Covenant for many, not least within Chinese civil society.⁶⁴

As the Second World War came to a close, Chinese diplomats and intellectuals broadly supported U.S.-led initiatives for a new system of global governance at the key conferences of Dumbarton Oaks, Bretton Woods, and San Francisco.⁶⁵ This included de facto support for a framework of international governance in which economic sanctions practices were not clearly systematized and regulated at the collective level, but were made by the prerogative of either the newly-established UN Security Council or individual state governments exercising largely uncurbed rights to apply economic pressure.⁶⁶ Crucially for the subsequent development of international sanctions practice, the United States after 1945 rapidly developed a doctrine highly permissive of unilateral economic coercion in the pursuit of foreign policy goals.⁶⁷

Ironically, China itself soon became the first major target of U.S. unilateral sanctions practices in the postwar era, with the victory of the Chinese Communist Party in its civil war with the ruling Guomindang resulting in a sense of crisis in Washington policy circles and playing a major role in the development of Cold War “containment” strategies.⁶⁸ The Truman administration placed extensive restrictions on trade with China, terminating the close relationship of the two national

⁶⁴ For a discussion of the discourse of the “failure” of sanctions during the League years (and certainty among many Western policymakers of its subsequent return), see NICHOLAS MULDER, *THE ECONOMIC WEAPON: THE RISE OF SANCTIONS AS A TOOL OF MODERN WAR* 287-88 (2022).

⁶⁵ *Id.* at 181-83.

⁶⁶ *Id.* at 261 (noting the “broad-based revival of economic pressure” throughout the 1940s and extending into the postwar period).

⁶⁷ On the resistance of U.S. officials and international lawyers to clearly define the notion of “economic coercion” and subject it to collective legal regulation, see Myres S. McDougal & Florentino P. Feliciano, *Legal Regulation of Resort to International Coercion: Aggression and Self-Defense in Policy Perspective*, 68 *YALE L.J.* 1057, 1115 (1959) (describing various forms of “economic coercion” as “inescapable in the ordinary relations of states”). Opponents of these shifts, who had still been prominent voices in the interwar years, fell out of relevance after the war. See Edwin M. Borchard, *The “Enforcement” of Peace by “Sanctions”*, 27 *AM. J. INT’L L.* 518, 522 (1933) (arguing that attempts at enforcing international norms, including by “boycotts and embargoes,” would only stimulate resentments and aggression by their targets).

⁶⁸ MYRES SMITH MCDUGAL & FLORENTINO P. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER: THE LEGAL REGULATION OF INTERNATIONAL COERCION* 195 (1961).

economies and posing significant obstacles for the new communist regime's development plans.⁶⁹ These steps occurred in tandem with China's diplomatic exclusion from the United Nations, and continued recognition of the Guomindang rump state relocated to Taiwan, which could be viewed as a kind of extreme case of diplomatic sanctions against a disfavored regime. The use of diplomatic and economic pressure to "isolate China" was, in the eyes of China's communist authorities, one of the main alleged offenses committed by the U.S. government. Soon after, similar complaints were levelled against the Soviet Union with respect to its withdrawal of experts and limits on trade amidst the Sino-Soviet split beginning in the late 1950s.⁷⁰

As a poor, developing state experiencing periodic shortages of food and goods and in desperate need of foreign capital, the China of the mid-twentieth century was in no position to employ sanctions on a wide scale.⁷¹ However, state-sponsored boycott activities under the label of *dizhi*, as well as participation in a few instances of collective sanctions mobilized at the international level, were undertaken by the ruling Communist Party. This included support for boycotts and sanctions against South Africa in response to its policies of apartheid.⁷² Generally, however, the notion of *dizhi*, which had once been conceptually important in Chinese ideas and practices regarding international political economy, was not heavily emphasized on an official basis throughout the era of planned economy under Mao Zedong or during the subsequent "Reform and Opening-Up" period under the leadership of Deng Xiaoping, when acquiring foreign investment to promote economic growth became one of the key tenets of state policy.

The United States' practices of unilateral sanctions, meanwhile, remained a major target of China's criticism, even after China was no longer a major target. The ongoing embargo on Cuba, for example,

⁶⁹ See ZHANG, *supra* note 33, at 31.

⁷⁰ Mikhail Klochko, *The Sino-Soviet Split: The Withdrawal of the Specialists*, 26 INT'L J. 556, 559 (1971).

⁷¹ There were, however, occasional economic restrictions imposed unilaterally by Beijing, for example, those against Vietnam and Albania for allegedly unfriendly policies.

⁷² The international sanctions movement against Rhodesia and South Africa was in many ways atypical and, potentially, an exception that proved the rule of the inefficacy of sanctions at the multilateral level during the Cold War. These were the only two cases of UN Security Council approval of sanctions between 1945-1990; Chinese support for sanctions and boycotts thus could be viewed as consistent with a more general embrace of the UN Charter framework for UNSC-mandated punitive action against states in situations rising to the level of threats to "international peace and security," rather than being closely related to more recent sanctions practices.

was routinely condemned by China as an abusive form of economic coercion against a cherished socialist ally.⁷³ In the wake of the suppression of the major protest movement symbolically centered on Tiananmen Square in 1989, Deng Xiaoping raised the possibility of a new U.S. embargo against China like that imposed in the 1950s and declared that “China doesn’t fear this sanctions stuff,” for, “on the contrary, the sanctioners themselves will suffer losses.”⁷⁴ Soon after, Jiang Zemin, the newly appointed head of the Communist Party who was still very much under Deng’s shadow, rushed to agree, warning that “it is very unwise for any nation to try and ostracize or exclude China.”⁷⁵

B. Conceptual Reappropriation

The showdown over the Tiananmen crackdown resulted in only U.S. and EU sanctions over prohibiting arms exports, dual use goods, and some aid lending, but did not reach the level of a more comprehensive trade ban or a sincere effort to “enforce” human rights norms.⁷⁶ Nonetheless, in the decades since, China continued to emphasize its opposition to the unilateral sanctions of the United States.⁷⁷ Indeed, China still frequently reiterates the stance that “unilateral sanctions not authorized by the [Security] Council do not have [a] foundation in international law.”⁷⁸ State media often take aim at the United States’ sanctions practices as well as U.S. dollar dominance, control of multilateral institutions, and dominant role in global finance.⁷⁹ Since the beginning of the Reform era in 1978, unilateral

⁷³ Cf. Guo Xiangang, *Meiguo Dui Guba Zhicai Yi Wei Qiang Nu Zhi Mo* [U.S. Sanctions on Cuba Are Already a Spent Force], 4 GUOJI WENTI YANJIU [INT’L STUD.] 38 (2000).

⁷⁴ *Dong Ou Gaige Dui Zhongguo De Chongji* [The Impact of Eastern European Reform on China], 20 XIN BAO REN (Jan. 1, 1990), <https://sys01.lib.hkbu.edu.hk/bujspa/purl.php?&did=bujspa1031561> [<https://perma.cc/B63X-FBK2>].

⁷⁵ *Hu Xinmin: 90 Niandai Chu Zhongguo Shi Zenyang Dingzhu Xifang De Zhicai Yali De?*, GUANCHA (Nov. 5, 2018, 4:13 PM), <https://user.guancha.cn/main/content?id=50791&s=fwrnhtycwz> [<https://perma.cc/WY8B-A8Y2>].

⁷⁶ See Chi-hung Wei, *Engaging a State that Resists Sanctions Pressure: US Policy Toward China, 1992–1994*, 43 MILLENNIUM 429, 429-30 (2015).

⁷⁷ See *America’s Coercive Diplomacy and Its Harm*, CHINA DAILY (May 18, 2023, 6:40 PM), <https://www.china-daily.com.cn/a/202305/18/WS64660085a310b6054fad3c96.html> [<https://perma.cc/2MYH-H7KS>].

⁷⁸ See, e.g., U.N. Press Release SC/15279, *supra* note 1.

⁷⁹ *America’s Coercive Diplomacy and Its Harm*, *supra* note 77 (“The hegemony of [the] US dollar is an important foundation for US economic coercion.”).

sanctions were depicted primarily in official discourse as an inherently unjust hegemonic instrument of coercion by powerful states against weaker peoples whose self-determination they threatened.⁸⁰

This stance shifted only relatively recently, with older ideas about sanctions and economic coercion as potentially legitimate elements in official statecraft being brought back into the spotlight, even as China continues to vociferously criticize U.S. unilateralism in this arena. The conceptual framework of *dizhi* played a significant role in this shift back towards imagining economic pressure as a legitimate tool for pursuing political aims.⁸¹ Subsequent Chinese approaches to sanctions have at times relied upon the legacies of civil society *dizhi* to help justify policies, despite initial government resistance to embracing this legacy.⁸²

Beginning in the 1980s, such protests emerged as a form of civil society activism that often carried a heavy implicit criticism of the Communist Party's Reform Era policies of rapprochement with Japan, which played an important role in Deng-era economic policy.⁸³ The watershed moment for these critiques was Japanese Minister Nakasone Yasuhiro's August 15, 1985 visit to the Yasukuni Shrine, a Shinto religious site commemorating 2.5 million Japanese service members who died in war, including fourteen war criminals prosecuted at the post-World War II Tokyo Tribunal.⁸⁴ Nakasone's visit as sitting prime minister incited international controversy, with Chinese university students in Beijing and other demonstrators nationwide publicly protesting the apparent semi-official Japanese reaffirmation of its wartime programme and/or qualification of its condemnation of atrocities committed during the period.⁸⁵ Along with this direct link to the forms of imperial aggression that had prompted earlier waves of activism, protestors also frequently targeted Japan's alleged

⁸⁰ *Id.* ("The economic sanctions and blockade imposed by the United States on developing countries such as Venezuela, Cuba, Myanmar and Syria have directly interrupted the sustainable development process of these countries.").

⁸¹ For discussion of one of the early 2000s movements reviving the notion of *dizhi* to address historical and contemporary grievances against Japan, see *Dizhi Rihuo Shi Ge Aiguo Weimingti*, CCTV NEWS (Aug. 22, 2012) <http://news.cntv.cn/special/thinkagain/japanesecommodity/index.shtml> [<https://perma.cc/2SHS-A7W8>].

⁸² *Id.*

⁸³ JESSICA CHEN WEISS, POWERFUL PATRIOTS: NATIONAL PROTEST IN CHINA'S FOREIGN RELATIONS 82-83 (2014).

⁸⁴ *Id.* at 12, 82.

⁸⁵ *Id.*

“economic invasion” of China, referring to the new, massive presence of Japanese products and investments in the country.⁸⁶

In the 1985 movement, the Communist Party, whose leadership was not firmly in favor of Deng’s pro-market policies or the economy’s new openness to foreign investment, did not take a strong line against the protest movement but allowed it to grow, only reining it in after protestors began to more directly criticize the Chinese state authorities.⁸⁷ Although the 1985 anti-Japan protest movement did not explicitly center on a boycott initiative, it set a pattern for subsequent nationalist campaigns (especially those related to Japan) that would feature such calls.⁸⁸ Throughout the following decades, anti-Japanese activists who obliquely or explicitly criticized Chinese authorities for failing to take a firm enough line against China’s former invader frequently organized—sometimes in a semi-officially approved manner—to issue public calls for a stronger diplomatic stance on issues such as the Diaoyu/Senkaku Islands territorial dispute, Japan’s hopes for UNSC permanent membership, or the Yasukuni issue.⁸⁹ By the late 1990s, these campaigns were often associated with calls for the boycott of Japanese goods, though Party authorities tended to suppress such explicit *dizhi* activism.⁹⁰

The Chinese state, meanwhile, was also progressing towards a more activist stance with respect to economic statecraft. In particular, the Taiwan issue became a major source of conflict in the wake of the 1989 Tiananmen protest movement, as Western states suspended arms sales to Beijing and some increased sales to Taipei.⁹¹ Although the Chinese government did not respond by implementing sanctions against the United States, it targeted France due to its sale of frigate hulls and fighter jets to Taiwan by closing the French consulate and French Trade Commission in Guangzhou and excluding French firms

⁸⁶ *Id.*; see also Jeffrey N. Wasserstrom, *Chinese Students and Anti-Japanese Protests, Past and Present*, 22 *WORLD POL’Y J.* 59, 61-62 (2005). Notably, the movement effectively was launched with university protests in Beijing on September 18, the anniversary of Japan’s invasion of Manchuria in 1931, and originated in part with anger over Japan’s continued vast wealth disparity with respect to its former targets of imperial aggression. These and other connections with the boycotts of the 1920s and 1930s suggest a genuine conceptual continuity at work in the resurgence of *dizhi* activism five decades later in the Reform Era.

⁸⁷ Wasserstrom, *supra* note 86, at 61-62.

⁸⁸ See, e.g., *id.* at 62-63.

⁸⁹ WEISS, *supra* note 83, at 189-99.

⁹⁰ *Id.* at 104-05.

⁹¹ *Id.* at 235-38.

from bids for government contracts, among other similar moves.⁹² These de facto sanctions appeared to be quite effective, with German and Dutch governments declining to follow the United States' and France's arms sales to Taiwan.⁹³ Meanwhile, France's change of its arms sale policy in 1994 and the subsequent election of Jacques Chirac shifted France to a more China-friendly policy stance.⁹⁴ For the time being, however, neither state media nor official policymakers associated these measures with civil society *dizhi* activism; moreover, the State Council's measures against France, while sweeping, were clear in motive and ceased upon France's change of policy.⁹⁵

Relatively few other such episodes occurred in the 1990s and the first decade of the twenty-first century, but nationalist commentary calling for targeted boycotts in response to provocations by foreign states or firms gradually increased, in part due to the commentary's status as a rare exception to the suppression of critical political discourse in civil society.⁹⁶ By the Hu Jintao/Wen Jiabao era of 2002-2012, periodic protests occurred over nationalist causes related especially to either Japan- or Taiwan-related issues.⁹⁷ These protests increasingly took the form of coordinated campaigns among networks

⁹² For a useful primary source-based account of this episode, see Zhang Ketian, *Calculating Bully: Explaining Chinese Coercion* 325-35 (Sept. 2018) (Ph.D. dissertation, Massachusetts Institute of Technology), <https://dspace.mit.edu/handle/1721.1/122472> [<https://perma.cc/4QG7-9A54>].

⁹³ *Id.* China's sanctions were also viewed as potentially influencing the opposition's victory in France's 1993 parliamentary elections and by 1994 the government of François Mitterand had made a formal statement promising "not to authorize any French enterprises to participate in the arming of Taiwan." Roger Cohen, *France Bars Taiwan Sales, Warming China Ties*, N.Y. TIMES (Jan. 13, 1994), <https://www.nytimes.com/1994/01/13/world/france-bars-taiwan-sales-warming-china-ties.html>.

⁹⁴ Ju Yi, *Five Decades of Sino-French Relations: Foundations for a New Relationship*, CHINA INST. OF INT'L STUD. (Mar. 11, 2014) https://www.ciis.org.cn/english/COMMENTARIES/202007/t20200715_2820.html [<https://perma.cc/PKQ9-CAU5>] (noting that "Chirac took a series of bold and innovative actions to improve ties with China. For instance, he was the first Western leader to propose 'giving up confrontation and engaging in dialogue' with China on human rights issues; he was the first to openly oppose 'Taiwan independence' while supporting the policy of 'one country, two systems'; he was the first European leader to openly advocate and insistently promote the lifting of EU arms embargo against China.").

⁹⁵ Zhang, *supra* note 92, at 340-41.

⁹⁶ See WEISS, *supra* note 83, at 249-58, for a partial list of protest incidents indicating the gradual emergence of boycotting campaigns as a more prominent feature of activism.

⁹⁷ *Id.*

of nationalist activists and media entities in which *dizhi* of foreign companies' products or services was a growing element.⁹⁸

Ironically, the Communist Party's discomfort with boycotting tactics—which it characterized as ill-suited to its policies of promoting foreign investment in China—and countervailing unwillingness to categorically reject such approaches given their historical credentials in patriotic and socialist radical activism, may have contributed to the allure of such tactics in the public imagination.⁹⁹ Some of the decisive shifts with regards to the return of *dizhi* as an economic coercion framework came with the emergence of a more “responsive” approach to foreign policy during the Hu-Wen era, when (semi-censored) public discourse over perceived affronts to Chinese sovereignty were increasingly acknowledged by the state.¹⁰⁰

It is clear from later developments that the gradual merging of nationalist *dizhi* rhetoric with official state action along the same lines was already established in embryo during the Hu-Wen years. In a number of cases, the State Council under Wen Jiabao undertook what some foreign diplomats referred to as “soft sanctions” against foreign states that had affronted Chinese sovereignty by, e.g., receiving visits by the Dalai Lama.¹⁰¹ Following such visits to European states, China undertook measures such as delaying or freezing aircraft orders.¹⁰² This incident was subsequently recalled in the memoirs of State Councilor Dai Bingguo, directly tasked with managing relations with France during the episode. In his account, China's firm and unyielding (*qiangying*) position was manifested in actions taken to stop France from “making unnecessary and unwanted trouble (*xia zheteng*) in its policies towards China.”¹⁰³ Similar dynamics were associated with actions taken against Norway—specifically, the Norwegian salmon

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ For examples of such action in connection with the Senkaku-Diaoyu Islands dispute, see M. Taylor Fravel, *Explaining China's Escalation over the Senkaku (Diaoyu) Islands*, 2 GLOB. SUMMITRY 24 (2016).

¹⁰¹ See, e.g., Zhang, *supra* note 92, at 362-99.

¹⁰² *Id.* at 385 (“[W]hen Chancellor Merkel received the Dalai Lama in early September 2007, German aircraft exports to China in the fourth quarter dropped by 34% compared to the last quarter and 40% compared to the fourth quarter of 2006. The decline continued for a year until September 2008, when Germany reaffirmed that Tibet is part of Chinese territory and China deemed that Sino-German relations had ‘comprehensively recovered.’”).

¹⁰³ Zhang, *supra* note 92, at 387 (citing DAI BINGGUO, ZHANLUE DUIHUA: DAI BINGGUO HUIYILU [STRATEGIC DIALOGUES: THE MEMOIR OF DAI BINGGUO] 350 (2016)).

industry, which was dependent on Chinese consumers—following the awarding of the Nobel Peace Prize to the imprisoned Chinese political dissident Liu Xiaobo.¹⁰⁴

This practice of using state power in a flexible (indeed, erratic) manner to impose significant economic costs on other states to punish affronts to Chinese “security,” very broadly defined as include mislabelling of sovereign territory or other such symbolic offenses, became one foundational aspect of China’s new sanctions practice.¹⁰⁵ The emergence of a new tactic emphasizing the targeting of specific firms accused of particularly egregious behavior with respect to China’s red-line issues, mostly connected with territorial sovereignty disputes, became another important element. Early moves in this category involved a various foreign corporations or organizations, such as Marriott, for listing Taiwan as a country.¹⁰⁶ Other targets included a wide range of firms (or individuals, such as performers and athletes) accused of threatening Chinese sovereignty, “interfering in internal affairs,” or, at times, merely making informal statements seen as causing harm to China’s security or reputation.¹⁰⁷

The growing use of such moves by Chinese government organs, primarily those under the aegis of the State Council, was a significant feature of the years between 2007 and 2009, amid the coinciding processes of Beijing’s successful hosting of the Summer Olympic Games and, more significantly, its idiosyncratic experience of the 2008 global financial crisis as an opportunity to further close the country’s development gap with the West and become a still greater player in global finance and trade flows.¹⁰⁸ Amidst this shift in relative global economic influence, Chinese strategies of economic coercion aiming at the enforcement of state stances on key issues, especially those

¹⁰⁴ For a brief but valuable early account of these informal sanctions, and their context with respect to Chinese foreign disputes more generally, see James Reilly, *China’s Unilateral Sanctions*, 35 WASH. Q. 121 (2012).

¹⁰⁵ *Id.* at 123 (“Unlike U.S. sanctions, which are formalized through domestic law and/or presidential decisions, China rarely openly declares its economic sanctions. Instead, Beijing prefers to use vague threats, variation in leadership visits, selective purchases (or non-purchases), and other informal measures.”).

¹⁰⁶ *Cf.* Christina Lai, *More than Carrots and Sticks: Economic Statecraft and Coercion in China–Taiwan Relations from 2000 to 2019*, 42 POLITICS 410, 417 (2022).

¹⁰⁷ *Id.*; Zhang, *supra* note 92, at 383.

¹⁰⁸ *Cf.* DANIEL W. DREZNER, *THE SYSTEM WORKED: HOW THE WORLD STOPPED ANOTHER GREAT DEPRESSION* 145-58 (2014); ADAM TOOZE, *CRASHED: HOW A DECADE OF FINANCIAL CRISES CHANGED THE WORLD* 524 (2018).

wrapped up with the concept of sovereignty, increased.¹⁰⁹ Between 2008 and 2012, demand for *dizhi* of foreign states, their national industries, or their particular firms or products, became a more entrenched feature of public discourse in China than it had been since the 1930s. This securitization dynamic continued into the Xi administration beginning in 2012, and further escalated into a more comprehensive discourse.

C. U.S. Influence and Regulatory Reinvention

The transition from the Hu era to the Xi era saw a growing number of PRC scholars arguing that China needed better policy instruments, potentially including sanctions, to protect national core interests and ensure “economic security,” among other goals.¹¹⁰ Academics holding such views wrote amidst a situation in which it was clear that China’s government had begun to more frequently use occasional informal economic pressure in its foreign relations. Meanwhile, government bureaus, including the Ministry of Education (“MOE”), had started to indicate openness to discussing the merits of sanctions and even funded studies into the feasibility of a new Chinese approach to the topic.¹¹¹

In 2007, for example, legal scholar Jian Jisong wrote that “China should increase its use of unilateral economic sanctions in order to maintain its legal international interests and achieve its foreign policy objectives.”¹¹² In 2009, Liu Jianping and Liu Wei, scholars of international economics, in a detailed monograph on U.S. sanctions, recommended that “given our nation’s increasing economic power, we should prudently use economic sanctions against those countries that damage world peace and damage our country’s national interests.”¹¹³ Such views gradually gained prominence by the early 2010s, especially among experts on the United States or its approaches to

¹⁰⁹ See WEISS, *supra* note 83, at 249-58 (providing a list of protest incidents/campaigns and noting increasing prevalence of calls for boycotts).

¹¹⁰ See, e.g., Wang Zihong, *Yishi Xingtai Yu Guoji Jingji Zhicai: Yi Renquan Yu Minzhu Wei Zhengce Mubiao De Jingji Zhicai Jianxi* [Ideology and International Economic Sanctions: A Study of Economic Sanctions from the Perspective of Policies Directed Towards Human Rights and Democracy], 16 GUOJI LUNTAN [ASIAN J. INT’L STUD.] 1 (2014); Shangguan Qingyun, *Jingji Zhicai Shi Dufu Feilibin De Liangyao* [Economic Sanctions Are Effective Medicine in Dealing with the Philippines], SHIJIE BAO (May 22, 2013).

¹¹¹ See Reilly, *supra* note 104, at 122-23.

¹¹² *Id.* at 122.

¹¹³ *Id.* at 123.

international relations and international economic policy. These scholars began to more openly advocate that China should develop its own sanctions regime in order to match the status and capabilities of the United States.¹¹⁴

As Chinese leadership shifted to Xi Jinping after 2012, an increasing number of writers on international policy topics reached conclusions similar to those of Bai Lianlei, a researcher with the official think tank China Institute of International Studies (“CIIS”), who wrote in 2016 that “as the . . . conditions for China’s economic-growth-first policy fade away, and as China’s determination to enhance its exercise of international . . . authority increases, its rejection of the tool of economic sanctions will gradually weaken.”¹¹⁵

Through the early years of the Xi era, the notion of a more proactive Chinese sanctions policy was still almost invariably associated in popular or academic discussion, though rarely in official discourse, with the explicit example of the United States as both the world’s sole superpower (and thus a role model for any state aspiring to such a role) and China’s main international rival. Yet, as other aspects of China’s more robust influence on international legal and economic order took shape, a growing number of scholars called for a sanctions policy that would match its new status. As Hu Xiaoqing of Beihang University argued, through the development of the Belt and Road Initiative (“BRI”) and the creation of the Asian Infrastructure Investment Bank (“AIIB”), China had become a more fundamental global economic player than ever before.¹¹⁶ Becoming a proactive user of economic sanctions would further “help to gradually establish China’s stature of a major world power” and help to “protect the Chinese state and nation

¹¹⁴ For an overview of emerging debates during the 2010s, see Song Guoyu, *China’s Debates on Economic Diplomacy*, in CHINESE SCHOLARS AND FOREIGN POLICY: DEBATING INTERNATIONAL RELATIONS 173, 181-84 (Huiyun Feng, Kai He & Yan Xuetong, eds., 2019). As Song describes, 2010s appraisals of U.S.-style unilateral sanctions’ potential value turned largely on questions of state capacity and cost-benefit analysis, rather than issues of legality under international law. Opponents of applying unilateral sanctions tended to point to potential negative effects on China’s international trade activities, while proponents argued that sanctions could be useful to deter hostile U.S. actions, including to counter U.S. sanctions. *Id.* at 181-82.

¹¹⁵ See Bai Lianlei, *Zhongguo Wei He Bu Yuan Shiyong Jingji Zhicai?* [*Why Is China Not Willing to Use Economic Sanctions?*], 1 FUDAN GUOJI GUANXI PINGLUN [FUDAN INT’L STUD. REV.] 150 (2016).

¹¹⁶ Hu Xiaoqing, *Jingji Zhicai Zai Zhongguo Shishi De Shexiang* [*Envisioning Chinese Utilization of Economic Sanctions*], 12 FAZHI BOLAN [LEGALITY VISION] 135 (2016).

while responding to foreign threats and coercion.”¹¹⁷ As a “non-violent . . . effective . . . strategic tool of foreign policy,” China could use sanctions to advance its goals both in relations with other major powers and vis-à-vis weaker states, though generally rejecting comprehensive sanctions of the sort used by the U.S. against Cuba or Iran.¹¹⁸

These conversations contextualize how the impact of the THAAD confrontation in 2016-2017, followed by the U.S. trade war and U.S.-EU sanctions against China after 2018 could have rapidly stimulated a sudden and decisive shift in Chinese policy. The THAAD episode, comprised China’s state and public reaction to the South Korean decision to cooperate in hosting a planned U.S. regional missile defense mechanism, the Terminal High Altitude Area Defense (“THAAD”) system, as part of South Korea’s extensive military cooperation in its alliance arrangement with the United States, primarily targeted at North Korea.¹¹⁹ The THAAD system was portrayed in Chinese media as a threat to Chinese security, and as a unilateral escalation of military tensions in the region by the United States and South Korea.¹²⁰ In response to a strong government media campaign emphasizing these points and criticizing South Korea’s moves as aiming at the containment of China, a number of prominent civil society intellectuals and semi-official media members (i.e., those not directly representing state positions, but operating in a zone of permissible “independent” discourse and sometimes subsequently endorsed by official sources) called for boycotts of South Korean products.¹²¹ This nationalist discourse received various forms of amplification from government organs.

Significant examples of sanctions against South Korea included the China National Tourism Administrations’ issuance of travel warnings to South Korea, placement of informal bans on group and package tours, and deterrence of Chinese tourism to South Korea, which

¹¹⁷ *Id.*

¹¹⁸ *Id.* For a summary of Chinese discourse on this point, see Yiying (Gloria) Xiong, *Legality, Legitimacy and Institutionalization: China’s Dilemma of Sanctions and Economic Coercion*, 1 J. CONTEMP. CHINA 1, 8-9 (2024).

¹¹⁹ See Darren J. Lim & Victor A. Ferguson, *Informal Economic Sanctions: The Political Economy of Chinese Coercion During the THAAD Dispute*, 29 REV. INT’L POL. ECON. 1525, 1525-26 (2022).

¹²⁰ See, e.g., *THAAD Poses Real Threat to Security of China*, CHINA DAILY (July 15, 2016), https://www.chinadaily.com.cn/opinion/2016-07/15/content_26096252.htm [https://perma.cc/MGF9-SMJF].

¹²¹ Lim & Ferguson, *supra* note 119, at 1532.

shocked South Korea's tourism sector.¹²² China also targeted the Lotte Group, a major corporate conglomeration, over its agreements with the South Korean government to hand over land for use in the THAAD program, setting a significant precedent. Lotte was hit with an onslaught of fines and closures by regional authorities under various different branches of the State Council based on a wide range of supposed violations of administrative regulations (e.g., fire code infractions). With several dozens of its stores in Mainland China closed by fiat, and facing a loss of hundreds of millions of U.S. dollars, the company suspended operations in China.¹²³ The Lotte example was the most dramatic instance of a major state action against a foreign corporation that constituted a *de facto* exclusion from the Chinese market. Many of China's sector-specific measures were, though, reversed once South Korea modified its policies, although some restrictions have been more lasting.¹²⁴

While this South Korean episode marked a major intensification of earlier practices used to enforce preferred sovereignty and security norms, it mainly consisted of escalated versions of practice already in regular usage. Thus, for example, the firms or industries targeted for "shock and awe" bombardment of business-disrupting regulations were those "likely to face higher exit costs from the disruption of economic exchange, relative to their Chinese counterparts" who were situated to shift their own trade patterns in more efficient ways.¹²⁵ The sudden loss of tourism or retail revenue from Chinese consumers could impose a highly uneven set of costs on the Korean side that was not matched with similar liabilities on the Chinese side, such as for tourism agencies who could simply focus on marketing alternative packages.¹²⁶ Strategic industries or industries deeply implicated in the functioning of supply chains vital to China's economy tend to be spared from the effects of such coercive measures.¹²⁷ Meanwhile,

¹²² Florence Wen-Ting Yang, *Asymmetrical Interdependence and Sanction: China's Economic Retaliation Over South Korea's THAAD Deployment*, 55 *ISSUES & STUD.* 4, 12-13 (2019).

¹²³ See, e.g., Hufbauer & Jung, *supra* note 6; Joyce Lee & Adam Jourdan, *South Korea's Lotte Reports Store Closures in China amid Political Stand-off*, *REUTERS* (Mar. 6, 2017, 4:13 AM), <https://www.reuters.com/article/idUSKBN16D03U/>.

¹²⁴ See Hufbauer & Jung, *supra* note 6.

¹²⁵ See Lim and Ferguson, *supra* note 119, at 1532.

¹²⁶ *Id.* at 1539.

¹²⁷ See EUR. PARLIAMENT, *supra* note 6, at 7; RICHARD NEPHEW, *CHINA AND ECONOMIC SANCTIONS: WHERE DOES WASHINGTON HAVE LEVERAGE?* 4 (2019), <https://www.brookings.edu/wp->

these consumer-focused, informal, and ad hoc sanctions both maintained substantial continuity with the legacy of grassroots *dizhi* and maintained a degree of plausible deniability. Some prominent Chinese IR scholars have suggested that such informal sanctions provide benefits of “strategic ambiguity,” as well as inducing targets to “self-reflect on [their] transgressions.”¹²⁸

While the THAAD-related sanctions maintained the legacy of ambiguity, ad-hoc-ness, and informality, very soon after Beijing began to embrace the project of establishing a formal sanctions framework. The most evident cause for this shift was the radical worsening of U.S.-China relations and escalation of mutual economic coercion that occurred in the following years. Beginning in 2017, the administration of former U.S. President Donald Trump began implementing a wide range of sanctions, tariffs, and other coercive measures on China, in response to alleged human rights violations as well as “unfair” trade practices. Sanctions became even more central to this conflict in 2020, when the U.S. Department of the Treasury undertook a major wave of sanctions against Chinese officials and organizations allegedly involved in human rights abuse in Xinjiang.¹²⁹ With such measures easily conforming to China’s portrayal of the United States as motivated by its own alleged strategies of zero-sum competition, the resulting confluence of economic, security, and reputational factors set the stage for an unprecedentedly thorough merging of *dizhi* discourse, official economic coercion, and legalistic methods. Western firms finding themselves pressured to withdraw operations from Xinjiang due to existing or possible future measures were subsequently targeted by Chinese consumers for boycotts over alleged complicity with U.S. hostility and intervention.¹³⁰

This widespread, informally organized (or at least, thus portrayed) use of economic coercion tactics to counter foreign intervention occurred on a wider scale than had episodes of previous decades, such as the recurring Japan-related protest waves. While previous episodes of alleged foreign intervention or hostile restrictions based on human rights concerns had not prompted a comprehensive shift in

content/uploads/2019/09/FP_20190930_china_economic_sanctions_nephew.pdf
[<https://perma.cc/GA65-GMY6>].

¹²⁸ Xiong, *supra* note 118, at 10.

¹²⁹ Press Release, U.S. Dep’t of the Treasury, Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Executive Order (July 31, 2020), <https://home.treasury.gov/news/press-releases/sm1073> [https://perma.cc/66VB-CLVV].

¹³⁰ See, e.g., Ghiretti, *supra* note 6.

policy, enough environmental factors had changed by 2020 to bring about a decisive turn to a new regime. In addition, officials within the Chinese Ministry of Foreign Affairs (“MOFA”) were reported to have pushed for a more proactive approach to economic coercion, turning China into a user of sanctions to counteract its targeting by Western states.¹³¹ Then-Vice Minister of Foreign Affairs Qin Gang, for example, was reported by European diplomats to have been involved in deciding on the extensive measures levied against European officials and organizations, including the MERICS think-tank, for their “support” of Belgium’s Xinjiang-oriented punitive measures.¹³² Earlier in Qin Gang’s career, he had played a role in similar episodes, such as defending Chinese economic restrictions against European states over Tibet and Taiwan issues while serving as MOFA spokesman.¹³³ In evaluating these accounts, it is relevant to note the decision-making process of China’s informal sanctions, which occur within the MOFA and MOC, rather than formally requiring approval from the highest levels of government.¹³⁴

These precedents also suggest that a major transition in mainstream Chinese institutional views on economic sanctions had already occurred by 2016 at latest, thus preceding the Trump administration’s dramatic escalation of confrontational economic policies vis-à-vis China. However, before the latter development cemented the existence of “rivalry-first” dynamic in Sino-U.S. relations, Chinese writing on formalizing State Council economic coercion practices remained highly speculative. Official strategy only made its (rapid) shift to catch up with policy advocacy after the paired blows of the U.S.-China trade war and the West’s Xinjiang and Hong Kong-related sanctions. In charts indicating Chinese economic restrictions practice, 2018 stands out as a sharp quantitative spike leading to a qualitative shift: following the major wave of retaliatory trade war measures taken by China

¹³¹ Emily Feng, *China Has Replaced Its Foreign Minister, Absent from Public for a Month*, NPR (July 25, 2023, 9:36 AM), <https://www.npr.org/2023/07/25/1189915255/china-foreign-minister-replace-qin-gang-wang-yi> [<https://perma.cc/6MQP-3LEA>].

¹³² *Id.*

¹³³ See *Foreign Ministry Spokesperson Qin Gang’s Regular Press Conference on March 3, 2009*, EMBASSY OF THE PEOPLE’S REP. OF CHINA IN THE KINGDOM OF NOR. (Mar. 3, 2009), http://no.china-embassy.gov.cn/eng/fyrth/200903/t20090304_2757292.htm [<https://perma.cc/A84U-YQDH>].

¹³⁴ Song, *supra* note 114, at 184.

in 2018, targeted actions against Western firms and individuals became a far more regular part of economic statecraft.¹³⁵

Beijing's desire to counter U.S. sanctions after 2018 contributed to interest in the topic for some of China's most prominent international relations scholars, including Tsinghua University's Yan Xuetong, who predicted in 2019 that "economic sanctions could become a [more] popular means for confronting other states in all fields" whose "advantages will hence seduce the United States and China into [increasingly] imposing sanctions on other states[.]"¹³⁶ Advocacy regarding increased usage of economic sanctions has been especially associated with scholars emphasizing China's self-assertion as a great power with a status equivalent to the United States. Yan, for example, has long advocated a system of "bipolarity" between China and the United States in global order.¹³⁷ Fudan University's Song Guoyou, similarly, focuses his research on U.S.-China relations, economic diplomacy and global political economy, including in advising China's Ministry of Commerce regarding U.S. economic pressure.¹³⁸ His 2019 study on sanctions suggested that the main obstacle to their greater adoption by China was the lack of a comprehensive legal regime.¹³⁹ Subsequent to the passage of the AFSL and related regulations, he praised the new sanctions practices as "breakthroughs" that have allowed China to "[stand] up to the United States' economic coercion."¹⁴⁰ The role of

¹³⁵ Compare NEPHEW, *supra* note 127 with Ghiretti, *supra* note 6; see also ANGELA POH, *SANCTIONS WITH CHINESE CHARACTERISTICS: RHETORIC AND RESTRAINT IN CHINA'S DIPLOMACY* (2020) (publisher's description) (describing it as "puzzling" that "until the end of Xi Jinping's first term in March 2018, China had been [comparatively] restrained in its use of coercive economic measures").

¹³⁶ YAN XUETONG, *LEADERSHIP AND THE RISE OF GREAT POWERS* 202 (2019) (pointing specifically to "[t]he US- China trade conflicts that started in 2018" as the main source for China's likely full embrace of sanctions). Notably, sanctions and other forms of economic statecraft were also a main focus of the volume co-edited by Yan Xuetong, Huiyun Feng, and Kai He. See *CHINESE SCHOLARS AND FOREIGN POLICY: DEBATING INTERNATIONAL RELATIONS*, *supra* note 114. This volume, which was based on discussions between leading international relations and foreign policy scholars between the years 2014 and 2019 both summarizes and itself embodies shifting attitudes with respect to a number of issues in foreign policy during the 2010s, including economic sanctions. See *id.* at 18-19.

¹³⁷ See, e.g., Yan Xuetong, *For a New Bipolarity: China and Russia vs. America*, 30 *NEW PERSPS.* Q. 2, 12 (2013).

¹³⁸ See Song Guoyou, *INST. OF INT'L STUD. FUDAN UNIV.* (Jan. 10, 2022), <https://iis.fudan.edu.cn/df/32/c40493a57138/page.htm>.

¹³⁹ Song, *supra* note 114, at 184.

¹⁴⁰ Song Guoyou, *U.S. Economic and Trade Policy Toward China and New Trends in U.S.-China Economic and Trade Relations*, *CSIS INTERPRET: CHINA* (Mar. 15, 2023), <https://interpret.csis.org/translations/u-s-economic-and-trade->

U.S.-trained and U.S.-focused international relations scholars in advocating for sanctions usage supports the apparently significant degree of socialization on this topic stemming from the U.S. example.¹⁴¹

III. ASSESSING SINO-AMERICAN CONVERGENCE

A. China's New Legislation in Comparative Perspective

The PRC's Anti-Foreign Sanctions Law ("AFSL") was adopted by the Standing Committee of the National People's Congress ("NPCSC") on June 10, 2021. It confers major new powers upon State Council organs to impose economic, travel, and other restrictions upon targeted individuals or entities, in particular through the use of "countermeasures lists."¹⁴² The association of China's sanctions under the AFSL with "countermeasures" is especially significant, as it suggests an unwillingness to (fully) abandon China's traditional position regarding the illegality of unilateral coercive measures as a matter of international law.¹⁴³

Based on the official view that unilateral (non-UN-based) sanctions are illegal forms of interference in the *domaine réservé* of targeted states, they could only be legitimately utilized under international law as countermeasures—i.e., limited responses to a prior illegal act by another state.¹⁴⁴ Prevailing doctrines concerning the stringent requirements for countermeasures would require that these be, *inter alia*, proportionate responses to the target's prior illegal act, intended only to induce the other state to stop its illegal behavior, and

policy-toward-china-and-new-trends-in-u-s-china-economic-and-trade-relations/
[<https://perma.cc/9KNT-G5LL>].

¹⁴¹ Cf. HUIYUN FENG, KAI HE & XIAOJUN LI, HOW CHINA SEES THE WORLD: INSIGHTS FROM CHINA'S INTERNATIONAL RELATIONS SCHOLARS 23-24 (2019) (noting that "[s]ince China overtook Japan in 2010 as the world's second-largest economy, the moniker 'G2,' which indicate a bipolar world, has gained much more traction among both pundits and policy analysts," and summarizing the results of a mid-2010s survey finding that "while Chinese IR scholars acknowledge the absolute domination of the United States in the short term, they also view its power as slowly declining and the world moving toward multipolarity").

¹⁴² AFSL, *supra* note 8, arts. 4-6.

¹⁴³ See *supra* note 1 and accompanying text.

¹⁴⁴ Cf. Devika Hovell, *Unfinished Business of International Law: The Questionable Legality of Autonomous Sanctions*, 113 AJIL UNBOUND 140 (2019) (noting that "controversy continues to surround the lawfulness of . . . 'unilateral coercive sanctions'").

terminated once the target has done so, among other restrictions.¹⁴⁵ It remains to be seen whether China's countermeasures practice will indeed abide by these limits. On the one hand, Article 3 of the AFSL specifically connects the legislation to countering the "hegemony" and interference of the United States, suggesting the law is intended to be associated with reprisals.¹⁴⁶ On the other hand, the vast scope of the law's potential applications may run in the other direction. With permissible grounds for the adoption of restrictions extending to any alleged "discriminatory measures against Chinese citizens/interference with China's internal affairs," the potential field for usage of the AFSL's newly defined powers is quite broad.¹⁴⁷

As early analysts of the legislation have already noted, while the provisions of the AFSL are most explicitly targeted towards facilitating symmetrical retaliation against foreign states, organizations, or individuals involved in carrying out sanctions against China, in practice it could permit China to develop its own targeted sanctions regime on a more sweeping scale.¹⁴⁸ The AFSL's relationship with previous measures used to counter foreign sanctions lends support to the notion that it combines this goal with more far-reaching objectives. Prior to the passage of the AFSL, China's Ministry of Commerce in 2020 implemented Unreliable Entity List Provisions that created a regime for imposing economic restrictions on foreign entities accused of "endangering [its] national sovereignty, security or development interests."¹⁴⁹

¹⁴⁵ See, e.g., Julia Schmidt, *The Legality of Unilateral Extra-territorial Sanctions Under International Law*, 27 J. CONFLICT & SEC. L. 1, 53, 73-74 (2022) (arguing that "a retorsion becomes unlawful . . . when the restrictive measure goes beyond what is necessary in order to achieve a legitimate objective, which would be a question of its proportionality [or] when the objective to be pursued is an illegitimate one").

¹⁴⁶ AFSL, *supra* note 8, art. 3.

¹⁴⁷ *Id.*

¹⁴⁸ See Katniss Xuejiao Li, *Performative Economic Sanctions: How Sanctions Work Without Economic Harm*, 15 HARV. NAT'L. SEC. J. 2, 327, 358-359 (2024) (noting that, so far, "sanctions by China and Russia [are] largely non-coercive and performative in that they typically fail to cause economic harm to change the behavior of their targets" and that "China's and Russia's sanctions predominantly target foreign government officials, who appear largely unaffected by these measures"); cf. Jenny (Jia) Sheng, Jack Ko, Nancy A. Fisher, Matthew Rabinowitz, Chunbin Xu & Fang Wang, *China Passes Sweeping Anti-Foreign Sanctions Law*, PILLSBURY L. (June 15, 2021), <https://www.pillsburylaw.com/en/news-and-insights/china-passes-sweeping-anti-foreign-sanctions-law.html> [<https://perma.cc/6F8R-GX2L>] (noting that "[m]ultinational entities with operations in both the U.S. and China may face the dilemma of complying with U.S. sanctions or being on China's anti-sanctions list").

¹⁴⁹ UEL, *supra* note 10, art. 2.

These also applied, more specifically, to cases in which the foreign entity applied “discriminatory measures” or “suspend[ed] transactions” with a Chinese entity in a way that “violates normal market principles.”¹⁵⁰

The 2021 Blocking Regulation, meanwhile, established a set of rules for both prohibiting Chinese entities from complying with foreign sanctions and also facilitating relevant counteraction. It specifically applies to any situation in which foreign restriction measures have been applied to a Chinese entity, in a manner that violates China’s national interests.¹⁵¹ The Regulation also entails a broad permission entailing that “the Chinese Government may take necessary counter-measures based on actual circumstances and need.”¹⁵² Together with China’s Provisions on the Unreliable Entity List (“UEL”),¹⁵³ the Blocking Regulation already institutes state authority to prohibit extraterritorial effects of U.S. or other foreign state sanctions within its own territory, as well as to facilitate countermeasures against any entity identified as facilitating those sanctions. Indeed, the Blocking Regulation also indicates that Chinese citizens whose interests are negatively affected by another party’s compliance with foreign sanctions may institute legal proceedings and seek compensation.¹⁵⁴ Together with the UEL, the Blocking Regulation thus establishes a relatively robust protective mechanism against foreign unilateral sanctions against China, and creates possible countermeasures within a relatively constrained sphere of action. In these respects, the UEL and Blocking Regulation together approximate the key features of their most evident model, the European Union’s Blocking Statute.¹⁵⁵

¹⁵⁰ *Id.*

¹⁵¹ Blocking Regulation, *supra* note 10, art. 2 (noting that the rules “apply to situations where the extra-territorial application of foreign legislation and other measures, in violation of international law and the basic principles of international relations, unjustifiably prohibits or restricts the citizens, legal persons or other organizations of China from engaging in normal economic, trade and related activities with a third State (or region) or its citizens, legal persons or other organizations”).

¹⁵² *Id.* art. 12.

¹⁵³ *See* UEL, *supra* note 10.

¹⁵⁴ *Id.* art. 9. There is also a provision for applying for exemption from the Regulation in order for a Chinese person or entity to be allowed to comply with foreign sanctions as justified in a particular case. *Id.* art. 8.

¹⁵⁵ *See* Council Regulation (EC) No 2271/96 of 22 November 1996 Protecting Against the Effects of the Extra-Territorial Application of Legislation Adopted by a Third Country, and Actions Based Thereon or Resulting Therefrom, 1996 O.J. (L 309) 1.

Given that China already had in place a regulatory framework roughly approximating the EU Blocking Statute, the most important features of the AFSL appear to be the provisions that go beyond the blocking of foreign sanctions to encompass the facilitation of China's own unilateral measures. These include the use of forms of coercive enforcement such as asset freezes, visa and travel bans, and bans on cooperation with Chinese individuals or entities, among others.¹⁵⁶ Each of these measures and the potential simultaneous use of unreliable entities lists to designate foreign targets of such measures closely resembles existing practices of the U.S. sanctions regime. Aspects of the AFSL that diverge from the United States' model, meanwhile, include its replacement of an "emergency"-based delegation of authority (as under IEEPA) with a more general reference to countering foreign "interference" and defending state sovereignty, security, or national interests. In addition, AFSL differs from IEEPA in its direct empowerment of the MOFA with the ability to make sanctions determinations.¹⁵⁷

The MOFA's prominence contrasts with the U.S. approach, as a more direct parallel would place authority either in the hands of the Premier or with the Ministry of Commerce ("MOC"), which is the PRC equivalent of the U.S. Department of the Treasury. While the MOC has been given primary responsibility for administration of unreliable entities lists in the new regime, it is notable that the AFSL, which is justified more explicitly based on considerations of reciprocity with foreign states, seems to empower the MOFA.¹⁵⁸ Chinese academic commentators on the AFSL have taken account of this potentially confusing division of labor, and of the relative opacity of sanctions decision-making under the legislative regime, raising suggestion including the creation of a new, OFAC-like dedicated inter-agency body.¹⁵⁹

¹⁵⁶ See Luo Guoqiang & Liu Tian, *Wo Guo "Fan Waiguo Zhicai Fa" De Shiyong Guize Ji Qi Falü Tiaohe He Wanshan* [The Implementation Principles of China's Anti-Foreign Sanctions Law and Their Legal Adjustment and Improvement], 54 YUNNAN SHIFAN DAXUE XUEBAO [J. YUNNAN U.] 126 (2022).

¹⁵⁷ See, e.g., *id.* at 123.

¹⁵⁸ *Id.* at 125-26.

¹⁵⁹ Du Tao & Zhou Meihua, *Yingdui Meiguo Danbian Jingji Zhicai De Yuwai Jingyan Yu Zhongguo Fang'an: Cong "Zudian Banfa" Dao "Fan Waiguo Zhicai Fa"* [China's New Countermeasures against U.S. Unilateral Economic Sanctions: From Blocking Measures to Anti-Foreign Sanctions Law], 5 WU DA GUOJIFA PINGLUN 4, 1, 18 (2021) (suggesting "establishing a dedicated counter-sanctions mechanism to unify the coordination and implementation of counter-sanctions measures").

Another feature of the both the UEL and AFSL that differs from U.S. legislation is the empowerment of Chinese litigants to seek judicial relief when they are harmed by another party's compliance with foreign sanctions (or, potentially, other forms of "interference").¹⁶⁰ These provisions appear to draw most directly on the example of the European Union's Blocking Statute, which also grants relief for litigants harmed by compliance with foreign extraterritorial sanctions.¹⁶¹ However, the potential for litigation against general participation in foreign "interference" goes well beyond the EU example.¹⁶² A better point of comparison might be foreign legislation for (quasi-)universal civil jurisdiction, such as the U.S. Alien Tort Statute, which also provides a domestic cause of action for violations of international norms, (though usually only in a human rights context).¹⁶³ Given that domestic litigation under either UEL or AFSL has yet to occur, it remains to be seen whether these provisions will be used in an expansive manner or in a more restricted way resembling the European Union Blocking Statute.¹⁶⁴

The important issue of whether and how targeted foreign entities can challenge designations under China's sanctions regime also remains largely unclear. The UEL includes vaguely-worded provisions for such challenges, but apparently leaves both the procedure and the outcome of such processes entirely up to Ministry of Commerce discretion.¹⁶⁵ The AFSL, meanwhile, does not clearly indicate the availability of any procedure for challenging a designation.¹⁶⁶ There is thus

¹⁶⁰ AFSL, *supra* note 8, art. 12.

¹⁶¹ Tom Ruys & Felipe Rodríguez Silvestre, *Economic Statecraft: A Closer Look Inside the European Union's Expanding Toolbox*, 51 GA. J. INT'L & COMPAR. L. 647, 655 (2022).

¹⁶² *Cf.* Du & Zhou, *supra* note 159, at 23 (arguing that "the EU's Blocking Statute is not sufficiently protective and no longer adapts to the current situation of unilateral U.S. economic sanctions").

¹⁶³ *See id.* at 22 (arguing that AFSL Article 12 should be clarified by revisions to the Civil Procedure Law clearly establishing the availability of extraterritorial civil jurisdiction to allow suing foreign entities for foreign sanctions-related behavior, based on a protective theory of jurisdiction).

¹⁶⁴ *See* Ruys & Rodríguez Silvestre, *supra* note 161, at 669 (noting that the E.U. Blocking Statute is effectively limited to the application of "unfriendly, but lawful 'retorsions'" rather than countermeasures against foreign states).

¹⁶⁵ UEL, *supra* note 10, art. 13 ("A foreign entity may apply for its removal from the Unreliable Entity List, the working mechanism shall decide whether to remove it based on actual circumstances.").

¹⁶⁶ Indeed, the statutory language may discourage this. AFSL, *supra* note 8, art. 7 ("Decisions made by the relevant departments of the State Council in accordance with the provisions of Articles 4 through 6 of this Law are final decisions."); AFSL, *supra* note 8, art. 8 (providing that "[w]here there are developments or changes in

a need for additional clarity as to whether normal applications for reconsideration of administrative decisions may be applied in the context of MOC or MOFA determinations on UEL and AFSL designations.¹⁶⁷

Despite various remaining uncertainties described above, the spate of new legislation has resolved one of the key obstacles noted by 2010s advocates of a more assertive sanctioning posture for China: the lack of an overarching legal regime for pursuing such policies.¹⁶⁸ Now that the foundations for the regime are in place, it is possible to assess the new approaches' degree of continuity with past Chinese practices of sanctioning, as compared with their incorporation of more recent innovations or the reception of foreign influences. First, alongside the new formalized tools there does appear to be a continued usage of informal sanctions, comprising disguised trade restrictions targeting states that have taken "unfriendly" foreign policy decisions.¹⁶⁹ This suggests at least partial continuation of pre-AFSL practices of imposing costs on foreign states by denying their exporters the benefit of China's consumer market, as was applied to Norwegian salmon, South Korean retailers, Canadian canola exporters, and various others.¹⁷⁰ Thus, it is unlikely that the AFSL has displaced these alternative forms of sanctioning; rather, it appears to offer a more formalized alternative geared towards specific targeting of individuals or entities when this is preferable to policymakers.

Meanwhile, the new legislation's notion of counter-sanctions, or *fanzhi*, also suggests a modification of traditional ideas of *dizhi*, with the latter's conceptual associations of economic sovereignty as a core aspect of national sovereignty.¹⁷¹ Conveying the idea of a legal restriction put in place to symmetrically oppose a preceding incursion or aggressive action by the target, *fanzhi* indicates that the appropriate scope for China's sanctions is against foreign states, their citizens, or

the circumstances on which countermeasures are based, the relevant departments of the State Council may suspend, modify, or cancel the countermeasures" but establishing no private right or procedure for pursuing such determinations).

¹⁶⁷ See Du & Zhou, *supra* note 159, at 21.

¹⁶⁸ See Song, *supra* note 114, at 184 (noting that "the lack of legal validity makes it quite difficult to implement economic sanctions in China").

¹⁶⁹ See, e.g., *China's Rejection of Guatemalan Shipments Could Be Related to Taiwan Ties, Guatemala President Says*, REUTERS (May 25, 2024), <https://www.reuters.com/world/chinas-rejection-guatemalan-shipments-could-be-related-taiwan-ties-guatemala-2024-05-25/>

¹⁷⁰ See POH, *supra* note 135 at 199-200, 211, 221, 270.

¹⁷¹ The term *fanzhi* previously existed with the general meaning of a "counter-strike," before being applied more specifically within the sanctions context.

their organizations that challenge China's fundamental interests, rather than being applicable to situations of alleged violation of universal values.¹⁷² AFSL sanctions may thus be especially appropriate to the context of targeting other great powers, both because of the ability to more clearly differentiate targets and to provide arguments against possible retaliation by characterizing China's own moves as valid countermeasures under international law.¹⁷³

Alongside the AFSL, other newly passed laws have further defined the features of China's new sanctions regime. Among the most important of these is the Foreign Relations Law ("FRL"), passed in 2023, which is a major piece of legislation embodying several longstanding aspects of the NPC's legislative agenda of the last several years.¹⁷⁴ In comparison with the more specifically oriented AFSL, the FRL could be regarded as the broadly framed central pillar of China's stated intention to carve out a comprehensive new system for "foreign-related rule of law" (*she wai fazhi*).¹⁷⁵ Comprising a comprehensive restatement of China's foreign relations principles, organizational hierarchy, and other aspects of the "system" for the first time in decades, the FRL is closely intertwined with the AFSL in defining the operation of sanctions practices. Article 33 is particularly relevant, providing that:

The People's Republic of China has the right to take, as called for, measures to counter or take restrictive measures against acts that endanger its sovereignty, national security and development interests in violation of international law or fundamental norms governing international relations.

The State Council and its departments adopt administrative regulations and departmental rules as necessary, establish related working institutions and mechanisms, and strengthen inter-departmental coordination and cooperation to adopt and enforce measures mentioned in the preceding paragraph.

¹⁷² Cf. Luo & Liu, *supra* note 156, at 125 (emphasizing the reactive character of Chinese sanctions by reference to the fact that "China is the first state to directly place the word 'counter' (*fan*) in the title of its countermeasures legislation").

¹⁷³ See Du & Zhou, *supra* note 159, at 2 (characterizing AFSL sanctions as countermeasures under international law).

¹⁷⁴ *Zhonghua renmin gongheguo dui wai guanxi fa* (中华人民共和国对外关系法) [Law on Foreign Relations of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., June 28, 2023, effective July 1, 2023), 2023 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 522 (China) [hereinafter FRL].

¹⁷⁵ See Rudolf, *supra* note 11.

Decisions made pursuant to the first and second paragraphs of this Article are final.¹⁷⁶

The FRL and Article 33 thus build upon the AFSL by more explicitly indicating the legitimacy of sanctions on the basis of alleged acts against Chinese “sovereignty, national security, or development interests,” and which violate international law or “fundamental norms of international relations,”¹⁷⁷ but which do not respond to prior foreign sanctions as such. Moreover, the law reinforces the primacy of the State Council as the venue for such economic statecraft.¹⁷⁸ The FRL also restates in broader terms a feature contained in Article 7 of the AFSL, which relates to the finality of measures taken under the new sanctions regime.¹⁷⁹ This establishes another parallel with the sanctions regime of the United States, in which designation of unreliable entities, imposition of asset freezes, and other restrictive measures are rarely subject to meaningful challenge in federal courts. Operating under the political question doctrine and understandings of the separation of powers under which foreign policy authority is assigned to the Executive, U.S. courts face sharp limits in supervising sanctioning actions.¹⁸⁰

Another partially related legislative effort with some implications for China’s new sanctioning regime is the revision to its longstanding positions regarding foreign immunity. The National People’s Congress has recently adopted a Foreign State Immunity Law (“FSIL”) that brings China’s positions on immunity much closer to those common among developed states.¹⁸¹ The legislation marks the abandonment of China’s traditional “absolute immunity” approach, which held that foreign states and most state-affiliated entities could not be sued for damages in Chinese civil litigation, criminally penalized under Chinese criminal law, or subject to court enforcement of fines and penalties.¹⁸² China’s traditional absolutist position was widely viewed,

¹⁷⁶ FRL, *supra* note 174, art. 33.

¹⁷⁷ *Id.* arts. 1, 19.

¹⁷⁸ *Id.* art. 12.

¹⁷⁹ AFSL, *supra* note 8, art. 7.

¹⁸⁰ *See, e.g.*, LeClercq, *supra* note 7, at 125.

¹⁸¹ Zhonghua renmin gongheguo waiguo guojia huomian fa (中华人民共和国外国国家豁免法) [Law of the People’s Republic of China on Foreign State Immunity] (promulgated by the Standing Comm. Nat’l People’s Cong., Sept. 1, 2023, effective Jan. 1, 2024) 2023 STANDING COMM. NAT’L PEOPLE’S CONG. GAZ. 626 (China) [hereinafter FSIL].

¹⁸² *See* William S. Dodge, *China’s Draft Law on Foreign State Immunity Would Adopt Restrictive Theory*, TRANSNAT’L LITIG. BLOG (Apr. 12, 2023),

both within Chinese and foreign scholarly analyses, as being out of step with China's role as the world's second largest economy.¹⁸³ There were, accordingly, various commercial reasons to shift China's stance on immunity from an absolute to a qualified or restrictive stance. An inability to provide for litigation or compulsory measures against foreign state actors, and legal ambiguity regarding the operations of entities such as central banks, sovereign wealth funds, or foreign state-owned enterprises ("SOEs"), could in various situations threaten Chinese national interests or the interests of its firms.¹⁸⁴ China's anomalous position also contributed to a lack of parallelism between it and many of its trade partners.¹⁸⁵

However, along with the main pillars of China's new sanctions regime—the AFSL and the FRL—the FSIL also may serve to facilitate possible forms of counter-action against the United States or other great powers. This is particularly indicated by the reciprocity-oriented features of the legislation.¹⁸⁶ The FSIL's reciprocity clause states, "Where the immunity granted by a foreign court to the People's Republic of China and its property is inferior to that provided for by this Law, the courts of the People's Republic of China may apply the principle of reciprocity."¹⁸⁷ This is a feature present in the immunity laws of a few other states, including Russia and Argentina, but that is not widespread and nor contained in the UN Convention on Jurisdictional Immunities of States and Their Property.¹⁸⁸ Its inclusion in the FSIL

<https://tlblog.org/chinas-draft-law-on-foreign-state-immunity-would-adopt-restrictive-theory/> [<https://perma.cc/LV3W-WK6N>].

¹⁸³ *Id.*

¹⁸⁴ See, e.g., Guan Feng, *Do State-Owned Enterprises Enjoy Sovereign Immunity?*, CHINA L. INSIGHT (Sept. 27, 2018), <https://www.chinalawinsight.com/2018/09/articles/dispute-resolution/do-state-owned-enterprises-enjoy-sovereign-immunity/> [perma.cc/X26T-MG4X]; Zhao Zhujun & Guo Jianping, *Settlement of Belt and Road Disputes Between China and Central Asian Countries*, 29 ASIA PAC. L. REV. 189 (2021).

¹⁸⁵ See Philippa Webb, *United Nations Convention on Jurisdictional Immunities of States and Their Property*, U.N. AUDIOVISUAL LIBR. OF INT'L L. (Dec. 2, 2004), <https://legal.un.org/avl/ha/cjistp/cjistp.html> [perma.cc/79N5-WJ5F].

¹⁸⁶ Dodge, *supra* note 182 ("One of the most interesting provisions of China's draft law on state immunity is Article 20 . . . The reciprocity clause in the draft law means that Chinese courts would be able to exercise jurisdiction over the United States and its property in any case where U.S. law would permit U.S. courts to exercise jurisdiction over China and its property."); see also Du & Zhou, *supra* note 159, at 21-22 (arguing that the revision to China's stance on immunity was needed because it was likely that AFSL-related litigation might eventually need to target a foreign state or state-related entity).

¹⁸⁷ FSIL, *supra* note 181, art. 21.

¹⁸⁸ See Dodge, *supra* note 182.

seems most directly relevant to potential future conflicts with the United States, given the way that carve-outs to the U.S. Foreign Sovereign Immunities Act also establish relatively broad exceptions to state immunity upon what have proven to be easily politicized grounds.¹⁸⁹

Meanwhile, the FSIL may also facilitate new informal sanctions by denying immunity to foreign states or their officials regarding “damage to movable or immovable property caused by the foreign state in PRC territory,” or disputes over any “right, interest, or obligation of the foreign state” to property in China.¹⁹⁰ Although only explicitly addressing commercial and property disputes, these provisions also would also appear to apply to situations in which civil litigants under Article 12 of the AFSL could target foreign firms or individuals, including those with government affiliations, for their participation in causing “property damage” or commercial losses in China through compliance with foreign sanctions or other unfriendly measures. The FSIL also may have implications for any possible asset confiscations that could be taken in line with future sanctions-related litigation.¹⁹¹ This is particularly apparent in Article 13 of the FSIL, which provides that foreign state assets can be targeted by judicial compulsory measures “where [the measures are taken] to enforce an effective judgment of a PRC court, and the property of the foreign state is used for commercial activities, is connected to the litigation, and is located in PRC territory.”¹⁹² It seems plausible that a foreign SOE or sovereign wealth fund found to have caused commercial losses in China through compliance with U.S. sanctions, for example, could be sued for damages by affected Chinese parties.

The legislative history of the FSIL is revealing, as it was in part based on a bill introduced by an NPC delegate in 2020 that specifically responded to U.S. litigation seeking to attribute liability to China for

¹⁸⁹ *Id.* (“Chinese courts could hear expropriation or terrorism claims against the United States, for example, because the U.S. Foreign Sovereign Immunities Act (FSIA) has exceptions for expropriation and terrorism,” even though China’s FSIL does not). For a critical discussion of private terrorism litigation facilitated by the FSIA exception, and its potential to foment geopolitical conflict and racial animus, see Maryam Jamshidi, *The World of Private Terrorism Litigation*, 27 MICH. J. RACE & L. 203, 222 (2021) (arguing that “the criminal and private terrorism laws, and indeed the U.S. government’s counterterrorism policies more generally, are notably reminiscent of other forms of racial stereotyping and discrimination that have been exposed as illegitimate”).

¹⁹⁰ FSIL, *supra* note 181, arts. 9-10.

¹⁹¹ *Id.* art. 14(3).

¹⁹² *Id.*

the COVID-19 pandemic.¹⁹³ As the delegate bill stated, this form of transnational litigation was a manifestation of “American hegemony” that China had to more actively counter, a goal that was stymied by excessive deference to foreign state immunity.¹⁹⁴ In that respect, as well as in terms of its potential facilitation of asset seizures or imposition of liabilities against foreign states, the FSIL, like the FRL and the AFSL, contributes to the robust new sanctions regime by which Beijing aims to, in the newly adopted official rhetoric of the Communist Party leadership, “engage in international struggle (*guoji douzheng*).”¹⁹⁵ The United States’ influence can be felt in such justifications for China’s new policies, reflected in their efforts to “counter” the United States’ own sanctioning efforts, and, not least, borrow from the U.S. sanctions framework as a role model for China’s own initiatives.

B. Replicability of U.S. Approaches by China

China’s sanctions framework, though formalized only recently and carrying significant conceptual legacies from China’s own modern history of *dizhi* practices, nonetheless already evidences major signs of influence by U.S. approaches. Unreliable entities lists, asset freezes, and travel-related sanctions on visa applications or transit closely resemble longstanding U.S. approaches.¹⁹⁶ Other aspects of the new regime, such as the limits of judicial review or obligations to provide rationales for sanctions usage, as well as the extensive delegation of decision-making authority to the executive, also resemble the U.S. model.¹⁹⁷

¹⁹³ NPCSC Session Watch: Lawmaking Reforms, Corporate Bankruptcy, Charity, Financial Stability, Foreign Sovereign Immunity, Cross-Border Litigation & More, NPC OBSERVER (Jan. 3, 2023) <https://npcobserver.com/2022/12/12/npcsc-session-watch-lawmaking-reforms-corporate-bankruptcy-charity-financial-stability-for-foreign-sovereign-immunity-cross-border-litigation-more/> [https://perma.cc/7D98-4ASM].

¹⁹⁴ *Id.*

¹⁹⁵ Xue'er Shixi, *Xi Jinping: Yunyong Fazhi Shouduan Zhankai Guoji Douzheng*, QIU SHI WANG (Feb. 18, 2022, 3:48 PM), http://www.qstheory.cn/zhuanqu/2022-02/18/c_1128390377.htm [perma.cc/C2AN-PKC4].

¹⁹⁶ *Cf.* Luo & Liu, *supra* note 156.

¹⁹⁷ Notably, however, while Congress exercises little oversight with respect to preventing or repealing U.S. sanctions, it does frequently become involved with sanctions policy in order to legislatively impose new measures or to “lock-in” preexisting measures (or, by threatening to do so, to influence Executive decision-making to deter potential acts of repeal). *See, e.g.*, Jordan Tama, *So Congress Is Challenging the President About Sanctions? That Has a Long History*, WASH. POST (June 16,

Despite similarities in the legal framework, however, the very different international financial roles of the U.S. dollar as opposed to the Chinese renminbi (“RMB”) (also known as the yuan) limit the possibility of complete parallelism between the two countries’ sanctions. While lack of access to U.S. dollar reserves would pose a serious risk to the financial stability of many states, and would at minimum force a major change of fiscal policy for most others,¹⁹⁸ the same is hardly true of the RMB. China has recently increased emphasis on internationalization of the currency, but this project remains in its early stages.¹⁹⁹ Recently, the RMB has become the fifth most widely held reserve currency and currency fifth most used in international cross border transactions, but the distance between it and the Euro, yen, and pound, not to mention the U.S. dollar (which is far ahead in all categories), means progress towards any project of replacement could only be carried out over the course of decades.²⁰⁰

A major question for targeted individuals or institutions is whether China might eventually further emulate the United States by pursuing secondary sanctions against those who transact with targeted firms. So far, there are few signs of this escalation, but it is at least fully conceivable. China has yet to imitate the United States in that particular form of economic interventionism or in other decried forms of U.S. sanctioning, such as comprehensive sanctions that the United States has used to debilitate entire national economies over the course of decades. Total embargoes like those leveled by the United States against Cuba, North Korea, or China during the early Cold War—i.e.,

2017, 4:25 PM), <https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/16/so-congress-is-challenging-the-president-about-sanctions-that-has-a-long-history/> [https://perma.cc/LJN2-MFSG].

¹⁹⁸ See, e.g., Kari Lindberg, Nick Wadhams & Jenny Leonard, *Dollar’s Dominance Gives U.S. Upper Hand in China Fight*, BLOOMBERG (Sept. 10, 2020, 12:02 AM), <https://www.bloomberg.com/news/articles/2020-09-09/dollar-dominance-gives-u-s-upper-hand-in-china-sanctions-fight> [https://perma.cc/JM45-YBGB] (“Some of the sanctions Chinese banks could be subject to could have a significant impact on their ability to access U.S. dollars.”).

¹⁹⁹ *Id.* (“China is disadvantaged in the sanctions game because its payment system is underdeveloped and yuan internationalization is decades away.”); Markus Jaeger, *Promoting the RMB Will Limit, but Not Quash, China’s Vulnerability to US Currency Sanctions*, GERMAN COUNCIL ON FOREIGN RELS. (Apr. 5, 2023), <https://dgap.org/en/research/publications/promoting-rmb-will-limit-not-quash-chinas-vulnerability-us-currency-4> [https://perma.cc/2PN4-7LQH].

²⁰⁰ See, e.g., Wes Kosova, *China Wants the Yuan to Rival the Almighty Dollar: Big Take Podcast*, BLOOMBERG (May 24, 2023, 5:00 AM), <https://www.bloomberg.com/news/articles/2023-05-24/china-wants-the-yuan-to-rival-the-almighty-dollar-big-take-podcast> [https://perma.cc/2YH5-RAQE].

total “ostracism” of the type explicitly geared towards promoting regime change—has yet to become a feature of China’s repertoire. However, the implementation of such sanctions may be more a matter of time and capacity than values-based restraint. Again, the different statuses of the U.S. dollar and the Chinese yuan and the state’s respective financial-monetary systems as a whole, currently hinder such aspirations.

Meanwhile, China’s dozens of uses of the new AFSL have been far more expressive or performative than practical. The Ronald Reagan Presidential Library, for example, was sanctioned for its hosting of a meeting between Taiwan’s President Tsai Ing-wen and U.S. House Speaker Kevin McCarthy, despite an apparent lack of assets in China or other jurisdictional connections.²⁰¹ With regards to some of China’s other targets, however, such as U.S.-based weapon manufacturers Raytheon and Lockheed Martin, or the MERICS think-tank (Europe’s largest China-focused research organization), potential concrete impacts are more apparent.²⁰² Travel bans, lost business connections, chilling effects on individuals’ family members or collaborators with an organization, inability to list on Hong Kong’s financial markets or have access to Chinese investors, and other such costs, could conceivably affect behavior even for targets ensconced in armored financial strongholds of the West. For the moment, however, AFSL-based sanctions have not yet risen to the level of punitive impact of either their U.S. model or informal measures used by China in various cases before 2021.²⁰³

Another ironic area of divergence from the United States is the greater limitations on individual Chinese policymakers with respect to the use of sanctions (or other major tools of international coercion empowered by a specific legislative delegation) as compared with the vast power for unilateral action enjoyed by the U.S. executive. Of course, the Chinese Communist Party enjoys effectively untrammelled

²⁰¹ Simone McCarthy & Jake Kwon, *China Sanctions US Organizations for Hosting Taiwan Leader During Stopover*, CNN (Apr. 27, 2023, 8:34 PM), <https://edition.cnn.com/2023/04/07/china/china-sanctions-hudson-institute-ronald-reagan-library-intl-hnk/index.html> [<https://perma.cc/XD9K-XQY4>].

²⁰² See Ghiretti, *supra* note 6, at 5-6.

²⁰³ Foreign policymakers and analysts generally express more concern about informal sanctions and embargo measures than about the effects of sanctions under the new legislation. See MARCIN SZCZEPAŃSKI, CHINA’S ECONOMIC COERCION: EVOLUTION, CHARACTERISTICS AND COUNTERMEASURES 4 (2022) (describing how “measures applied are opaque and informal, and often either lack legislative justification or are based on deliberate misinterpretation of legislation, ‘grey areas’ in Chinese legislation or gaps in international trade law”).

authority, with little chance for any legal challenge to a policy undertaken by the consensus of Party leaders acting via the formal authorization of the Central Committee.²⁰⁴ Particular leaders of the Party have also usually enjoyed extensive personal authority and capacity to mobilize preferred policies; this is true of Xi Jinping, in the opinion of almost all professional observers.²⁰⁵ However, the head of the Communist Party/President does not have official constitutional powers that are of equal magnitude to the U.S. President, including in the realm of sanctions.²⁰⁶ Were the PRC sanctions regime to more closely resemble the United States', it could more explicitly assign sanctions authority to the office of Communist Party General Secretary or State President (*guojia zhuxi*), as opposed to leaving it in the hands of the State Council and its bureaucratic organs. In the past, General Secretaries and Premiers of the State Council have diverged on policy, and such a situation could theoretically recur.²⁰⁷

Even absent such a policy split, however, the question of the extent of General Secretary/President's involvement in specific policy has implications for how policies are formed and what issues will be prioritized. The Xi administration has seen a growing emphasis on "head of state diplomacy" (*yuanshou waijiao*), which seems to suggest more foreign policy coordination under his own person or otherwise at the high levels of the Communist Party.²⁰⁸ In line with these trends, China's sanctions regime could potentially be further revised to help establish a more explicitly empowered unitary executive office along U.S. lines, just as it has already helped to assert the MOFA and MOC as transnational legal actors exercising U.S. agency-like punitive powers.²⁰⁹ The question as to how much further imitative dynamics in the

²⁰⁴ See, e.g., Zhang Qingmin, *The 20th CPC National Congress and China's Foreign Policy: Implication and Reflection*, 5 CHINA INT'L STRATEGY REV. 1, 17 (2023) (describing the "centralized and unified diplomatic leadership of the CPC").

²⁰⁵ *Id.*

²⁰⁶ For examples on the lack of "a constitutional base" for the *de facto* powers of the President of the People's Republic of China, see Wang Zhengxu, *Chinese Presidency: Institutionalisation, Constitutional Ambiguities and the Trajectories Towards Democratisation*, 11 CHINA: INT'L J. 140, 151-53 (2013).

²⁰⁷ *Id.*; see also Ryan Martínez Mitchell, *Chinese Receptions of Carl Schmitt Since 1929*, 8 PENN ST. J.L. & INT'L AFFS. 181, 262 (2020) (noting that influential Chinese scholars have for many decades been interested in theoretical arguments defending a more robust executive authority).

²⁰⁸ See Zhang, *supra* note 204, at 17 n.8 (noting that "[a]fter the 18th Party Congress, the term 'summit diplomacy' was changed to head-of-state diplomacy (*yuanshou waijiao*, 元首外交, presidential diplomacy)").

²⁰⁹ In this vein, it is important to note that the existing legislation and regulations have already to a certain degree pushed in this direction, by further centralizing

use of sanctions may progress may potentially benefit from examining some of the key factors influencing states' strategic considerations in such interactions. The next Part seeks to draw insights from rational choice theory in order to better explain why states, in particular great power aspirants like China, may find "mimetic unilateralism" of a prestigious rival an appealing strategy when pondering whether to build legal regimes for transnational coercion.

IV. HOW UNILATERAL ECONOMIC COERCION FACILITATES "MIMETIC UNILATERALISM"

A. The Limits of Rational Emulation

The previous sections explained how the current development of a unilateral sanctions regime in China has drawn upon both resources from local conceptual history and the example of the United States. The United States has provided a model both for China to maintain robust practices of informal economic coercion and for partially incorporating these into a concrete legal regime. This Section explores that process of legal mimesis from a more theoretical perspective, arguing that it instantiates a type of "mimetic unilateralism" that is a regularly occurring form of state legal behavior, with specific features, rationales, and effects. As this Section will argue, imitative unilateral sanctioning is generally a form of suboptimal strategic behavior that forfeits more productive cooperation among states.²¹⁰ However, actions imitating the unilateral coercion of a prestigious rival may at times provide positive marginal utility to a state. They can do so for two basic reasons: First, because objectively optimal strategies rely on obtaining information about rivals as well as strategic circumstances, which may be costly.²¹¹ Second, because a state's own endogenous

decision-making on application of economic coercion. The MOC measures on Unreliable Entities established a cross-department working group to decide on designations decisions and related actions, while the AFSL has empowered the MOFA more explicitly as the center of sanctions authority with respect to countermeasures against actions by foreign states. *See supra* notes 8-10 and accompanying text.

²¹⁰ Cf. Nuno R. Garoupa & João E. Gata, *A Theory of International Conflict Management and Sanctioning*, 110 PUB. CHOICE 41, 55, 43 (2002) (noting that various studies have cast doubt on the effectiveness of sanctions in changing their targets' behavior, while suggesting that they can nonetheless be used as effective bargaining tools in some situations).

²¹¹ John Conlisk, *Costly Optimizers Versus Cheap Imitators*, 1 J. ECON. BEHAVIOR & ORG. 275, 275-77 (1980) (noting that "optima may be excessively hard for agents to discover" in a given strategic situation, and that it can be more rational

preferences may value signals of status (prestige) more highly than assessments of concrete benefits that might be derived from cooperation.²¹²

That rational choice theory can be useful for describing states' behavior in international law is a widely held view. Legal interactions of states, like other forms of interstate interaction, often exhibit features of mutually influenced strategic decision-making.²¹³ Game theory and other forms of rational choice analysis have long been used to analyze the strategic dimensions of international relations.²¹⁴ More recently, some international legal scholarship has adopted aspects of these disciplines, particularly game theory, to assess the nature and operation of phenomena such as, in particular, the development of customary international law ("CIL") norms.²¹⁵ Game theory has also been profitably applied, *inter alia*, to the negotiation of treaty regimes; the rule-sets used to govern specific global goods, such as high seas resources; and to the coordination of interstate cooperation via non-

to be a low-cost imitator of relatively successful strategies rather than a "costly optimizer").

²¹² See, e.g., Joseph Henrich, *Cultural Group Selection, Coevolutionary Processes and Large-Scale Cooperation*, 53 J. ECON. BEHAVIOR & ORG. 3, 23 (2004) ("Among the cues individuals use to rank potential models is the amount of prestige-deference an individual receives from other people. This deference acts as an honest signal of whom other individuals believe is highly successful or skilled because deference is 'paid' to such individuals in exchange for copying opportunities.").

²¹³ Francesco Parisi & Nita Ghei, *The Role of Reciprocity in International Law*, 36 CORNELL INT'L L.J. 93, 94 (2003) (describing game theory as "a useful tool for the study of international law and the relations between sovereign states, because it focuses on interactions where parties can only determine their own strategies, and thus have no direct control of the outcome").

²¹⁴ See generally Peter G. Bennett, *Modelling Decisions in International Relations: Game Theory and Beyond*, 39 MERSHON INT'L STUD. REV. 19 (1995); Randall W. Stone, *The Use and Abuse of Game Theory in International Relations: The Theory of Moves*, 45 J. CONFLICT RESOL. 216 (2001); John K. Setear, *An Iterative Perspective on Treaties: A Synthesis of International Relations Theory and International Law*, 37 HARV. INT'L L.J. 139 (1996).

²¹⁵ See, e.g., Jack L. Goldsmith & Eric A. Posner, *A Theory of Customary International Law*, 66 U. CHI. L. REV. 1113, 1139-67 (1999) (applying game theoretic principles to challenge positivist accounts of customary international law); see generally Mark A. Chinen, *Game Theory and Customary International Law: A Response to Professors Goldsmith and Posner*, 23 MICH. J. INT'L L. 143 (2001); George Norman & Joel P. Trachtman, *The Customary International Law Game*, 99 AM. J. INT'L L. 541 (2005); Anthony D'Amato, *International Law as a Unitary System*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL LAW 101-11 (David Armstrong ed., 2009); Jens David Ohlin, *Nash Equilibrium and International Law*, 96 CORNELL L. REV. 869, 875 (2011).

treaty mutual agreements.²¹⁶ It has also been applied to the topic of economic sanctions, though generally from the perspective of particular sanctions uses rather than the costs and benefits of establishing a sanctions regime.²¹⁷

In order to better understand the phenomenon of unilateral sanctioning and how it functions as a learned behavior by which states can deter each other from international legal cooperation, it is important to first address the broader question of how such cooperation, and failure to achieve it, has been generally interpreted in rational choice terms. Traditionally, legal scholarship, like legal reasoning in general, often relies heavily upon arguments by analogy.²¹⁸ The partial adoption of game theory concepts into legal scholarship, meanwhile, introduces a distinct set of methodological preoccupations that is not impervious to challenge.²¹⁹ However, its international law applications can at least provide a useful lens through which to construct plausible empirically informed accounts of legal interactions as concrete social phenomena, which are necessarily not solely and entirely explicable by reference to the normative considerations of a jurisprudential "internal view." Game theoretic approaches thus permit redescribing legal phenomena in terms of rational interactions by decision-makers.²²⁰

²¹⁶ See, e.g., Parisi & Ghei, *supra* note 213, at 110-18 (2003) (analyzing strategic factors and reciprocity dynamics in the Truman Declaration, the Law of the Sea Treaty, GATT, and the Comprehensive Test Ban Treaty); Gordon R. Munro, *Game Theory and the Development of Resource Management Policy: The Case of International Fisheries*, 14 ENV'T & DEV. ECON. 7, 23 (2009) (arguing that "game-theoretic analysis points towards the importance of establishing clear property rights for the fishery resources within the high seas under [Regional Fisheries Management Organizations] governance").

²¹⁷ Representative game theoretic explorations of sanctions include Marc V. Simon, *When Sanctions Can Work: Economic Sanctions and the Theory of Moves*, 21 INT'L INTERACTIONS 203 (1995).

²¹⁸ Analogic reasoning has, however, long been recognized as a fundamental aspect of legal cognition in general and of the development of modern liberal jurisprudence in particular. See, e.g., GERALD J. POSTEMA, *LEGAL PHILOSOPHY IN THE TWENTIETH CENTURY: THE COMMON LAW WORLD* (2005).

²¹⁹ See, e.g., Detlev F. Vagts, *International Relations Looks at Customary International Law: A Traditionalist's Defence*, 15 EUR. J. INT'L L. 1031, 1031-32 (2004).

²²⁰ See JACK L. GOLDSMITH & ERIC A. POSNER, *THE LIMITS OF INTERNATIONAL LAW* 100 (2005) ("The simplest explanation for why a state might comply with a treaty . . . is that it fears retaliation or some other failure of cooperation or coordination if it does not."). Subsequent scholarship has pointed out that the epiphenomenality of international law does not necessarily disprove either the validity of a legal norm or its association with principled self-restraint by a state genuinely committed to cooperative relations with others. See Ohlin, *supra* note 215, at 875 ("[T]he new realism misuses the methodology by concluding that self-interested behavior and normativity are mutually exclusive.").

Translated into rational choice terminology, the construction of a robustly institutionalized unilateral sanctions regime like that of the United States, or that which has been newly adopted in China, is classifiable as a form of *defection* from an alternative strategy of cooperation in the depoliticization of economic relations.²²¹ A perfectly cooperative approach to economic relations would be one in which State A and State B both left all final determinations of the legitimacy of law- or norm-enforcing economic restrictions that may be justified on an exceptional basis up to a multilateral institution, such as the United Nations Security Council or General Assembly, the WTO Appellate Body, or another such forum. By contrast, legislating a regime like that established by the TWEA and IEEPA in the United States, or the UEL, Blocking Regulation, and AFSL in China, creates conditions for domestic public law authorities to make regular unilateral decisions on punitive economic interventions.

If the decision as to whether to pursue or forego unilateral economic sanctions (i.e., “defect”) were being made in the context of a single, non-repeated bilateral Prisoner’s Dilemma game, each state’s rational self-interest would favor defection. Lacking knowledge about its rival’s intention to cooperate or defect, the state would find itself firmly entrenched in the classic non-cooperative Nash Equilibrium scenario by which its *only* rational course of action would be to develop unilateral sanctioning capacities. That is, State A’s defection strategy would result in the highest possible payoff if State B chose to cooperate by eschewing unilateral economic coercion practices, *and* it would also avoid the worst possible loss if State B were to decide to defect. By contrast, a cooperation strategy by State A, would result in the worst possible loss if B defects, and a less-than-optimum benefit if B cooperates. That this defection strategy dictated by rational *self*-interest differs from the most efficient outcome for both parties—namely, the Pareto-efficient, loss-minimizing choice of both parties to cooperate—is among the most salient takeaways of the classic, non-repeated Prisoner’s Dilemma scenario.²²²

²²¹ Game theory has previously been applied to economic sanctions in various studies, some quite thorough. However, this scholarship has tended to analyze strategies of cooperation or defection with reference to specific episodes of sanctions, rather than the higher-order strategic decision to adopt a comprehensive unilateral sanctioning regime in the first place. *See, e.g.*, Simon, *supra* note 217, at 217-24 (analyzing various case studies).

²²² *See, e.g.*, Dipyaman Banerjee & Sandip Sen, *Reaching Pareto-Optimality in Prisoner’s Dilemma Using Conditional Joint Action Learning*, 15 AUTONOMOUS AGENTS & MULTI-AGENT SYS. 91, 98-99 (2007).

However, as is the case with many forms of social interaction, interstate behavior with respect to economic sanctions hardly occurs in the setting of a single, non-repeated, simultaneous decision-making event undertaken by a pair of actors in a condition of perfect ignorance regarding the other's choices. Expansions of the Prisoner's Dilemma's (and other games') chronology and iterability as well as in the envisioned number of players have endowed them with far greater verisimilitude.²²³ An infinitely iterated version of the Prisoner's Dilemma, in which states' future decisions to cooperate or defect are based in part on information about their counterparts' behavior in previous rounds, would lead to a very different set of outcomes than a single-round game. Because the probability of a rival defecting in future rounds is increased by State A's decision to defect in an earlier round, cooperation becomes a more attractive option.²²⁴ An infinitely repeating Prisoner's Dilemma thus differs fundamentally from the single round example, although a finitely-repeating game is more similar: as long as there is a final instantiation in which a strategy could be taken without concerns over the signaling effects on a rival's behavior in future rounds, the dominant strategy of defection tends to prevail and states find themselves back in non-cooperative equilibrium.²²⁵

A straightforward application of these basic Prisoner's Dilemma dynamics to international legal interactions would hold that "[legal cooperation arises when states find themselves in a bilateral

²²³ With regards to the number of players, Posner and Goldsmith argue that much apparently multilateral and episodically contained international law phenomena can be broken down into successive bilateral interactions. This has implications for the repeatability and signalling of preferences with respect to the strategic benefits of cooperation. See Goldsmith & Posner, *supra* note 215, at 2, 10, 15 (noting that cooperation may require that "players must have sufficiently low discount rates: they care about the future relative to the present").

²²⁴ Posner and Goldsmith acknowledge the distinction between finite and infinite iteration as a key determinant in the conditions for international legal cooperation, noting that, for the latter to occur, "[f]irst, both parties must care about the future—that is, they must both be willing to defer a present payoff for future gains. Second, the states must believe that they will continue to encounter each other for the foreseeable future. Finally, the payoffs for defection must not be too high relative to the payoffs for cooperation." Chinen, *supra* note 215, at 148 (citing Goldsmith & Posner, *supra* note 215, at 1126).

²²⁵ See Parisi & Ghei, *supra* note 213, at 109 n.53 ("[I]n a repeated Prisoners' Dilemma game with a finite horizon, mutual defection is likely to dominate the game from the very first round of players' interaction. Th[is] result is logically derived through backward induction: since the last game is likely to be dominated by mutual defection, the one-to-the-last game will also induce defection (since there is no future cooperation to preserve). The same logic thus applies to all previous rounds of the game.").

[infinitely] repeated prisoner's dilemma."²²⁶ In the context of economic sanctions policy, the relevant conclusion is that states will pursue a cooperative pooling of sanctions capabilities with a multilateral legal institution only if they are involved in a potentially infinite series of encounters, if signaling of future preferences can be done credibly, and if the likelihood and gravity of potential losses resulting from a failure to defect do not outweigh the potential gains of cooperation.²²⁷ Otherwise, the appeal of defection would be sufficient to ensure the prioritization of a unilateral sanctions regime. And, of course, regardless of the finite *or* infinite nature of the Prisoner's Dilemma dynamic between a pair of states, any known decision by either state to defect, in any round, would restore defection to its status as the presumptive dominant strategy for the counterpart state.²²⁸

Of course, as was explained in the previous sections, both the United States and China had established histories of unilateral usage of economic coercion (i.e., in our current terms, defection from multilateral regulation), before the adoption of the relevant international treaty frameworks such as UN Charter Chapter VII, UN General Assembly Resolution 2625, ARSIWA, and the WTO Agreements. To the extent that failure to leave economic sanctions up to these rule-sets and their respective authoritative interpreters is a form of defection in game-theoretic terms, we could conclude that the United States might have signalled a defection from the very beginning of its participation in the relevant regimes, first via its use of the TWEA powers in the 1940s-1970s, and then with the development of the IEEPA system starting in 1977.²²⁹ While a strategy of "tit for tat with forgiveness" might still be rational in an iterated setting after a rival's defection, the vast and growing scale of the U.S. sanctioning regime could be seen as foreclosing such opportunities to rivals that might be inclined towards exploring this strategy.

The extreme consequences of such a conclusion, though, indicate that it fails to explain mimetic unilateral sanctioning. There are several reasons why the straightforward Prisoner's Dilemma analysis applied

²²⁶ Chinen, *supra* note 215, at 148.

²²⁷ Stephen J. Majeski, *Arms Races as Iterated Prisoner's Dilemma Games*, 7 MATHEMATICS SOC. SCI. 253, 264 (1984) (noting that even "when the termination of an arms race is not known with certainty by the participants, cooperative behavior can be rational if the likelihood of war is small enough").

²²⁸ *Id.*

²²⁹ This can be contrasted with, for example, U.S. behavior in relation to GATT, which featured a more selective strategy of "induced reciprocity." Parisi & Ghei, *supra* note 213, at 112-13.

above to establishing sanctions regimes may be too simplistic. For one, although various states have incorporated unilateral economic sanctions into their legal systems, this is a very recent historical development.²³⁰ At the same time, full-on multilateralism and deference to legalized international economic processes (defined above as “cooperation”) is an even more recent phenomenon.²³¹ Thus, it would be more reasonable to define cooperation much more modestly as a state’s choice to pursue a path of long-term convergence towards multilateralism in the use of economic coercion, while defection would be a shift in the opposite direction. Thus modified, the terms of the Prisoner’s Dilemma would appear to favor cooperation even when one or the other party has defected, and perhaps even if there is the possibility that the game may eventually be terminated.²³²

If cooperation thus appears to be the more appealing strategy, then it bears asking why the U.S.-China relationship currently seems to be exhibiting a pattern of imitative defection. In the following Section, I point to three additional rational choice considerations—namely, myopic optimization, cost-minimizing imitation, and endogenous social effects—to argue that while mimetic unilateralism in the use of sanctions likely does not constitute an optimal strategy when viewed in objective terms of exogenous state preferences, it may be a rational expression of endogenous preferences regarding (1) security and risk-aversion, (2) reducing the costs of decision-making, and/or (3) asserting the symbolic prestige of great power status.

B. Factors Promoting Imitative Securitization

Individual actors do not always exhibit perfect rationality in the pursuit of self-interest. Herd behavior, for example, is a well-known phenomenon in behavioral economics comprising the tendency of individuals in a group to defer to actions that are not optimal from an individual perspective.²³³ Altruism is another observed phenomenon

²³⁰ Cf. MULDER, *supra* note 64.

²³¹ See, e.g., Parisi & Ghei, *supra* note 213, at 112-13.

²³² Majeski, *supra* note 227, at 264 (noting that “[i]f termination probabilities only increase, then the unforgiving strategy is still best. However, when players can defect and then cooperate, termination probabilities decrease, the unforgiving strategy vectors are no longer Pareto preferred under all condition . . . [and] a strategy where rational players can initiate defection and then choose to cooperate, is Pareto preferred.”).

²³³ Cf. Marco Cipriani & Antonio Guarino, *Herd Behavior in Financial Markets: An Experiment with Financial Market Professionals*, 7 J. EUR. ECON. ASS’N 206 (2009).

by which either group interests or interests of other individuals may be prioritized over self-interest. Many theories of such recurring “irrational” forms of behavior have been advanced in general terms and by reference to specific scenarios, including in studies under controlled settings, revealing a number of contextual factors that may play a role in the presence of such behavior.²³⁴ More general attempts at explanation of non-self-interest-maximizing choices have also been a special focus of evolutionary game theory, which contextualizes the decision-making of individuals situated within changing and dynamically interacting populations.²³⁵ Choices that do not effectively advance individual self-interest may still rationally maximize group self-interest.²³⁶ With regards to sanctions-related behavior, for example, this might be the case with some boycotting campaigns, which involve foregoing personal economic benefits in the name of group welfare.

Of course, empirically observed behavior may also exhibit irrationality from the perspective of self-interest while also not clearly demonstrating the altruistic promotion of group success. Most dynamics of evolution within strategic settings involve actors pursuing strategies of “myopic optimization,” i.e., behavior that involves pursuing a limited (or near-term) interest with maximum rationality at the expense of behaviors that would more effectively promote greater interests over the long term.²³⁷ Given that real human decision-makers fail to exhibit perfect rationality at all times, the exhibition of partial rationality involved in myopic optimization of a specific preference with negative consequences for other preferences down the line is a relatively common phenomenon.²³⁸

The bias towards myopic optimization in the use of sanctions could involve, for example, forsaking beneficial economic relations in the name of relatively attenuated security threats (such as, perhaps, in the South Korea THAAD scenario), due to a strong preference for

²³⁴ *Id.*

²³⁵ See, e.g., Jonathan Newton, *Evolutionary Game Theory: A Renaissance*, GAMES, May 24, 2018, at 5 (noting, for example, that “behavior under a dynamic with frequent coalitional strategy updating may differ from behavior under a purely individualistic dynamic”).

²³⁶ Cf. Booth, *supra* note 22.

²³⁷ Alain Govaert, Pouria Ramazi & Ming Cao, *Rationality, Imitation, and Rational Imitation in Spatial Public Goods Games*, 8 IEEE TRANSACTIONS CONTR. NETWORK SYS. 1324 (2021) (“Particularly in social dilemmas, myopic optimizations typically lead to Nash equilibrium pay-offs that are well below the optimum, e.g., the tragedy of the commons.”).

²³⁸ *Id.* (noting that “within a cluster of cooperators, the myopic best response of a player is to defect”).

risk-aversion.²³⁹ Indeed, the costs involved in China's sanctions episodes do not consist only in harms to its interest in economic globalization, or multilateral guarantees against the erratic use of coercion by foreign states, but also in "audience costs" related to contradicting its own long-stated positions on the illegitimacy of sanctions.²⁴⁰ The limited security benefits derived from using sanctions on foreign states may have difficulty in matching these costs (especially when dealing with important economic and diplomatic partners like South Korea).

Historically, the development of unilateral sanctions practices by the United States under the TWEA and IEEPA, as well, exhibited features of excessive securitization and imposed policies biased towards addressing security risks at the expense of other values.²⁴¹ The United States' wide-ranging sanctions practices of the early Cold War under the TWEA and the embargoes against China and Cuba in particular, for example, clearly imposed major costs on the nation's trade benefits, diplomatic goodwill, and credibility as a leader within the international system, as well as regarding the durability of multilateral institutions.²⁴²

The development of comprehensive unilateral sanctioning regimes in general may function as a form of myopic security-maximization leading to forfeiting of the potential benefits of cooperation.²⁴³ Moreover, as landmark examples such as the U.S. embargo against Cuba demonstrate, the subjectively perceived security threats of sanctions targets were often not actually commensurate with their actual potential harm.²⁴⁴ Translated into the microeconomics of investing both the United States' and China's self-imposition of significant costs in order to promote security goals resembles the "myopic loss aversion" whereby investors tend to weigh losses more heavily than gains

²³⁹ On excessive risk-aversion as a myopic optimization strategy (specifically in arms race dynamics among states), see, for example, Majeski, *supra* note 227.

²⁴⁰ Another important factor is "audience costs" related to China's long-term vocal advocacy against unilateral sanctions. See POH, *supra* note 135.

²⁴¹ USA CONGRESS HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY AND TRADE, EMERGENCY CONTROLS ON INTERNATIONAL ECONOMIC TRANSACTIONS 89 (1977), Statement of Peter Weiss (claiming that economic sanctions "have not worked" and "place American business at a great disadvantage in relation to its foreign competitors").

²⁴² *Id.*

²⁴³ *Cf.* Govaert et al., *supra* note 237 at 1324-25.

²⁴⁴ See, e.g., NIGEL D. WHITE, THE CUBAN EMBARGO UNDER INTERNATIONAL LAW: EL BLOQUEO I (2014) (arguing that, *inter alia*, "the Cuban embargo undermines the use of sanctions worldwide").

when assessing performance.²⁴⁵ The gains of maintaining positive ties with a state despite its unwelcome policy choices (such as South Korea's defense cooperation with the U.S., or 1960s Cuba's close ties with the Soviet Union) are apparently underestimated, while potential costs and threats are overestimated.

Analogizing myopic loss aversion to the unilateral sanctions context would imply that, in the United States' perspective in 1962 or China's in 2017, almost *any* loss to relative security arising from disfavored policies from Cuba or South Korea, respectively, would appear to be weighted so highly as to justify jeopardizing economic interests, reputation within the international community, and the functioning of generally useful multilateral institutions. China's intense reaction to U.S. policy from 2018 on, amidst simultaneous pressures from sanctions and trade war, has also suggested a strong loss-aversion bias.²⁴⁶ By way of comparison, the potential risks of technological dominance by a rival great power that would arise from unfettered access to semiconductors, other chip technologies, or necessary raw materials, are apparently viewed by the United States as outweighing the potential benefits from pursuing a stable *modus vivendi* with regards to free trade in these commodities.²⁴⁷

If these securitization strategies leading to escalating sanctions usage are indeed suboptimal from a long-term perspective, why would they be pursued by the United States or emulated by China? The answer to the latter question may have to do not only with a shared myopic optimization preference of loss aversion, but also with the cost structure of decision-making for a "new great power" like modern China. Because actors almost never exist in an environment of perfect information, decision-making is an "expensive" process in terms of information gathering, deliberation, and coordination. A classic explanation in rational choice terms for the prevalence of imitative behavior, even where its results would be suboptimal from the perspective of perfect knowledge, is the insight that "if decision making is costly,

²⁴⁵ See generally Kristoffer W. Eriksen & Ola Kvaløy, *Myopic Investment Management*, 14 REV. FIN. 521, 521 (2010) (showing that investors, for example, weighed losses two times larger than gains when deciding whether a strategy was successful or in need of modification).

²⁴⁶ See POH, *supra* note 135.

²⁴⁷ For a critique of the standard view that free trade tends to promote peaceful and stable international relations, see Carsten Kowalczyk, *Trade Negotiations and World Welfare*, 79 AM. ECON. REV. 552, 552 (1989) (demonstrating that "approaching free trade may reduce world welfare when both tariffs and subsidies are involved").

it may be optimal for individuals to imitate the behaviour of other persons who are better informed.”²⁴⁸ Another way to phrase this is that an otherwise optimal strategy could become unfavorable if the process by which it is reached imposes too many costs, whereas a suboptimal strategy may become optimal if it is “cheap” enough to formulate.²⁴⁹

Mimetic unilateralism as a state strategy of legal borrowing might thus be explicable based primarily upon the low costs of imitation as opposed to independent policy formation. For a state in unique circumstances as a newly arrived great power, with no rulebook to follow and with only one major current example to serve as a role model (i.e., the United States), imitation would be the cheapest default method to formulate strategies.²⁵⁰ While this Article does not have the space to examine in detail the nature of decision-making costs in the Chinese system of governance, it is important to note that such costs do clearly exist. The Chinese Communist Party’s process of policy formation, although more hierarchical and far less transparent or publicly deliberative than the processes of Western democracies, nonetheless occurs via the mediation of a large number of internal and external interest groups, each with their own preferences and forms of influence.²⁵¹ Individual officials, even leaders of the Party and state, also have finite resources of political capital to expend when attempting to coordinate collective action toward a preferred set of goals.²⁵²

Policy decisions are also associated with costs related to justification within domestic civil society and to international partners. In this respect, imitation of the U.S. legal regime for unilateral sanctions

²⁴⁸ Charles F. Manski, *Identification of Endogenous Social Effects: The Reflection Problem*, 60 REV. ECON. STUD. 531, 531 (1993) (citing Conlisk, *supra* note 211).

²⁴⁹ See Conlisk, *supra* note 211; see also Henrich, *supra* note 212 at 24 (“because the world is a noisy, uncertain place, and it is often not entirely clear why a particular individual acquires great prestige or success, humans have evolved the propensity to copy a wide-range of cultural traits from prestigious individuals, only some of which may actually relate to the individuals’ success”).

²⁵⁰ See *supra* notes 114-120 and accompanying text for demonstrations of Chinese international relations scholars calling for the establishment of a more U.S.-like sanctions regime.

²⁵¹ YUHUA WANG, TYING THE AUTOCRAT’S HANDS: THE RISE OF THE RULE OF LAW IN CHINA 5 (2015) (“authoritarian rulers cannot solely rely on force to stay in power; they need cooperation as well – especially from interest groups that control valuable assets.”).

²⁵² For a recent analysis of how intra-Communist Party factionalism often was explicitly geared towards preventing the emergence of high-capital politicians capable of challenging dispersed elite networks, see VICTOR C. SHIH, COALITIONS OF THE WEAK: ELITE POLITICS IN CHINA FROM MAO’S STRATAGEM TO THE RISE OF XI (2022).

could seem like an attractively low-cost option as compared with attempting to articulate a more sui generis approach “with Chinese characteristics.” Indeed, it may even be possible to view the imitation of the United States’ international role in general, at least in terms of capabilities, as a “Schelling Point” of spontaneous coordination for actors across China’s political spectrum.²⁵³ Though individual politicians may disagree about various ideological positions and policy preferences, the notion that China should equal or resemble the United States in terms of comprehensive state capacity is widely shared across factions, including theorists of Chinese Marxism, ethno-nationalists, state capitalist/mercantilists, and even liberals with normative investments in the U.S. model.²⁵⁴ To the extent that a legal regime for unilateral sanctions is an aspect of U.S. state capacity, it would be expected for actors with different values and preferences to nonetheless converge upon it as a default behavioral model.

C. Endogenous Preferences and Great Power Performativity

While the low costs of imitation as opposed to fully independent policy formation may help to explain imitative unilateral sanctioning behavior, it is also important to note that other factors may come into play. Particularly important may be the idiosyncratic, endogenous preferences of Chinese policymakers. Unilateral sanctions may be attractive in part because of their association with great power status and prestige. To that extent, securitization by means of sanctions would be explicable not only as a manifestation of excessive loss aversion, or reduced costs of decision-making, but in positive terms as an assertion of membership in a social category, or “reference group,” which can also be displayed through acts of imitation.²⁵⁵

²⁵³ For a particularly lucid explanation of Schelling Points (i.e., intuitive points of overlapping preferences for spontaneous coordination), see Christopher Potts, *Interpretive Economy, Schelling Points, and Evolutionary Stability* 6-8 (Mar. 27, 2008) (unpublished manuscript), <https://web.stanford.edu/~cgpotts/manuscripts/potts-interpretive-economy-mar08.pdf> [<https://perma.cc/TL8J-VJAL>].

²⁵⁴ For various expert views on the interlinked dynamics of Sino-American competition and emulation (from a third-party European perspective), see generally GER. INST. FOR INT’L & SEC. AFFS., *STRATEGIC RIVALRY BETWEEN UNITED STATES AND CHINA: CAUSES, TRAJECTORIES, AND IMPLICATIONS FOR EUROPE* (Barbara Lippert & Volker Perthes eds., 2020), https://www.swp-berlin.org/publications/products/research_papers/2020RP04_China_USA.pdf [<https://perma.cc/6MED-RTND>].

²⁵⁵ See generally Francesco Guala, Luigi Mittone & Matteo Ploner, *Group Membership, Team Preferences, and Expectations*, 86 J. ECON. BEHAV. & ORG. 183 (2013).

Experimental research has shown that group membership, and even perceived membership in a specific reference group of other social actors, can significantly affect individual behavior during multilateral games.²⁵⁶ Reference groups can affect behavior through “endogenous social effects,” which exist “if the propensity of an individual to behave in some way varies with the prevalence of that behavior in some reference group containing the individual.”²⁵⁷ Such variation can, however, be difficult to assess quantitatively, both because of its potential lack of a direct connection with a clearly identifiable form of objective interest, and also because of the so-called “reflection problem” of causation; i.e., does membership in a certain group actually cause individuals to behave in a certain way, or do the individuals that behave in that way simply choose to become members of the group?²⁵⁸

Such issues of causation aside, endogenous social effects may help to explain the non-interest-maximizing aspects of securitization,²⁵⁹ as they indicate potential influences upon state behavior that relate to the independent variable of group identity. Identities, ascribed statuses, and relational interactions can all have powerful effects in shaping state behavior.²⁶⁰ Such arguments have often coincided with claims regarding the robustness of liberal international order and/or democratic peace theory, which view states as socializing via global institutions that favor liberal and democratic norms as likely to converge on similar sets of cooperative behavioral choices.²⁶¹ Conflict-promoting forms of socialization, however, are also entirely possible, and some scholars have suggested that they are at play in U.S.-China relations.²⁶²

To the extent that states view themselves as part of a club of great powers in which the United States is a role-model member, these same states are likely to emulate the United States’ practices. This is in part because:

²⁵⁶ *Id.*

²⁵⁷ Manski, *supra* note 247, at 1.

²⁵⁸ *Id.*

²⁵⁹ See Booth, *supra* note 22.

²⁶⁰ See, e.g., ANDREW LINKLATER & HIDEMI SUGANAMI, THE ENGLISH SCHOOL OF INTERNATIONAL RELATIONS: A CONTEMPORARY REASSESSMENT 52 (2006) (noting that “[Hedley] Bull’s conception of self-help under anarchy has to do with ‘helping to make the rules effective’ – or socialized collaboration”).

²⁶¹ *Id.*

²⁶² See Yoder & Haynes, *supra* note 25.

When status is sufficiently important relative to intrinsic utility [. . .] many individuals conform to a single, homogeneous standard of behavior, despite heterogeneous underlying preferences. They are willing to suppress their individuality and conform to the social norm because they recognize that even small departures from the norm will seriously impair their popularity.²⁶³

Self-perception as joining the “reference group” of great powers thus entails developing capacities for forms of unilateralism that are in use among that reference group, potentially including those connected with a legal regime of unilateral economic sanctions. The escalating securitization of trade, commercial, and legal relationships, or the pursuit of forms of punitive economic power capable of asymmetrically enforcing preferences against weaker neighbors, could be construed as informed in part by acculturation into a pattern of “great power club” behavior exemplified by the United States under the TWEA and IEEPA.

The endogenous social effect of imitation as a function of great power club membership (or aspirations to join such membership) deserve careful study as a factor influencing state behavior at any given moment, alongside considerations of rational self-interest and ethical principles like those encoded into international legal norms. Such factors can also be mutually influencing, however. If it is the case, for example, “that status (esteem or popularity) depends on public perceptions about an individual’s preferences over actions [and thus] does not depend on actions themselves . . . directly,” then the creation of a unilateral legal regime for exerting international punitive authority might, per se, be enough to signal elite status even if it goes largely unused or its uses remain merely performative.²⁶⁴ Likewise, mimesis-based identity factors could strengthen certain preferences at the same time that the imitated behavior (e.g., rising sanctions use) also affects a purely interest-based calculus of cooperation or defection.²⁶⁵

²⁶³ B. Douglas Bernheim, *A Theory of Conformity*, 102 J. POL. ECON. 841, 860 (1994).

²⁶⁴ *Id.* at 843; see also Li, *supra* note 148 at 369 (arguing that both China’s and Russia’s use of sanctions exhibit a “strategy [that] employs strong rhetoric appealing to nationalist sentiments and a disjunction between laws and their enforcement”); *id.* at 351-53, 355 (providing statistics to support the claim that the majority of sanctions targets for both China and Russia have been individuals with minimal links to their jurisdictions).

²⁶⁵ See Bernheim, *supra* note 263, at 842 (“One line of research suggests that individuals obtain information by observing each others’ actions and are therefore

Reference group membership is especially relevant with regards to the prestige-signaling aspects of sanctions. The pursuit of status is not necessarily reducible solely to the spreading of social effects within a particular reference group, but rather can also constitute aspects of a rational strategy intended to maximize social recognition.²⁶⁶ While members of a dominant group (such as the great powers) recognize each other, they also assert a higher status as against non-members, demanding recognition by the latter and justifying their own exertion of asymmetrical influence.²⁶⁷ Like other types of performative or ritualized competition (such as a Balinese cockfight), economic sanctions may function among group members as embodiments of status, both with regards to outsiders and to shifting in-group hierarchies.²⁶⁸

While notions of prestige and “great power” status are difficult to quantify, reliant as they are upon highly subjective interpretations of social roles and relations, they may be still more conducive to mimetic phenomena than other kinds of preferences for this very reason. Some cognitive psychologists have attributed plausibility to the notion of “mimetic desire” posited by René Girard, a historian, literary theorist, and philosopher of culture, which he advanced over decades of writings as a general theory of human social organization.²⁶⁹ Naturally, a

inclined to imitate those who are believed to be better informed. Another school of thought holds that agents act similarly because similar actions sometimes create mutual positive externalities. A refinement of this second view suggests that mutual interdependence may give rise to multiple equilibria and that social norms arise to coordinate the selection of some particular equilibrium.” (internal citations omitted). In the context of unilateral sanctions, the “second view” described by Bernheim could be seen as applying to a situation in which great powers’ collectively increasing use of sanctions creates the “positive” externality of promoting the status of all great powers (despite their mutual rivalry) relative to less powerful states.

²⁶⁶ Stijn Rottiers, *The Sociology of Social Recognition: Competition in Social Recognition Games* 25-26 (Univ. of Antwerp, Herman Deleeck Ctr. for Soc. Pol’y, Working Paper No. 10, 2010) (“[T]o acquire more general social recognition, people have to participate in high stock social recognition games, such as recognition games with a large audience.”).

²⁶⁷ *Id.*

²⁶⁸ See Geertz, *supra* note 30, at 73-74 (describing the “migration of the Balinese status hierarchy into the body of the cockfight,” which functions as a “simulation of the social matrix”).

²⁶⁹ Jean-Pierre Dupuy, *Naturalizing Mimetic Theory*, in *MIMESIS AND SCIENCE: EMPIRICAL RESEARCH ON IMITATION AND THE MIMETIC THEORY OF CULTURE AND RELIGION* 193, 197-99 (Scott R. Garrels ed., 2011); PAISLEY NATHAN LIVINGSTON, *MODELS OF DESIRE: RENÉ GIRARD AND THE PSYCHOLOGY OF MIMESIS*, at xv-xviii (1992) (describing Girard’s account of mimetic desire as a useful explanation of emulation dynamics “exclusively at the sociological and psychological levels of

full exploration of Girard's sprawling *oeuvre* is well beyond the scope of this Article. Moreover, it is debatable to what extent his theories of mimetic desire and conflict, which were articulated primarily over the course of essayistic works of literary and religious interpretation, can be summarized in strictly rationalistic and empirically relevant terms.²⁷⁰ However, the basic thrust of Girard's notion of mimetic desire is highly relevant here as one potential factor in the formulation of unilateral sanctions regimes by states emulating peers.

In essence, Girard argues that all human desire is socially and culturally mediated, and that the attribution of value to a specific good (or status) is dependent upon the preexisting or simultaneous observation that another social actor has already given it value.²⁷¹ A modest version of this thesis would hold that, while goods may indeed be initially seen as valuable due to scarcity, utility, or aesthetic features, much of their ultimately perceived value for a given subject is due to the perception of others' desire for the good in question.²⁷² Such a theory of valuation may be especially relevant with regards to luxury goods, and perhaps most of all so-called "Veblen goods," referring to goods whose demand counterintuitively increases as they become more expensive.²⁷³ While the standard explanation for such demand is based on the association of such prices with exclusivity and status

description," while rejecting the idea that this requires an acceptance of Girard's metaphysical themes).

²⁷⁰ See LIVINGSTON, *supra* note 269, at xviii (noting Girard's religious and mystical speculations and denying scientific rigor to such claims, while maintaining that some of his insights are useful in psychological analysis).

²⁷¹ See *id.* at 2, 132-33 (arguing in favor of the utility of Girard's notion of desire as arising from a mimetic interaction among mutual observers, but declining to follow him in the more sweeping assertion that mimesis lies at the origin of the development of basic cognitive or biological functions).

²⁷² See Scott Garrels, *Convergence Between Mimetic Theory and Imitation Research*, in HOW WE BECAME HUMAN: MIMETIC THEORY AND THE SCIENCE OF EVOLUTIONARY ORIGINS 79, 90 (Pierpaolo Antonello & Paul Gifford eds., 2015) ("[W]hat the imitator experiences is a linear process in which he or she is suddenly motivated or curious about an object. The essential misrecognition in this process is that it is the object of the imitator's desire that has somehow become valuable. . . . The reality is that the model's desire or interest in the object has effectively created value in the object by means of his simple attention to and interest in it.").

²⁷³ See Elizabeth Currid-Halkett, Hyojung Lee & Gary D. Painter, *Veblen Goods and Urban Distinction: The Economic Geography of Conspicuous Consumption*, 59 J. REG'L SCI. 83, 84-85 (2018); Christopher P. Barrington-Leigh, *Veblen Goods and Neighbourhoods: Endogenising Consumption Reference Groups* 20 (Munich Personal RePEc Archive, MPRA Paper No. 25735, 2008), <https://wellbeing.research.mcgill.ca/publications/Barrington-Leigh-veblenNeighbourhoods-DRAFT2008.pdf> [<https://perma.cc/7QJL-K6EP>].

prestige, Girard's notion of mediation based on a relationship of mimesis with a specific model "desirer" helps to further explain why not all goods can function as Veblen goods—they must first be chosen by an "influencer" relevant for the subject, i.e., a concrete status-bearer that "activates" desire for both the good in question and the status associated with it.²⁷⁴

For the purposes of assessing any potential Girardian dynamics in the process of mimetic unilateralism, and more specifically the establishment of unilateral sanctions regimes, it is relevant to note the complex interweaving he posits between desire and rivalry. While sometimes read as making a simplistic claim that "desire causes rivalry" (or vice versa), Girard's thesis of mimetic desire stands for the more sophisticated notion that the two phenomena are linked in a relationship of mutual causation.²⁷⁵ Shared desire for a given object can give rise to a relationship of rivalry, which in turn intensifies desire for the object.²⁷⁶ Or, alternatively, actors with an initial possibility for cooperation can exert social effects on each other (due to mutual suspicion) in such a manner that both ultimately defect.²⁷⁷ In short, preferences-setting is potentially best viewed as an intersubjective process by which actors can, in at least some circumstances, be simultaneously driven towards both greater homogeneity and greater conflict by their increasingly overlapping desires.²⁷⁸

What Girard describes as "the obliteration of difference by mimetic reciprocity" lies at the core of many subsequent claims regarding the nature of conflict in human societies and methods for the termination of such conflicts.²⁷⁹ The credence attributed to these features of Girard's thought varies, even by those who perceive him as contributing relevant cultural and anthropological insights that deepen the overly rationalistic accounts of human behavior that are usual features

²⁷⁴ See LIVINGSTON, *supra* note 269, at 2.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*; *cf.* Yoder & Haynes, *supra* note 25, at 11 ("When the prospect of socialization exists, it is possible for Receiver to exploit Sender in round 1 and Sender's Successor to exploit Receiver in round 2, despite both Sender and Receiver having initially benign preferences.").

²⁷⁸ See, e.g., Garrels, *supra* note 272, at 90 ("If left to itself, the mimetic process between two persons goes through three identifiable stages: mimetic desire, mimetic rivalry, and mimetic violence.").

²⁷⁹ *Id.* at 92-93.

of economics.²⁸⁰ The primary takeaway from the Girardian model of mutually embedded rivalry, imitation, and desire is that a growing homogeneity of two states—i.e., where State B has newly come to resemble State A in terms of its wealth, military strength, or international status, becoming its only plausible “peer competitor”—could potentially inaugurate a kind of feedback loop in which a previously low-valued good, such as a legal regime for the regular unilateral imposition of economic restrictions against foreigners, becomes newly revaluated at a higher level simply because it is typical of State A. Such revaluation would naturally lead to suboptimal strategies from the perspective of the original, pre-imitation matrix of preferences. It would also potentially contribute to a relationship of conflict in which trends toward homogeneity fuel increasing clashes by producing competing desires for scarce goods, which might be thought to include, as one such “good,” a reified capacity to inflict economic pain viewed as a marker of the prestige of great power status.²⁸¹

V. UNILATERAL SANCTIONS REGIMES IN AN ERA OF MULTIPOLAR COMPETITION

A. Clashing Projects for “Rules-Based” Order

Although motivated by a mix of different potential rationales, as was explained in Part IV, strategies of mimetic unilateralism in the establishment of transnational legal processes appear to comprise certain general features that apply regardless of their initial motivations. These in turn result in specific characteristics for the foreign relations law systems of the states adopting such strategies. With respect to the relationship of sanctions emulation between China and the United States, and perhaps with regard to other powers developing sanctioning capabilities, including the European Union and Russia, the modifications of public law to accommodate practices of unilateral economic coercion tend to result in (1) the growth of an ecosystem of sanction-like practices that involve extraterritorial effects of domestic

²⁸⁰ See Tyler Cowen, *The Contributions of Rene Girard*, MARGINAL REVOLUTION (Mar. 4, 2018, 1:02 AM), <https://marginalrevolution.com/marginalrevolution/2018/03/contributions-rene-girard.html> [<https://perma.cc/9PZR-HN3Y>].

²⁸¹ Cf. Randall L. Schweller, *Realism and the Present Great Power System: Growth and Positional Conflict over Scarce Resources*, in UNIPOLAR POLITICS: REALISM AND STATE STRATEGIES AFTER THE COLD WAR 28-68 (Ethan B. Kapstein & Michael Mastanduno eds., 1999); Deborah Welch Larson & Alexei Shevchenko, *Status Seekers: Chinese and Russian Responses to U.S. Primacy*, 34 Q.J.: INT’L SEC. 63, 71-73 (2010).

laws, which can be either combined with formal sanctions or used as alternatives; (2) the displacement of international legal authorities and institutions by domestic agencies or other government actors; and, conversely, (3) the importation of some international factors into domestic administrative decision-making, selectively incorporating international law norms as features of domestic governance with transnational effects.

With regards to the expansion of sanction-like practices, these features are particularly notable in the U.S. foreign relations law context, where many forms of action by administrative agencies and other government actors have been accurately described as *de facto* sanctions.²⁸² The extraterritorial effects of U.S. anti-terrorism legislation, for example, have been used to apply forms of sanctions-like pressure to a wide variety of targets, including some with tenuous connections to terrorism.²⁸³ Likewise, the United States has deployed legislation relating to foreign influence or to investment screening regarding foreign-related security concerns in ways that closely resemble the effects of sanctions.²⁸⁴ Outside of the administrative state, the United States has restricted property ownership at various levels of government in order to target supposedly pernicious security consequences of property acquisition by nationals of certain states.²⁸⁵ Perhaps most significantly, meanwhile, the United States has pioneered an approach to foreign sovereign immunity that to a great degree facilitates attempts to impose liability on foreign state actors on a range of grounds.²⁸⁶ Other “quasi-sanction” aspects of the U.S. legal system with extraterritorial implications, such as the unique form of civil

²⁸² See, e.g., Andrew Brady Spalding, *Unwitting Sanctions: Understanding Anti-Bribery Legislation as Economic Sanctions Against Emerging Markets*, 62 FLA. L. REV. 351, 366-77 (2010) (describing anti-bribery and other corruption related legislation as “unwitting sanctions”).

²⁸³ See Jamshidi, *supra* note 189.

²⁸⁴ Anton Moiseienko, *Trading with a Friend's Enemy*, 116 AM. J. INT'L L. 720, 727 (2022).

²⁸⁵ See, e.g., Karoun Demirjian, *Bipartisan Plans to Move Aggressively on China Face Political Hurdles in Congress*, N.Y. TIMES (Feb. 25, 2023), <https://www.nytimes.com/2023/02/25/us/politics/china-congress-spy-balloon-tech.html> [<https://perma.cc/GKQ8-E48B>]; see also Matthew S. Erie, *Property as National Security*, WIS. L. REV. (Forthcoming, 2024) (unpublished draft on file with author).

²⁸⁶ Cf. Amanda Tuninetti, *Limiting the Scope of the Foreign Sovereign Immunities Act After Zivotofsky II*, 57 HARV. INT'L L.J. 215, 219-21 (2016).

liability incorporated into the Alien Tort Statute,²⁸⁷ could be viewed as additional features geared towards related transnational punitive ends.

Overall, the broader foreign relations law impacts of a unilateral sanctions regime also tend in the direction of replacing (or preempting) more cooperatively oriented forms of international engagement with alternatives based on domestic policy and legal standards.²⁸⁸ Whereas some states pursue a form of international legal monism in which international law institutions—including the International Court of Justice (“ICJ”) in particular and other institutions such as the International Criminal Court (“ICC”) and the World Trade Organization (“WTO”) Appellate Body—are treated as authoritative legal tribunals whose decisions are final and binding, this view is not universal.²⁸⁹ By displacing the enforcement authority of the ICJ, ICC, WTO, and the United Nations in particular, unilateral sanctions regimes indicate a sovereigntist insistence on the primacy of national law over global norms.²⁹⁰

Like other aspects of unilateral sanctions, however, it would be overly simplistic to adopt an *ex ante* negative view regarding all of the consequences for foreign relations law stated above. In some respects, for example, the increased engagement with international legal norms resulting from a state’s decision to act as the (selective) enforcer of such norms could lead to a pattern of convergence between domestic and global norms, at least on some issues.²⁹¹ Even if this convergence

²⁸⁷ See generally Gary Clyde Hufbauer & Nicholas K. Mitrokostas, *International Implications of the Alien Tort Statute*, 7 J. INT’L ECON. L. 245, 247-52 (2004).

²⁸⁸ Dutch law, for example, demonstrates the alternative approach of incorporating international law as well as binding resolutions of international institutions. GW. [CONSTITUTION] art. 94 (“[R]esolutions by international institutions, which, according to their terms, can be binding on anyone shall have such binding force after having been published.”).

²⁸⁹ IWASAWA YUJI, DOMESTIC APPLICATION OF INTERNATIONAL LAW: FOCUSING ON DIRECT APPLICABILITY 240 (2022); Ryan Mitchell, *International Law as a Coercive Order: Hans Kelsen and the Transformations of Sanction*, 29 IND. INT’L & COMPAR. L. REV. 245, 298-300 (2019) (noting legal theorist Hans Kelsen’s acknowledgment of the shifting and variable content of customary international law and of the authority of international organizations).

²⁹⁰ See, e.g., MCDUGAL & FELICIANO, *supra* note 68, at 190-96 (rejecting the concept of multilateral regulation of economic coercion); cf. Ryan Mitchell, *Sovereignty and Normative Conflict: International Legal Realism as a Theory of Uncertainty*, 58 HARV. INT’L. L.J. 2, 421, 461 (2017) (noting that realist approaches to international law have tended to focus on concrete examples of applied coercion as a way to clear up ambiguous and “murky” normative disagreements).

²⁹¹ Despite the quite different emphases of U.S. and Chinese sanctions practice (largely oriented towards civil and political rights enforcement and liberal values, in

is not necessarily a strong trend with regards to policy effects, the transnational embedding of domestic agencies in the United States has been seen as promoting the consideration of factors for decision-making that better reflect best practices abroad in a variety of contexts, including, *inter alia*, environmental governance and immigration policy.²⁹² Even in lieu of any formal commitment to monism, many factors can prompt states to incorporate international law norms into their legal systems—and these forms of incorporation can also subsequently affect norms at the international level.²⁹³ Unilateral sanctions may thus, as one aspect of that transnational embedding of the administrative state, have the ironic function of at least indirectly contributing to some patterns of “back-door” multilateralism.

China’s emerging approach to unilateral sanctions shows increasing signs of paralleling the U.S. foreign relations law system’s approach to customary international law.²⁹⁴ With regards to China’s ecosystem of sanctions-like practices, however, it is more accurate to say that this category of administrative actions pre-existed and has now been partially incorporated into the new legislative regime. As was explained in Part II, recent Chinese *de facto* state sanctioning has occurred in a wide variety of contexts, often connected with international disputes over sovereignty and security issues, and was largely a reappropriation of the conceptual legacy of early practices of *dizhi*

the former case, and towards national sovereignty and territorial integrity against foreign pressure, in the latter case), it is possible that shared interests on topics such as international environmental law or some aspects of international humanitarian law, among others, could prompt overlapping unilateral sanctions usage. Indeed, humanitarian law issues surrounding weapons of mass destruction, and human rights concerns regarding violent atrocities, have already prompted Sino-U.S. sanctions coordination in several episodes via UN Security Council coordination. *See* POH, *supra* note 135, at 25-50.

²⁹² Elena Chachko, *Toward Regulatory Isolationism? The International Elements of Agency Power*, 57 U.C. DAVIS L. REV. 57, 61-62 (2023).

²⁹³ Pierre-Hugues Verdier & Mila Versteeg, *International Law in National Legal Systems: An Empirical Investigation*, 109 AM. J. INT’L L. 514, 530 (2015) (noting that “when lawmakers incorporate a CIL rule by legislation, they may interpret or modify the rule to provide additional detail and advance their preferred version of the rule”).

²⁹⁴ Compare Ingrid Brunk Wuerth, *Authorizations for the Use of Force, International Law, and the Charming Betsy Canon*, 46 B.C. L. REV. 293, 333, 344-45 (2005) (noting that lower courts have used the canon of deference to administrative agency interpretations of statutes “in tandem” with the *Charming Betsy* canon of respecting customary international law) with Du & Zhou, *supra* note 159 at 17-18 (arguing that AFSL sanctions should be interpreted in line with international law doctrine on countermeasures, but not asserting that the Chinese state is bound to do so as a matter of domestic law).

boycotting activism. To the extent that these practices of informal economic coercion persist after the AFSL's passage, including the use of apparently non-political commercial or investment restrictions to impose costs upon foreign states violating preferred national norms, they could be viewed as playing a role similar to the informal/de facto sanctioning practiced under U.S. law.²⁹⁵ Indeed, informal *dizhi* activism itself shows signs of continuing under the new regime, and is potentially facilitated by Article 12 of the AFSL, which allows private citizen lawsuits to compel damages from or injunctions against defendants involved in foreign sanctions against China.²⁹⁶ Somewhat like the U.S. Alien Tort Statute ("ATS"), such litigation may place Chinese courts in the awkward position of having to determine just how much they can rely on unincorporated customary international law.²⁹⁷

The displacement of international legal authorities by domestic equivalents is also best viewed as an existing feature of China's legal regime to which the new legislative initiative has further contributed. Whether China is a monist or dualist jurisdiction has been much debated, given the existence of somewhat conflicted language regarding this subject under relevant public law authorities.²⁹⁸ In practice, however, it has long been clear that China functions as a dualist jurisdiction (much like the United States), in which only by incorporation into a relevant domestic statute can international legal authorities be treated as binding legal standards and predictably enforced by the

²⁹⁵ Another aspect of China's legal system that is easily adaptable to this context is the much-discussed social credit system. Though its alleged dystopian features are often exaggerated in Western media reporting, social credit does have the capacity to serve as a potent (albeit largely privatized) form of "unreliable entities" list, including for foreign individuals or corporations, resulting in significant financial, economic, and travel restrictions on those so designated. See, e.g., Severin Engelmann, Mo Chen, Lorenz Dang & Jens Grossklags, *Blacklists and Redlists in the Chinese Social Credit System: Diversity, Flexibility, and Comprehensiveness*, in PROCEEDINGS OF THE 2021 AAAI/ACM CONFERENCE ON AI, ETHICS, AND SOCIETY 78, 78-88 (2021).

²⁹⁶ AFSL, *supra* note 8, art. 12.

²⁹⁷ See Verdier & Versteeg, *supra* note 293, at 531 ("[H]igh-stakes battles have been fought in U.S. courts over the interpretation of both the [ATS] itself and the CIL rules for which it provides a domestic remedy.").

²⁹⁸ Chinese courts and scholars have found themselves occasionally perplexed by the question of what degree of deference to give international law, and how to balance the foreign policy-implicating aspects of cases. See, e.g., Zhu Lijiang, *Treaties in the Chinese Legal Order: Discourses, Developments and Debates*, 17 CHINA: AN INT'L J. 135, 142-43 (2019) ("Chinese academics have divided opinions on the question whether China is a monist or dualist state in addressing the relationship between international law and domestic law.").

courts.²⁹⁹ Nonetheless, with respect to binding decisions of international legal tribunals, China has frequently pursued a strategy of (slow) obedience.³⁰⁰ Thus, while ICC determinations on issues such as head of state immunity have been subject to rejection by the Chinese state (on grounds of its different interpretation of that legal standard under customary international law), the same has not been true of WTO Appellate Body rulings, which China has tended to treat as binding, if not always to comply with them expeditiously.³⁰¹

The well-known example of the arbitration ruling against China in its dispute with the Philippines over South China Sea territorial questions illustrates both sides of this trend. While insisting upon its right to “ignore” the “farcical” ruling of the arbitration tribunal, which exercised jurisdiction despite a Chinese treaty reservation over all issues touching on sovereignty or territory, China has nonetheless sought to abide by some aspects of the ruling (though not those having to do with territorial ownership itself).³⁰² This rather nuanced approach in some ways already resembles that of the United States, which is not a member of the United Nations Convention on the Law of the Sea (“UNCLOS”), despite its numerous actions taken to “enforce” (parts of) the treaty vis-à-vis China and other states.³⁰³ China’s new unilateral sanctions regime will, in all likelihood, contribute greatly to its ability to adopt a similar posture of selective enforcement of international norms against foreign targets where such actions align with its overall preferences. At the same time, the outcome if there were a WTO ruling against one of China’s AFSL-based sanctions

²⁹⁹ Anthony Carty & Fozia Nazir Lone, *Some New Haven International Law Reflections on China, India and Their Various Territorial Disputes*, 19 ASIA PAC. L. REV. 193, 193 (2011) (“[I]n China and India, international law and diplomacy are guided by a formalist dualism.”).

³⁰⁰ U.S. TRADE REPRESENTATIVE, 2022 REPORT TO CONGRESS ON CHINA’S WTO COMPLIANCE 52 (2023) (noting that “China consciously decided to maintain market-distorting practices that benefit its own companies, even in the face of adverse rulings at the WTO” for about a decade).

³⁰¹ See, e.g., MITCHELL, *supra* note 44, at 210-18.

³⁰² See *Failing or Incomplete? Grading the South China Sea Arbitration*, ASIA MAR. TRANSPARENCY INITIATIVE (July 11, 2019), <https://amti.csis.org/failing-or-incomplete-grading-the-south-china-sea-arbitration/> [<https://perma.cc/34EV-NERE>].

³⁰³ See, e.g., Robert Beckman, *The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea*, 107 AM. J. INT’L L. 142 (2013); cf. *Murkowski Reintroduces Resolution Calling on U.S. Senate to Ratify Law of the Sea*, LISA MURKOWSKI (Nov. 16, 2023), <https://www.murkowski.senate.gov/press/release/murkowski-reintroduces-resolution-calling-on-us-senate-to-ratify-law-of-the-sea> [<https://perma.cc/8YLC-EL4M>] (“Ratifying the Law of the Sea Treaty will help us keep China’s illegal territorial advances at bay in the South China [Sea].”).

remains to be seen. In pre-AFSL cases, China has tended to withdraw from its de facto sanctions imposed on ostensible commercial grounds after they were challenged.³⁰⁴ However, the “stronger” legal position offered by the new legislation may promote a tendency to no longer be so deferential.

Whether the adoption of the unilateral sanctions regime will further the Chinese administrative state’s consideration of international legal factors, as has arguably been the case in the U.S. administrative state, also generally remains to be seen. Certainly, to the extent that sanctions are themselves informed by international legal standards, such as those connected with the enforcement of (Chinese interpretations of) a particular treaty or customary international law right, domestic legal authorities will have to take such factors into account. However, the fact that China’s sanctions are generally geared towards issues of sovereignty and national security, rather than human rights norms, leaves less room for such factors.³⁰⁵

There is, nonetheless, at least one major aspect of the new legislative framework that strongly encourages the consideration of international legal norms with respect to domestic law. Article 35 of the FRL commits the Chinese state to “take[] steps to implement sanction resolutions and relevant measures with binding force adopted by the United Nations Security Council in accordance with Chapter VII of the Charter of the United Nations,” and sets out specific requirements for the MOFA and other government departments to issue relevant notices and orders in order to implement UNSC sanctions.³⁰⁶ The law also prohibits Chinese citizens and organizations from taking actions to skirt UN sanctions, a phenomenon that has resulted in domestic and foreign criticism in the past.³⁰⁷ At least with regards to China’s interpretations of international legal standards, China’s emergence as a

³⁰⁴ See Reilly, *supra* note 104, at 122-24; cf. SAADIA M. PEKKANEN, JAPAN’S AGGRESSIVE LEGALISM: LAW AND FOREIGN TRADE POLITICS BEYOND THE WTO 127-34 (2008).

³⁰⁵ However, U.S. precedents are instructive in showing how even courts in a dualist jurisdiction interpreting domestic statutes can, at times, incorporate international law into their judicial reasoning. See, e.g., *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 20-21 (1963) (interpreting the National Labor Relations Act so as to be consistent with State Department regulations, while also relying on the fact that the rejected construction would have been contrary to a “well-established rule of international law”).

³⁰⁶ FRL, *supra* note 174, art. 35.

³⁰⁷ *Id.* On cases of Chinese companies or individuals facilitating sanctions evasion, see, for example, KING MALLORY, NORTH KOREAN SANCTIONS: EVASION TECHNIQUES 20-42 (2021).

U.S.-like unilateral sanctioner has also had the knock-on effect of promoting the status of one set of international legal norms within domestic law.

B. Facilitation of Rival Sanctions Ecosystems

Another significant feature of the foreign relations law surrounding unilateral sanctions is the mobilization of ersatz forms of multilateralism to justify unilateral enforcement actions, often through subsequent validation by coalitions of close international allies or partners, which is especially prominent in the United States' example. The mobilization of a wave of international sanctions against Russia in the spring and summer of 2022, during which the United States engaged closely with NATO allies and other G20 countries in an effort to jointly isolate Moscow and impose unprecedented economic costs for its use of force against Ukraine, is a particularly robust example of this strategy. While the use of "coalitions of the willing" to replace the United Nations and other centralized institutions of the international legal order has been widely condemned, including at times by close allies, the strategy has been used often enough to be seen as a characteristic feature of U.S. practice.³⁰⁸

During the 1990s and early 2000s, significant differences of opinion existed between the United States and European allies, particularly regarding secondary sanctions that took punitive action against individuals, organizations, or firms pursuing economic relations with countries (or their nationals) that were subject to a U.S. sanctions regime.³⁰⁹ This difference of opinion was a major factor leading to the European Union's gradual differentiation from the United States as a "great power" player in the realm of economic sanctions.³¹⁰ Despite frequent European cooperation with U.S. sanctions initiatives, especially recently, EU states still seek to chart their own course with respect to sanctions policy in general, as well as in specific cases.³¹¹ The

³⁰⁸ Stephen M. Walt, *Alliances in a Unipolar World*, 61 *WORLD POL.* 86, 95, 99, 117 (2009) ("[T]he unipole will prefer to operate with ad hoc coalitions of the willing, even if forming each new arrangement involves somewhat greater transaction costs.").

³⁰⁹ See, e.g., Daniel W. Drezner, *The United States of Sanctions: The Use and Abuse of Economic Coercion*, 100 *FOREIGN AFFS.* 142 (2021).

³¹⁰ BEATRIX IMMENKAMP, *EU SANCTIONS: A KEY FOREIGN AND SECURITY POLICY INSTRUMENT 7* (2024) ("[A]s the EU is the world's biggest trading power, when it does adopt economic sanctions, they can have a considerable effect.").

³¹¹ *Id.* at 4 (noting that, for example, "difference of views on extra-territorial scope has sometimes led to EU-US tensions").

emergence of human rights-based sanctions as a tool of EU statecraft, also a new development, has accordingly drawn the European Union closer to the sanctioning model of the United States (albeit with important differences) and, at the same time, reasserted the European Union's independence as an entity able to make its own sanctions policy.³¹²

The EU approach to sanctions, including human rights-based sanctions, differs most obviously from the U.S. model in its considerably higher degree of legal formalization and articulated rationales for the implementation of measures. The European Council statute empowering human rights-based sanctions specifically enumerates that they may be used to enforce norms prohibiting genocide, crimes against humanity, extrajudicial killings, and arbitrary arrests, among a few other grounds for the imposition of restrictions.³¹³ This contrasts with the extremely vague empowering language under the U.S. Global Magnitsky Act and other targeted sanctions legislation, which empower IEEPA-based sanctions to address human rights “emergencies,” essentially at the total discretion of the U.S. executive.³¹⁴ It remains to be seen how the respective human rights sanctions regimes of the United States and European Union, both recently adopted, will interact on issues of secondary sanctioning, the EU blocking statute, and very different approaches to the binding character of international legal norms.

Nonetheless, the role of the U.S.-EU sanctioning coalition with respect to Russia remains well-established and has also increasingly been active in coordinating policy with respect to China, including in the realm of economic coercion and its preemption.³¹⁵ Official EU

³¹² *Id.*; *cf.* Press Release, Eur. Council, EU Global Human Rights Sanctions Regime: Restrictive Measures Prolonged (Dec. 4, 2023, 2:40 PM), <https://www.consilium.europa.eu/en/press/press-releases/2023/12/04/eu-global-human-rights-sanctions-regime-restrictive-measures-prolonged/> (“The EU Global Human Rights Sanctions Regime, established on 7 December 2020, enables the EU to target individuals, entities and bodies – including state and non-state actors – responsible for, involved in or associated with serious human rights violations and abuses worldwide.”).

³¹³ Council Decision (CFSP) 2020/1999 of 7 December 2020 Concerning Restrictive Measures Against Serious Human Rights Violations and Abuses, art. 1, 2020 O.J. (L 410) 13 (EU).

³¹⁴ *Deripaska v. Yellen*, No. 21-5157, 2022 WL 986220, at *3 (D.C. Cir. Mar. 29, 2022) (noting that OFAC has “discretion to further the President’s geopolitical goals”).

³¹⁵ *See, e.g.*, Philip Blenkinsop, *EU and US to Pledge Joint Action over China*, REUTERS (May 13, 2023, 6:22 AM), <https://www.reuters.com/world/eu-us-pledge-joint-action-over-china-concerns-2023-05-13/>.

studies have pointed to the desirability of such transatlantic coalition-building as a “response” to Chinese economic coercion, and listed recommended steps such as coordinated WTO action to oppose China’s moves.³¹⁶ More dramatically, some officials, such as former Danish Prime Minister and NATO Secretary General Anders Fogh Rasmussen, have argued for an “Economic Article 5,” i.e., a NATO-like alliance arrangement in which any economic coercion (such as unilateral sanctions) against one alliance member would be met with joint reprisals.³¹⁷ Though such a radical move may be unlikely in the near or medium term, its very entry into serious policy debate already embodies the importance of coalitions to sanctions competition, and the scalability of great power sanctions rivalry into cold war among geo-economic blocs.

By contrast with the United States and its well-established international alliance system which is easily translatable, at least in part, from the context of military force to that of economic coercion, the PRC has historically pursued a traditional “non-alliance” policy in which guarantees of mutual military assistance are officially eschewed.³¹⁸ China’s unique alliance with North Korea, as a product of the Korean War, is a special exception that illustrates the rule. Other than its alliance with North Korea, China has avoided entangling alliances, despite the arguments of some international relations scholars that it should shift this position in order to more effectively match the United States in terms of international prominence and strategic versatility.³¹⁹ At the same time, this technical non-alliance policy has not

³¹⁶ MARCIN SZCZEPAŃSKI, CHINA’S ECONOMIC COERCION: EVOLUTION, CHARACTERISTICS AND COUNTERMEASURES 10-11 (2022), [https://www.europarl.europa.eu/Reg-Data/etudes/BRIE/2022/738219/EPRS_BRI\(2022\)738219_EN.pdf](https://www.europarl.europa.eu/Reg-Data/etudes/BRIE/2022/738219/EPRS_BRI(2022)738219_EN.pdf).

³¹⁷ See generally ANDERS FOGH RASMUSSEN & IVO DAALDER, MEMO ON AN ‘ECONOMIC ARTICLE 5’ TO COUNTER AUTHORITARIAN COERCION (2022), https://globalaffairs.org/sites/default/files/2022-06/CCGA%20Economic%20Article%205%20Brief_vF_0.pdf [<https://perma.cc/5U69-8F69>].

³¹⁸ Ling Shengli, *Zhongguo Wei Shenme Bu Jiemeng [Why Doesn’t China Form Alliances?]*, 3 WAIJIAO PINGLUN XUEBAO 20, 20 (2013) (arguing that China should be cautious about changing this traditional policy).

³¹⁹ See Yan Xuetong, *From Keeping a Low Profile to Striving for Achievement*, 7 CHINESE J. INT’L POL. 153, 165 (2014) (“As long as China regards national rejuvenation as its foreign policy goal, it has to abandon the non-alliance principle adopted in 1982.”). But see Yan Xuetong, *Becoming Strong: The New Chinese Foreign Policy*, 100 FOREIGN AFFS. 40, 44 (2021) (“Beijing remains wary of direct military confrontations and will continue to reject *military* alliances, which could drag it into an unnecessary war”) (emphasis added).

prevented substantial relationships of near-alliance-level support and commitment with a few international partners, in particular Russia, that share various strategic interests with China.³²⁰

With regards to economic coercion, Russia and all the BRICS countries (including India, whose relations with China are contentious due to territorial disputes and mutual security concerns) have expressed various degrees of willingness to build shared financial and economic institutions to close their gap of wealth and power with Western states, and the United States in particular.³²¹ While it is far from the robust sanctions-empowering coalition that the United States is able to mobilize through NATO and its other alliances, the BRICS arrangement provides the skeleton for a potential move in such a direction on a non-alliance basis. Other Chinese-dominated international forums, such as the Shanghai Cooperation Organization and some of the bilateral or multilateral economic arrangements under the Belt and Road Initiative also provide the framework for a move in such direction.³²² The empowerment of Chinese sanctions by a supportive coalition providing information or enforcement assistance—or even the mobilization of coordinated sanctions against a shared target—are possible future features of China's sanctions regime, which would bring it closer to its U.S. model. At present, however, they remain a distant prospect, deterred by China's traditional non-alliance policy, the idiosyncratic character of many of its sanctioning rationales (which are connected above all with its views on territorial and sovereignty issues), and U.S. first mover advantages with regards to many of the states' shared economic partners. But if enough states come to view China's sanctioning as less pernicious than the United States'—for example, if China were to prove more judicious in ensuring that implementations of AFSL and other sanctions are given plausible

³²⁰ Wang Yi: *China and Russia Have Forged a New Paradigm of Major-Country Relations That Differs Entirely from the Obsolete Cold War Approach*, MINISTRY OF FOREIGN AFFS. OF THE PEOPLE'S REPUBLIC OF CHINA (Mar. 7, 2024, 11:52 PM), https://www.mfa.gov.cn/eng/zxxx_662805/202403/t20240308_11256414.html [<https://perma.cc/A3W8-CTTB>].

³²¹ See, e.g., *Brazil's Lula Supports Trading Currency for BRICS Countries*, S. CHINA MORNING POST (Apr. 27, 2023, 12:14 AM), <https://www.scmp.com/news/world/americas/article/3218492/brazils-lula-supports-trading-currency-brics-countries>.

³²² Chinese scholars began to note the potential for blending these new institutional forms of geoeconomic influence with a more robust sanctions policy soon after they were unveiled. See, e.g., Hu, *supra* note 116.

rationales and do not overreach in terms of their aims, effects, or scope—this balance of influence could potentially shift in its favor.³²³

VI. CONCLUSION

In *The Elements of Law*, Thomas Hobbes wrote of “the other sort discontent which troubleth the mind of them who otherwise live at ease, without fear of want, or danger of violence”: for those in that fortunate category, unhappiness was most often produced by “a sense of their want of that power, and that honour and testimony thereof, which they think is due unto them.”³²⁴ In Hobbes’s view one of the chief potential causes of sedition, this desire for status and recognition could be so volatile because “all joy and grief of mind consist[] . . . in a contention for precedence to them with whom they compare themselves.”³²⁵ Even secure and comfortable individuals or groups might be so motivated by this mimetic desire that they would overturn the commonwealth that had hitherto ensured their safety.

Today, increasing academic and policy discourse is devoted to asking whether the international system is trending towards a period of renewed Cold War between major powers, particularly the United States and China, or transitioning to stable “multipolarity.”³²⁶ At the

³²³ See, e.g., ANATOL RAPOPORT, N-PERSON GAME THEORY: CONCEPTS AND APPLICATIONS 234 (2001) (explaining how “the worst circumstance [a coalition] can face [is] being confronted by the counter-coalition . . . which is determined to keep the joint payoff to [it as a whole] down to its minimum” which is “the worst [thing] that can happen to the *coalition*, but . . . not the worst thing that can happen to its *members*”). Tempting offers from a counter-coalition can, in game theoretic terms, provide new strategies with profitable payoffs to individual coalition states while reducing the overall payoffs for a joint coalition strategy. In a situation where Washington’s European allies have historically opposed some of its more extreme international sanctions practices (such as the use of secondary sanctions, particularly with respect to comprehensive primary sanctions on Cuba and Iran), a rising competitor offering a different framework of coordinated sanctions policy geared towards common goods might be able to provide a new focal point of cooperation. However, Chinese sanctions, which remain intensely focused on national sovereignty and security competition with the United States, do not yet presently appear to offer attractive benefits for such third state allies. If Beijing is disciplined in its use of sanctions, such as by carefully ensuring their conformity to the public international law of countermeasures, it may be able to win over some international adherents that would otherwise decline to cooperate.

³²⁴ PHILIP PETTIT, MADE WITH WORDS: HOBBS ON LANGUAGE, MIND, AND POLITICS 94 (2008).

³²⁵ *Id.*

³²⁶ On these debates, in which U.S. international relations literature are often framed around discussions of the concept of a “liberal international order” (de facto dominated by the United States), see G. John Ikenberry, *The End of Liberal*

same time, however, both of these potential futures actually involve the same underlying trend towards a greater homogeneity of roles among great powers and relative reduction of the *nonpareil* status of the United States as an exceptional actor.³²⁷ To the extent that homogenization of the United States with other great powers, especially China, is indeed an ongoing trend, it may lead to unpredictable consequences for the future of the international legal order. The biggest effect of attempts to aggressively reassert American predominance, such as by the ever-increasing use of unilateral sanctions, might be the growing adoption of similar economic coercion regimes by rivals. What this Article has defined as “mimetic unilateralism,” where a regime of punitive transnational legal processes imposed by one hegemonic contender is closely emulated by rivals taking it as a role model, may result.

The arena of unilateral sanctions particularly elucidates the potential stakes of a dynamic of legal rivalry and emulation among great power peers and aspirants. Although the actual efficacy of sanctions has long been debated and their use has been subject to heavy criticism on both effectiveness and humanitarian grounds,³²⁸ they remain not just a popular tool of U.S. economic and legal statecraft, but one whose use has increased exponentially in recent years.³²⁹ Chinese sanctioning, as this Article has explained, has important local precedents, on the one hand in informally organized practices of patriotic and nationalist economic coercion against imperialist aggressors, and on the other as an erratic practice of the State Council against foreign states

International Order?, 94 INT’L AFFS. 7 (2018); Hans Kundnani, *What Is the Liberal International Order?*, 17 GER. MARSHALL FUND U.S., Apr. 2017.

³²⁷ Cf. Andrew J. Bacevich, *The Reckoning That Wasn’t: Why America Remains Trapped by False Dreams of Hegemony*, FOREIGN AFFS. (Feb. 28, 2023), <https://www.foreignaffairs.com/united-states/andrew-bacevich-the-reckoning-that-wasnt-america-hegemony> [<https://perma.cc/P3PB-Y73Q>].

³²⁸ Opinion, *The Risks of One of the Most Severe Tools in America’s Foreign Policy Arsenal*, N.Y. TIMES (July 22, 2023), <https://www.nytimes.com/2023/07/22/opinion/sanctions-biden-venezuela.html> [<https://perma.cc/AU2A-W8L7>].

³²⁹ For empirical data on the steep, straight-line increase in sanctions usage by the United States under the Clinton through Trump administrations, see Aleksandra Kirilakha, Gabriel Felbermayr, Constantinos Syropoulos, Erdal Yalcin & Yoto V. Yotov, *The Global Sanctions Data Base: An Update that Includes the Years of the Trump Presidency* 7, 9 (Drexel Univ., Sch. of Econ. Working Paper, Paper No. 2021-10, 2021). For an effective visualization of this data, see Ella Koeze, *Boycotts, Not Bombs: Sanctions Are a Go-To Tactic, with Uneven Results*, N.Y. TIMES (Mar. 11, 2022), <https://www.nytimes.com/interactive/2022/03/11/world/economic-sanctions-history.html> [<https://perma.cc/4MRG-3EWR>].

and firms that transgress “core” national positions. While these longstanding ersatz behaviors could have declined in the face of growing international economic integration and institutionalization, instead Chinese sanctions have been newly codified into a legislative regime that is coming to resemble U.S. practices.

Aside from explaining these dynamics and situating them in the context of shifting perceptions of economic coercion in modern China, this Article’s key question is why China’s major act of legislative imitation might now be occurring, and what underlying rationales might clarify the trends that drive its decision (or similar decisions by states) to eschew multilateral, institutionalized forms of norm enforcement in favor of unilateralist alternatives. To answer this question, the Article has proposed an account of “mimetic unilateralism” as a phenomenon comprising the adoption of punitive unilateral legal tools, such as sanctions, by states imitating a prestigious rival. The reasons behind such mimesis are important to address, especially when the tool in question may be of dubious practical value for actually changing the behaviors of its targets or when it might potentially give rise to serious humanitarian implications for targeted individuals and groups, should it evolve in line with the American exemplar.³³⁰

Mutual emulation and contention between the United States and China in the sanctions arena seems poised to continue and perhaps escalate in the years to come. Moreover, there is every reason to believe that other major powers, whether global or regional, may find themselves following China’s lead and beginning to more highly value the ability to wield unilateral economic coercion as a legalized tool for the enforcement of national policy preferences. At the current, embryonic stage in such developments, it would behoove U.S. policy-makers to take steps to prevent the increasing spread of unilateralism, in part by rationalizing and reducing use of sanctions under the IEEPA and introducing due process, and in part by turning to multilateral approaches to norm-enforcement at the global level. Continued increases in unilateral sanctions use, whether in the service of national security,

³³⁰ For a vivid discussion of such human-level impacts of a long-running sanctions regime, see Nargol Aran, *The Invisible War*, GUERNICA (Apr. 5, 2023), <https://www.guernicamag.com/the-invisible-war/> [<https://perma.cc/LKG8-KBR8>] (recounting how, *inter alia*, “[o]n the bodies of the sick, like my father, who was diagnosed with cancer in 2013, Obama and Nephew’s war was felt with minute precision . . . [Meanwhile, the] impact of sanctions would only be exacerbated in the years after, by the compounding sanctions regime and by COVID,” and noting how some economists “directly attribute[] the economic weakness the sanctions created with thousands more COVID deaths than would have happened were Iran not under sanctions”).

international human rights, or other important aims and values, might end up having effects opposite from those intended. This is not only because sanctions themselves are such a volatile and potentially brutal weapon, but also because they appear to have become an increasingly central aspect of the United States' foreign policy, which establishes a model for other great power aspirants.

Throughout the history of the United States, many of its statesmen and citizens have been invested in the symbolic imagination of the country as a "shining city on a hill," setting forth an example to others around the world. U.S. foreign policy from its earliest days has generally assumed that foreign imitation (especially legal imitation) of the United States is an untrammled good, which ought to be encouraged wherever possible. And yet, faced with a world order in which relative homogeneity among major powers is an actual, lived fact, Washington may be witnessing new consequences of its own all-too-easily-emulated practices of unilateral economic coercion. These developments indicate that the United States should consider embarking on a more multilateral path, in part by embracing global institutions as forums for centralized decisions about the use of tools of coercion to enforce community norms.