BOYCOTTING CHINESE GENOCIDE AND THE DUTY TO PREVENT: OPPORTUNITIES LOST IN THE 2019-2021 UK TRADE BILL

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INTRODUCTION

Since the drafting of the Genocide Convention, the prevention of acts of genocide has taken on the status of an international norm, both under treaty obligation in the Convention and under customary international law in the Nuremberg Principles1 and progeny.2 A non-exhaustive list of some of the models of prevention used by the international community in this regard includes diplomatic approaches,3 causal models,4 naming and shaming including official victim recognition,5 judicial intervention and deterrence,6 military interventions,7 and collective and unilateral economic sanctions.8 Exactly which sanctions must be applied as a state obligation, and under what circumstances, remains a thorny question.

Prevention of genocide presents a complex and layered question as to when genocide will occur and how to reliably predict it. Professor Stanton has established a list of 10 non-linear warning signs for prediction9 and asserted suggested remedial sanctions at each stage.10 Though an erudite and insightful

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7. See U.N. Charter, art. 42.

8. Id. art. 41.


10. Id.
work, it does not specifically address state obligation under the Convention and/or customary international law. Putting aside the timing issue, the nature and limitations of state obligations remain murky and obscure. The Bosnian Genocide case\(^\text{11}\) before the International Court of Justice endeavored to address the questions, \textit{inter alia}, concerning both extraterritoriality\(^\text{12}\) and the preconditions of “effectively influencing”\(^\text{13}\) the course of the genocide as the legal standard for creating a state obligation.\(^\text{14}\) However, the decision arguably left more questions than answers.\(^\text{15}\)

In the United Kingdom, there has recently been debate regarding heightened state-on-state unilateral economic sanctions.\(^\text{16}\) Legislation had been proposed in the 2019-21 Trade Bill to include provisions disqualifying countries engaged in acts of genocide or mass atrocities from entering into trade relations with the UK.\(^\text{17}\) Though the measures failed to pass Parliament,\(^\text{18}\) proponents argued that the binding effect of the Convention and customary international law obligates states to take such measures.\(^\text{19}\) Among other issues, this raises the questions of the extraterritorial competence of obligation under the Convention, whether such a sanction is reasonable and whether trade sanctions against an offending

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12. Id. \(\S\) 183.

13. Id. \(\S\) 430.

14. Id. \(\S\) 432.


state, as a model for prevention, can be obligatory as a matter of due diligence.

Some scholars argue that economic sanctions are not effective measures in preventing genocide. They argue that sanctions make importation of food and medicine impossible and inadvertently lead to unnecessary collateral death. Lauterpacht argued that economic sanctions could have an opposite effect as in the Srebrenica Massacre, where sanctions purportedly made it easier for Bosnian Serbs and Croats to overrun and engage in genocide against Bosnian Muslims. Others point out the historically poor results of economic sanctions as a means of correcting certain state conduct because of the frequency with which state leaders ignore the suffering of their own people when juxtaposed with leadership interest. While these observations make a case against imposition of economic sanctions, this essay argues that when looked at from a contextual perspective, sanctions can be both effective and obligatory in the prevention of genocide. It also argues that the “effective influence” standard of the Bosnian Genocide ICJ case has been too narrowly construed and should receive a broader interpretation and not only be viewed as a standard for unilateral action, but also in the context of potential collective state action if the object and purpose of the Genocide Convention is to be faithfully observed. This also presupposes that

the influence probability is determinative of the economic situation of the target state and other states implementing similar sanctions. The sanctions leveled against Russia in its prosecution of the war in Ukraine are a poignant example of the potential effectiveness of trade sanctions because they are imposed collectively, pervasively applied, and on a vulnerable target with limited viable alternatives. This paper further argues: the failed 2019-21 UK Trade Bill amendment calling for imposing economic sanctions against states involved in alleged genocidal practices is in the character of a state obligation insofar as it applies to the treatment of Uighurs in the Xinjiang Province of China; such sanctions are likely to attract collective action among China’s most significant trade partners in the EU and other Western states; such sanctions are pervasive in character; and that China is a vulnerable state with few viable alternatives.

This essay will begin by discussing the UK Trade Bill, followed by an analysis of the standards laid out in the Bosnian Genocide case. It will discuss state obligation to prevent under the Convention, extraterritorial competence, and focus on the effective influence standard. It will thereafter address the issue of economic sanctions, historic effectiveness, reasonableness, and legality under international law. It will review potential application to China by reviewing Chinese vulnerabilities and the impact unilateral UK sanctions and/or collective sanctions from Western states would have, particularly in light of the success of the trade sanctions placed on Russia in response to its invasion of Ukraine. It concludes that in the contemporary international political economy, large states with massive trade can be most vulnerable to economic sanctions, and that the UK should have passed its amendment to the Trade Bill as a matter of due diligence to its obligations under the Genocide Convention.

I. THE UK TRADE BILL

According to the UN, China has developed a deliberate, large-scale policy targeting ethnic/religious minorities in Xinjiang. These policies include “enforced disappearances, torture, murder, sexual violence and so on.” There are credible reports that the Chinese government’s actions in Xinjiang is the

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27. See U.N. OFF. HIGH COMM’R FOR HUM. RTS., supra note 25.

largest incarceration of an ethno-religious minority since World War II. The Chinese government has subjected Uighurs and other Turkic Muslims to ‘re-education’ and ‘thought transformation’ and ‘forced labour.’ In as much as some of the actions involve suppression of Uighur births, mandatory pregnancy checks and forcible contraception, sterilizations and abortions, this allegedly amounts to biological genocide or at least ‘cultural genocide.’

Under Article V of the Genocide Convention, there is an obligation on State Parties to enact necessary legislation to give effect to the provisions of the Convention regarding prevention. As a State Party to the Convention and consistent with the objective of genocide prevention, the UK considered sanctioning China (and Myanmar) with targeted economic sanctions for acts committed against the Uighurs and the Rohingya, respectively through the Trade Bill 2019-21. The Bill required trade agreements to reflect Britain’s international human rights obligations and proscribed the UK from entering into trade agreements with countries whose governments knowingly and systematically violate human rights.

When introduced in the House of Commons, the original bill did not contain any provisions on genocide. An amendment dated 6 Jan. 2021 in HL Bill 160


31. See generally Joanne Smith Finley, Why Scholars and Activists Increasingly Fear a Uyghur Genocide in Xinjiang 23 J. GENOCIDE RSCH. 348, 348 (2021). One argument that undercuts prevention of births as a basis for genocide in the PRC is the application of the so-called “one child policy” across all ethnic groups, negating the intent to single out any specific group for destruction. On a related note, the government in Myanmar has also engaged in systematic forced migration and illegalization, imposed marriage and birth restrictions to control the Rohingya population in its deliberate bid to destroy the social and physical foundations of the Rohingya’s ethnic and religious identity. See also MARK D. KIELSGARD, RESPONDING TO MODERN GENOCIDE: AT THE CONFLUENCE OF LAW AND POLITICS 5-6 (2016).


34. HL Deb (25 Nov. 2021) (816) cols. 1014-55, supra note 17.

35. Id.

36. Id.


38. See generally Trade Bill 2020, HC Bill [120] (UK).
first introduced provisions concerning genocide.\textsuperscript{39} After HL Bill 160, there were two subsequent versions of the Bill, namely: Bill 239 2019-21 (18 Jan 2021) and HL Bill 164 (20 Jan 2021).\textsuperscript{40} The key requirement under the amendments consisted of the revocation of bilateral trade agreements if the High Court made an adverse determination regarding violations of human rights against UK’s trading partners.\textsuperscript{41} On 22 March 2021, UK parliamentarians narrowly voted by 318 to 300 to reject the ‘genocide amendment’ to the Trade Bill 2019-2021.\textsuperscript{42} The Trade Bill received a royal assent on 29 April 2021.\textsuperscript{43} It is noteworthy that Lord Acton of Liverpool, the mover of the genocide amendment debate, subsequently introduced a private member’s Bill, Genocide Determination Bill [HL], to address matters concerning cases of genocide.\textsuperscript{44}

II. OBIGATION TO PREVENT IN THE BOSNIAN GENOCIDE CASE

The obligation to prevent and punish acts of genocide under Article I of the Genocide Convention was at the center of the Bosnian Genocide case\textsuperscript{45} at the International Court of Justice in 2007. The court’s decision outlined the legal nature\textsuperscript{46} and scope\textsuperscript{47} of the obligation to prevent. It also pronounced itself on the extraterritoriality of the obligation.\textsuperscript{48}

A. Legal Nature of the Obligation to Prevent

Despite the plain text of Article I of the Convention, there has been

\begin{itemize}
\item \textsuperscript{40} See UK PARLIAMENT, Lords Amendments to the Trade Bill, Bill 239 https://publications.parliament.uk/pa/bills/cbill/58-01/0239/200239.pdf [https://perma.cc/W6MW-C5PR]; see also UK HOUSE OF LORDS, Trade Bill: Commons Reasons and Amendments to Certain Lords Amendments, https://publications.parliament.uk/pa/bills/cbill/58-01/164/5801164.pdf [https://perma.cc/2GYU-8LHL].
\item Please note that a subsequent amendment suggested that in addition to the preliminary determination made by the High Court, the government would carry out a risk assessment regarding the allegation before signing a bilateral trade agreement.
\item \textsuperscript{42} Id.
\item \textsuperscript{43} Under Section 3 of the Act, there is no requirement for a stoppage of trade relations because of reports of genocide. Where there are such reports, the House of Lords can debate on the reports and vote for or against the allegations made in the report.
\item \textsuperscript{44} Genocide Determination Bill 2022, HL Bill [23] (UK).
\item \textsuperscript{45} Bosnian Genocide case (2007), supra note 11, § 64.
\item \textsuperscript{46} Id. § 430.
\item \textsuperscript{47} Id.
\item \textsuperscript{48} Id. § 183.
\end{itemize}
ambiguity on whether the duty is legal, social, or political.\textsuperscript{49} In particular, there is obscurity regarding the binding character of Article V obligating State Parties to enact laws\textsuperscript{50} and Article VIII enabling State Parties to call on the competent organs of the UN to take actions\textsuperscript{51} for, \textit{inter alia}, the prevention of genocide. In its ruling on 8 April 1993, the ICJ observed that Yugoslavia and Bosnia-Herzegovina were under a “clear” obligation to prevent acts of genocide under Article I. In his Separate Opinion, Judge \textit{ad hoc} Lauterpacht stated that there was “no difficulty in declaring that all the parties to the Genocide Convention are under a duty to prevent genocide. This is merely a matter of reading the words of Article I.”\textsuperscript{52}

Eventually, the majority of the Court decided to dispose of the question in the clearest terms possible in its Judgement of 26 February 2007.\textsuperscript{53} The Court first stated that “Article I does impose distinct obligations over and above those imposed by other Articles of the Convention.”\textsuperscript{54} It further elaborated that the obligation is both “normative” and “compelling,”\textsuperscript{55} and acts done by UN organs in preventing genocide do not relieve a State Party’s obligation under the Convention as long as those efforts accede to the UN Charter.\textsuperscript{56} Judge Kreča, in


\textsuperscript{51} Polish argues that under Article VIII, “chances of the Council’s employing more than economic and diplomatic sanctions are negligible. The Council could have a genocide question referred to it in two ways. A State might bring a genocide accusation directly to the Council under Convention Article VIII; or a State disputing the Convention’s interpretation, application, or fulfilment might refer the matter to the Council from the International Court of Justice, as provided by Article 94(2) of the United Nations Charter. Following referral the Council might make recommendations, but plenary power could not be employed unless the Council found that the \textit{alleged acts threatened world peace.” O.F Polish, \textit{Genocide: A commentary on the Convention}, 58 YALE L.J. 1142, 1148 (1949) (emphasis added).

\textsuperscript{52} Bosnian Genocide case (2007), Order, 1993 I.C.J. 325, 407, ¶ 113 (separate opinion of Lauterpacht, J. \textit{ad hoc} supra note 11.

\textsuperscript{53} See generally Bosnian Genocide case (2007), supra note 11.

\textsuperscript{54} Id. ¶ 165.

\textsuperscript{55} Id. ¶ 427.

\textsuperscript{56} Id.
a Separate Opinion, dissented stating that the duty to prevent genocide is a “social, moral, even metaphysical duty,” but when categorized as a legal duty, it violates the principle of *impossibilium nulla obligatio est*. He stated that Article I is a general principle and does not mandate a distinct legal duty. Likewise, Judge Skotnikov stated that the majority’s opinion was a “political statement” and “extraordinarily expansive” and violates the rules of treaty interpretation.

B. Extraterritoriality

Apart from the above, another issue was the extraterritoriality of the obligation to prevent genocide. Before the 2007 judgment, some of the Court’s judges found the question of extraterritoriality controversial. For instance, the *ad hoc* Judge Lauterpacht stated that if one argued the obligation was limited to a state’s territorial confines, then that meant a State Party had no obligation to prevent genocide in occupied or invaded territory. Therefore, a proper meaning of the obligation is that state parties, individually and collectively, are obligated to take positive measures to prevent a genocide wherever it occurs. However, Judge Tarassov questioned this rationale, stating that “extraterritoriality” lacks balance and practicality.

Once again, the Court, in its 2007 Judgment, did not share such a narrow view. The Court held that, contrary to the obligation to punish under Article VI, which is subject to an express territorial limit, the substantive obligation arising from Articles I and III are not limited by territory. The two articles apply to a State Party wherever it may be acting or may be able to act in ways appropriate to meeting the obligation in question. Judge Tomka, in the Separate Opinion, also endorsed this view. He noted that State Parties could

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57. *Id.* at 457, ¶ 113 (separate opinion of Kreča, J. *ad hoc*).
58. *Id.*
59. *Id.* at 338, 340 (declaration of Skotnikov, J.).
63. *Id.* ¶ 115.
66. *Id.* ¶ 183.
67. *Id.*
not extend the universality approach as a duty to punish. Judge Kreca differed and stated that only UN organs have the duty to prevent a genocide occurring outside a particular territory.

C. Scope of Obligation

Despite the expansive finding of a binding obligation to prevent and its extra territorial application by the Court, the finding is limited by the scope of the obligation. As observed by Schabas, “nothing in the debates about Article I provides the slightest clue as to the scope of the obligation to prevent”. Notwithstanding the absence of a dispute between the Parties on the interpretation of the obligation to prevent in Bosnian Genocide, the Court took the initiative to formulate not only the condition precedent for the obligation to arise, but also steps that State Parties have to take to discharge the obligation. The Court held that a violation occurs if a State Party was aware, or should normally have been aware that a genocide is about to occur but failed to act regardless of any certainty at the time regarding the genocide. While the court did not offer steps necessary to discharge the obligation, a State Party should employ “all means reasonably available” to contribute to the restraining in any degree the commission of genocide. The obligation varies from state to state and depends on the State Party’s effective capacity to influence, within the limits of international law, the action of persons committing or likely to commit genocide. Thus, states have a three-prong test: (1) whether the measures are otherwise consistent with international law; (2) whether the measures are reasonable; and (3) whether the measures are calculated to effectively influence the course of the genocide.

1. Consistent with International Law

Firstly, the action taken by a state must correspond to international law, i.e., consistent with international law and, therefore, not an internationally wrongful

69. *Id.* ¶ 40, 67-68.
70. *Id.* at 457, ¶ 135 (separate opinion of Kreca, J. ad hoc).
73. *Id.* ¶ 160-62.
74. *Id.* ¶ 428-32.
75. *Id.* ¶ 431-32 (emphasis added).
76. *Id.* ¶ 430.
77. *Id.*
action. An internationally wrongful action is any act or omission attributable to a state under international law that constitutes a breach of an international obligation of the state.81 This is an act or omission that is injurious to the rights of other states.82 In that regard, an internationally wrongful action is an unlawful act between states in international law and not a dispute involving individuals of one country over the actions of another country. It is an act “contrary to the treaty right[s] of another State.”83 In Anglo-Iranian Oil Co.,84 ICJ held that it did not have jurisdiction over a complaint by the UK because there was no internationally wrongful act done by Iran regarding any treaty rights between the UK and Iran.85 In Greece v United Kingdom, the ICJ held that the UK had an obligation to enter into arbitration proceedings regarding a dispute arising out of the Greco-British Treaty of Commerce and Navigation (1886).86 This is because there was an obligation under Article XV of the treaty, which stated that disputes concerning the treaty would be settled through arbitration.87 In Italy v France et al., the ICJ held that an internationally wrongful act has to be one in which one state directly breaches an international obligation concerning a treaty where both parties are parties. Both parties must directly be interested in the unlawful character of the impugned actions.88 In that regard, a violation of the Genocide Convention by a certain State Party amounts to an internationally wrongful action89, and any State Party to the Convention can allege a violation of the obligations erga omnes by the offending State Party.90

It is noteworthy that there is no provision in the UN Charter that prohibits

82. See Marcela Barón Soto & Alejandro Gómez Velásquez, An approach to the state responsibility by an omission in The Inter–American Court of Human Rights Jurisprudence, 6 REV. CES DERECHO 3, 3-17 (2015).
83. Phosphates in Morocco (Italy v. France), Preliminary objections, 1938 P.C.I.J. (ser. A/B) No. 74 (June 14).
85. The court held that Iranian oil nationalization act of 1951 was not an internationally wrongful action. The reason for this was that inasmuch as the law was counter to a convention agreed upon by the Anglo-Persian Oil Company (now BP) and Iran in 1933. The convention allowed the Anglo-Iranian Oil Company a 60-year licence to mine oil in 260,000 square kilometres (100,000 sq. mi.) of Iran in return for a percentage royalty. Therefore, Iran did not breach any treaty obligations between itself and the UK. Thus, ICJ did not have jurisdiction over the matter. Id.
86. Ambatielos (Greece v. U.K.), Judgment, 1952 I.C.J. 28 (July 1).
87. Id. at 35.
the imposition of unilateral sanctions.\textsuperscript{91} While the UN General Assembly has passed several resolutions prohibiting such sanctions\textsuperscript{92}, the resolutions are not binding.\textsuperscript{93} The resolutions also do not have the force of customary international law due to the many objections by persistent objectors.\textsuperscript{94} Indeed, the PCIJ, in \textit{Lotus}, held that there are no presumptions or assumptions regarding restrictions related to the independence of states.\textsuperscript{95} The only thing that is required under international law is that a state not violate international law restrictions when exercising its jurisdiction.\textsuperscript{96} The ICJ reiterated this in \textit{Nicaragua}, where the Court stated that there is no expectation on a state to continue particular state relations, where it deems that they should not continue subsisting unless the basis for the relations is a treaty.\textsuperscript{97} An economic sanction cannot be presumed as contrary to international law unless that sanction breaches either treaty obligations to which both states are parties,\textsuperscript{98} or a violation of customary international law.\textsuperscript{99}

In \textit{Nicaragua}, the ICJ reiterated the existence of customary international law as prohibiting states from interfering in the affairs of other countries.\textsuperscript{100} The ICJ stated that a prohibition against states or groups of states from intervening directly (through military actions) or indirectly (through supporting subversive or terrorist armed activities) in a state’s internal and external affairs exists because states are sovereign and can make decisions freely.\textsuperscript{101} There is a prohibition on external interference seeking to tamper with those decisions.\textsuperscript{102} Therefore, economic sanctions imposed by the United States, including cessation of international aid, did not amount to an intervention.\textsuperscript{103} Moreover, the ICJ set up a two-prong test to determine if economic sanctions amounted to...
a violation of the principle of non-intervention. Firstly, the intervention must target matters that a state should freely determine without outside influence. Secondly, the intervention employed must use methods of coercion. However, if the matters in question concern *jus cogens*, international human rights, and touch on any *erga omnes* obligations, such matters will not be considered a domain reserved to a given state. The principle of non-intervention will not apply. This is because all states have an interest in such matters.

In the context of sanctions that can effectively influence the prevention of genocide, the sanctions must not be contrary to international law regarding treaties state parties have ratified. For instance, the sanctions should not violate *jus ad bellum* as mandated by the UN Charter. This means that the sanctioning state should not use sanctions in a manner amounting to an act of aggression. Additionally, the ILC’s Articles on State Responsibility clarify and refine the scope of a state’s right to deploy countermeasures, setting out a number of conditions. These conditions include, firstly, that the targeted states must have committed an internationally wrongful act. Secondly, the sanctioning state must establish that it is an “injured state.” Thirdly, the measures should aim at inducing the targeted state to comply with its obligations. Fourthly, the measures must be proportionate.

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105. Id. ¶ 205.


107. Id. ¶ 194.


110. Article 2, paragraph 4 of the Charter states: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.” U.N. Charter art. 2, ¶ 4.


must not affect the enjoyment of fundamental human rights or *jus cogens*, including the due process rights of individuals or entities targeted by the sanctions.\(^{117}\) Lastly, once the wrongful act has stopped, the measures must be terminated.\(^{118}\) These pre-conditions can be easily met in a situation whereby economic sanctions are deployed against a state involved in genocide under blanket theories of *jus cogens*\(^{119}\) and *erga omnes.*\(^{120}\)

2. Proportionality

The principle of proportionality can be best understood if it is read through the principle of good faith and “reasonableness” as its criterion.\(^{121}\) The principle of proportionality requires an analytical procedure of balancing whereby a priority relation between conflicting arguments or interests and values is established.\(^{122}\) This is because the principle’s origin is Roman private law and is rooted in equity and distributive justice which later developed into principles of necessity and proportionality.\(^{123}\) In the context of international law, proportionality denotes the application of extra-legal considerations in making decisions. Thus, in the context of measures intended to effectively influence the prevention of a genocide, one ought to question whether they are proportional when competing interests and values are considered.\(^{124}\)

The Roman roots of the principle are apparent in *North Sea Continental Shelf*, where the ICJ stated that reasonable and equitable measures rest on the circumstances present in that particular case or scenario.\(^{125}\) Under international law, there is no definition of what amounts to reasonable measures *per se*,\(^{126}\) but when looked at from the perspective in *North Sea Continental Shelf*, reasonableness denotes the factual element that parties take in their negotiations.\(^{127}\) These factual elements enable issues to be looked at from a fluid perspective\(^{128}\) by permitting a court to consider various principles or methods as

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\(^{118}\) Id.

\(^{119}\) Barcelona Traction, *supra* note 108, ¶ 34.

\(^{120}\) Id. ¶ 33.


\(^{122}\) Id.


\(^{127}\) North Sea Continental Shelf, *supra* note 125, ¶ 97.

\(^{128}\) Id. ¶ 41.
appropriate, or a combination of methods to come up with a solution instead of sticking to an imperative rule in situations the imperative rule did not envisage or take into account.\footnote{129}{Id \S 90.}

Reasonableness and proportionality, while closely related, denote different scenarios under the law. Reasonableness covers a wider area compared to proportionality.\footnote{130}{Id \S 54.} A measure may be proportional but unreasonable.\footnote{131}{See GARRY DOWNES, REASONABLENESS, PROPORTIONALITY AND MERITS REVIEW 12 (Sept. 24, 2008), https://www.aat.gov.au/AAT/media/AAT/Files/Speeches%20and%20Papers/ReasonablenessSeptember2008.pdf [https://perma.cc/3V8K-VUZR].} Reasonableness requires a test of \textit{rationality} whereas proportionality requires a \textit{relationship} test. Reasonableness requires the application of facts that are enough to induce a certain state of mind in a reasonable person.\footnote{132}{Id.} The law assumes that where the basis of a decision are beliefs and actions one considers irrational, then the decision fails the reasonableness test.\footnote{133}{See NANNAKI J. CHADHA, MARTIN J. TURNER & MATTHEW J. SLATER, Investigating Irrational Beliefs, Cognitive Appraisals, Challenge and Threat, and Affective States in Golfers Approaching Competitive Situations, 10 FRONTIERS PSYCH., Oct. 9, 2019, at 5 (2019).} These irrational beliefs include but are not limited to unfounded threats, emotions, and anxiety.\footnote{134}{See Scott Kraft, A Shocking Toll: In Kenya, Lightning Hits Hard, LOS ANGELES TIMES (Dec. 2, 1987), https://www.latimes.com/archives/la-xpm-1987-12-02-tn-17246-story.html [https://perma.cc/B6SC-VLPY].} An example of an irrational belief is that the red color attracts lightning strikes.\footnote{135}{See Iris Zeželj & Lilijana B. Lazarević, Irrational Beliefs, 15 EUR. J. PSYCH. 1, 1 (2019).} These beliefs also include “superstitions, paranormal and pseudoscientific beliefs, conspiracy theories etc.”\footnote{136}{See IRISS ŽEŽELJ & LJILJANA B. LAZAREVIĆ, Irrational Beliefs, 15 EUR. J. PSYCH. 1, 1 (2019).} Proportionality requires a judgement of the relationship between “an end, amounting to a need, and a means to satisfy the end.”\footnote{137}{See Martin Luterán, The Lost Meaning of Proportionality, in PROPORTIONALITY AND THE RULE OF LAW: RIGHTS, JUSTIFICATIONS, REASONING 21-42 (Grant Huscroft, Bradley W. Miller, & Grégoire Webber eds., 2014).} When determining the proportionality of a measure, one asks whether the end justifies the means.\footnote{138}{DOWNES, supra note 131 at 12.} There exists a relationship between proportionality and reasonableness. Hence, a decision will be reasonable if it meets the requirements related to a particular set of standards that may concern both the substance of the decision, or the process used to come up with the decision, and may also concern means-end efficiency.\footnote{139}{See MARTIN LUTERÁN, The Lost Meaning of Proportionality, in PROPORTIONALITY AND THE RULE OF LAW: RIGHTS, JUSTIFICATIONS, REASONING 21-42 (Grant Huscroft, Bradley W. Miller, & Grégoire Webber eds., 2014).} A decision is proportional if its basis is context-specific when looked at from the eyes of an ordinary reasonable person.\footnote{140}{SARTOR, BONGIOVANNI & VALENTINI, supra note 134.}
To determine proportionality, the state actions ought to serve a legitimate purpose or objective. Secondly, there must be a causal link between the alleged purpose and the action. Thirdly, the actions must meet the proportionality criterion by comparing what is generally done or legally done with the present action. According to Hofer, this entails the balancing of conflicting interests by considering the suitability and necessity of the means used for the sanctions. If the measures curtail the enjoyment of rights or interests, the measures will be proportional and reasonable if one can determine that there are no other less intrusive measures. One will have to consider if there is a causal link between the sanctions adopted, the context of their adoption, and the matter of their effectiveness.

In the context of unilateral sanctions, the measures taken to effectively prevent (or mitigate) the occurrence of genocide serve an obviously legitimate purpose or objective. This objective arises out of the obligation in Article I of the Genocide Convention and ICJ’s ruling in the Bosnian Genocide case. There is a presumption that the measures taken from the presence of a causal link between the actions of a state and the crime of genocide. Proportionality of requirement presupposes that the measures undertaken by a state party to prevent the occurrence of genocide in another country should not be so extreme that they devastate the sanctioning state’s own national interest in order to live up to their obligation. An example given to affirm this position is the grain embargo on the Soviet Union over its incursion into Afghanistan in 1980. The embargo raised the cost of grain to the Russians by $225 million ($799,435,542

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144. Id. at 401.
145. Corten, supra note 126, at 623.
146. Hofer, supra note 143, at 401.
150. In the case of China, there is a causal link between what the government in Xinjiang is doing and the persecution and cultural genocide of ethnoreligious minorities in Xinjiang.
152. The measures included blocking grain sales to the Soviet Union beyond the 8 million metric tons already contracted. This meant withholding an additional 17 million metric tons, which the Soviets have already ordered. See generally Afgh. Task Force Foreign Aff. & Nat’l Def. Div., Issue Brief Number IB80006, Afghanistan: Soviet Invasion and U.S. Response (1980).
in today’s money when adjusted for inflation leading the Soviets to turn to other sources such as Argentina. The embargo cost the United States an estimated $2.3 billion ($8,882,617,140 when adjusted for inflation). It led American farmers to lose their dominant market share in grains imported by the Soviet Union, a position they did not recapture until 2003. Nonetheless, this did not affect the United States enough to qualify as disproportionate as the bar set high with mass jus cogens violations such as military aggression and presumably mass genocide.

Another example to buttress this contention is the current sanctions imposed on Russia by most of its trade partner nations around the world. The sanctions entail a degree of self-sacrifice by EU states in foregoing oil and natural gas supplied by Russia. For instance, at the outset of the Russian war in Ukraine, fuel prices in Germany rose by €0.03. Motorists paid €2.13 for a litre of gasoline at the pump and €2.225 per litre of diesel, which was an increase of €0.55. The United Kingdom imposed sanctions on Russia, causing the price of fuel to rise by 20%, from £1.23 per litre of gasoline before the war to £1.54 after the war commenced. These prices ultimately normalized to rates below what they were before the imposition of sanctions against Russia. In the UK, there was a 41.8%–a-litre crash in the average pump price of petrol. In Germany and the EU, there was a drop of 16% with a litre of petrol selling at €

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155. FED. RSRV. BANK OF MINNEAPOLIS, supra note 153.
1.78 at the pump.\textsuperscript{165} Therefore, if the proportionality test is applied, it is plausible to claim the sanctions are reasonable when looking at cost in the context of the larger picture, i.e., the effect they have on the sender country compared to the goal they intend to serve, i.e., preventing the hostile takeover of Ukraine. The sanctions emptied Russia’s coffers, thus reducing advances made by the Russian military in Ukraine.\textsuperscript{166} The embargo led to Russian tax income from oil and gas falling to $5.8 billion in January 2023, half its January 2022 level.\textsuperscript{167}

Moreover, trade sanctions are a reasonable alternative compared to other alternatives.\textsuperscript{168} While sanctions have often not historically had a particularly good success rate,\textsuperscript{169} the United Nations Security Council\textsuperscript{170} or a member State acting unilaterally\textsuperscript{171} can use sanctions as a basis for coercion, to constrain, and for signaling.\textsuperscript{172} Even though UNSC sometimes uses sanctions for constraining and signaling, it mainly uses them for coercion.\textsuperscript{173} Nonetheless, UNSC sanctions have only been effective in coercing in 10\% of the time\textsuperscript{174} and effective in constraining and signaling in 27\% of the time.\textsuperscript{175} They were only effective 22\%
of the time, when looked at from all the three functions.\(^{176}\) Therefore, UNSC sanctions could be slightly more effective if used for the other non-coercive purposes.\(^{177}\) Nevertheless, sanctions are the most preferred non-military mechanism used to enforce international law\(^{178}\) because they do not usually lead to more expensive and drastic military cost.\(^{179}\) The costs on the sanctioning state are normally minimal.\(^{180}\)

Moreover, sanctions can affect the target country’s economic progress at a greater cost compared to a sanctioning country. One way of visualizing this is to consider the effect of sanctions imposed on China, Iran, and Cuba. The 1989 arms embargo against China worked in America’s favor because Chinese military advancement relied on ‘copy and paste’ mechanisms. However, it was not easy to use the same mechanisms for advanced Western technologies, such as digital technologies reliant on silicon chips. Additionally, China accounted for only 0.5% of America’s military exports. Therefore, the arms embargo not only impeded Chinese technological advancement but also did not affect America’s military exports.\(^{181}\) This is also the case in the United States’ embargo on Cuba.\(^{182}\) The economic costs on Cuba has led some to say that because of the sanctions, “In Cuba, it sometimes seems time stopped in the 1960s.”\(^{183}\)

In the case of Iran, the trade embargo following the Tehran Hostage Crisis in 1979\(^{184}\) wore down the Iranian economy and the country’s ability to repel Iraqi forces during the Iranian-Iraqi War.\(^{185}\) While the United States lifted the sanctions in January 1981 when Iran released the hostages,\(^{186}\) subsequent U.S. sanctions have crippled the Iranian economy. These include the 1987 sanctions over Iran’s support for Hezbollah, a Lebanese militant group,\(^{187}\) and the 1995

\(^{176}\) Id.
\(^{181}\) Id.
\(^{183}\) In Cuba, the pace of life continues to remain unhurried, CHINA DAILY (Apr. 17, 2017), https://global.chinadaily.com.cn/a/201704/17/WS59bb8200a310d4d9ab7e932d.html [https://perma.cc/3JGM-5U8V].
\(^{185}\) Id.
extension of those sanctions to firms dealing with the Iranian government.\textsuperscript{188} The United States imposed more sanctions after UNSC’s Resolution 1737 over Iran’s failure to cease its uranium enrichment program demanded in accordance with UNSC Resolution 1696.\textsuperscript{189} Other allied countries including Australia,\textsuperscript{190} Canada,\textsuperscript{191} and the EU, in pursuance of Council Common Position 2007/140/CFSP of February 2007 imposed sanctions against Iran. The EU imposed other sanctions against Iran between 2007 and 2012.\textsuperscript{192} The sanctions negatively affected the Iranian economy leading to its adoption of the Joint Comprehensive Plan of Action on 18 October 2015.\textsuperscript{193}

Additionally, while sanctions may hamper the sanctioning country’s access to certain key resources, the sanctioning country may still access the resources elsewhere and not suffer significant economic harm. For instance, while fuel prices rose in the UK and Europe because of sanctions imposed on Russia,\textsuperscript{194} the prices eased as soon as Europe and the UK were able to access oil from sources other than Russia.\textsuperscript{195} The reason for the easing of the prices was Europe and the UK finding alternative energy sources such as the United States, Qatar, and Australia.\textsuperscript{196} It is noteworthy that sender countries, because of their power and influence, can often access alternative markets for their goods and services compared to receiver countries.

As seen in the above discussion, economic sanctions are preferred because costs to the sender state are usually negligible and/or temporary, and thus a reasonable and proportionate approach, when compared to the effect of stopping or mitigating genocidal action in receiver states.

3. Effectively Influence the Course of the Genocide

The third limb determines whether the sanctions are likely to effectively influence the prevention of genocide.\textsuperscript{197} To effectively influence does not

\begin{footnotesize}
188. \textit{Id.} at 5.
190. AUSTL. DEP’T OF FOREIGN AFF. AND TRADE, SNAPSHOT IRAN SANCTIONS REGIME (2019).
192. SAMORE, supra note 187, at 9.
194. Sillars, supra note 163.
\end{footnotesize}
require a complete cessation of atrocities198 nor does it presuppose the degree of influence the sanction has on the cessation.199 Thus, this language should be considered in the context of degree of impact (effective) and the likelihood of achieving that impact (influence). What these words mean is a matter of legal construction. While the Bosnian Genocide case does not elaborate on a particular standard of proof,200 it follows that a common-sense approach should be applied201 such as a more-likely-than-not or the balance of probabilities standard.202 This is analogous to the reasonableness standard elucidated above203 and consistent with the plain meaning of the language in the decision.204 With regard to the term “influence” a common-sense approach implies that the sanctions taken would likely convince the target state to take some positive, compliant steps.

The term “effective” applies to the degree of impact anticipated by the sanctions imposed.205 Most scholars agree that this only requires some anticipated diminution of harm, Gibney describes the “effective” prong as creating an obligation of conduct, not of result.206 Rosenberg similarly concluded that due diligence only created an obligation of conduct, not a

198. See Bosnian Genocide case (2007), supra note 11, ¶ 430 (holding that “... a State cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide.”); see also J.S. McCormick, Effectiveness and Efficiency, 31 J. ROYAL COLL. GEN. PRACS. 299, 299 (1981) (stating that “effectiveness” denotes a measure of the success in achieving a clearly stated objective.)

199. The I.C.J. held that “this capacity itself depends, among other things, on the geographical distance of the State concerned from the scene of the event, and on the strength of the political links, as well as links of all other kinds, between the authorities of that State and the main actors in the events.” Bosnian Genocide case (2007), supra note 11, ¶ 430 (emphasis added).

200. The I.C.J. stated that “it is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide. As well as being generally difficult to prove, this is irrelevant to the breach of the obligation of conduct in question.” Id. (emphasis added).

201. The I.C.J. held, “... the notion of ’due diligence’, [...] calls for an assessment in concreto.” Id.


203. Corten, supra note 126.

204. See Bosnian Genocide case (2007), supra note 11, ¶ 431 (holding “if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent [...] it is under a duty to make such use of these means as the circumstances permit.” (emphasis added)). This denotes a common-sense approach regarding the means states can use to effectively influence the prevention of genocide and the impact anticipated by those means, i.e., those likely to deter.

205. Id.

206. See Mark Gibney, Universal Duties: The Responsibility to Protect, the Duty to Prevent (Genocide) and Extraterritorial Human Rights Obligations, 3 GLOB. RESP. TO PROTECT 123, 138-39 (2011).
result. Russell clarifies the duty as being only as contributing (emphasis added) to avoiding the damage (harm). The phrase “effectively influence,” while arguably vague, should be interpreted as persuading the target state to take some positive steps in correcting offending behavior. This doesn’t require a showing of complete cessation of offending conduct but at least a reduction of same. By logical implication, if the Court had intended for that state obligation to only arise when there was a guarantee of complete cessation of the offending behavior then it would have used considerably more affirmative language, and in any event, such a reading would unreasonably modify the affirmative language otherwise used elsewhere in the decision describing state responsibility to prevent.

A residual consideration in the interpretation of the phrase ‘effective influence’ is capacity. The state obligation becomes operative only if the sanctioning state has the capacity to effectively influence the course of the genocide. In the context of economic sanctions, this duty only attaches if the sanctioning state has significant economic clout in terms of trade to use as a forceful enough argument to persuade the offending state into some measure of compliance. Despite growing international economic interdependence, many states, standing alone, would not have the economic capacity to influence

207. See Sheri Rosenberg, Responsibility to Protect: A Framework for Prevention, 1 GLOB. RESP. TO PROTECT 442, 468 (2016).
208. See Russell Buchan, Cyberspace, Non-State Actors and the Obligation to Prevent Transboundary Harm, 21 J. CONFLICT & SEC. L. 429, 434 (2016).
210. See Bosnian Genocide case (2007), supra note 11, ¶ 430. Considering that the obligation to prevent genocide is an obligation of conduct and not one of result, a complete cessation of offending conduct is not expected. Id. States only have an obligation to employ all means reasonably available to them, “so as to prevent genocide so far as possible.” Id. (emphasis added). Failure to achieve the desired result does not incur any responsibility. Id.
212. See Bosnia Genocide case (2007), supra note 11, ¶ 431. The Court stated that “the obligation to prevent genocide only comes into being when perpetration of genocide commences . . . [f]rom that moment onwards, if the State has available to it means likely to have a deterrent effect on those suspected of preparing genocide, or reasonably suspected of harbouring specific intent (dolus specialis), it is under a duty to make such use of these means as the circumstances permit.” Id. (emphasis added). The obligation does not arise because of a guarantee that a state party will stop the genocide. See id. It only arises if the state party learns of a genocide but fails to employ the means available to it to stop the genocide. See id.
214. Id. at 28.
other states to halt conduct the other states regard as matters of national
compentence. However, in the course of the most significant jus cogens
violations such as aggression or genocide, unilateral economic sanctions
can gain traction amongst other states to impose similar sanctions or “collective
economic sanctions.” Thus, even if a state doesn’t independently have the
economic wherewithal to effectively influence an offending state, due diligence
requires efforts at collective action. This creates a special duty on
economically advantaged states because more states would join in economic
sanctions if a major trade partner joined and the presumption of the duty is
particularly strong if the target state is especially vulnerable to economic
sanctions.

Vulnerability of the target state along with economic stature of the
sanctioning state(s) are key. The requirement of showing “capacity” creates a
more obvious obligation on individual super-power economic states and the
likelihood of collective economic sanctions. Reference is made to other
measures in place by the United States, EU, Australia, and Canada showing an openness to imposing sanctions on China but not in a pervasive way. Nonetheless these measures affirm a willingness to impose sanctions against
China. It also provides the basis for a united face in the context of collective
sanctions, thus establishing the groundwork for an international “will” to
collectively impose pervasive sanctions.

217. Obvious exceptions may include the US, PRC, India, UK, etc. See Emily Meierding &
Rachel Sigman, Understanding the Mechanisms of International Influence in an Era of Great
218. Roger S. Clark, Negotiating Provisions Defining the Crime of Aggression, its Elements
219. Rachel K. Fischer and Kelly Myer Polacek, Genocide, 52 REFERENCE & USER SERVS.
220. LISA L. MARTIN, COERCIVE COOPERATION: EXPLAINING MULTILATERAL ECONOMIC
221. E. Ruvebana Brus and M. Brus, Before It’s Too Late: Preventing Genocide by Holding
the Territorial State Responsible for Not Taking Preventive Action, 62 NETH. INT’L L. REV. 25
(2015); see also JOHN HIECK, supra note 213, at 1-12 (2018).
222. See MARTIN, supra note 220, at 197-98.
223. See generally Özdamar & Shahin, supra note 23.
224. See infra note 407.
225. EU agrees first sanctions on China in more than 30 years, EURENEWS (Mar. 22, 2021),
https://www.euronews.com/my-europe/2021/03/22/eu-foreign-ministers-to-discuss-sanctions-on-
china-and-myanmar [https://perma.cc/XV6V-Z4FA]; see also EUs plans to slap sanctions on
2023-05-07/ [https://perma.cc/868W-BDGA].
226. Chris Buckley and Damien Cave, Australia Took on China. Did It Get It Right?, THE
relations.html.
227. Ryan Patrick Jones, Canada sanctions 4 Chinese officials for human rights abuses in
Moreover, “capacity” can also be determined in the nature of the sanctions.\textsuperscript{228} Whether unilateral or collective, sanctions must be “pervasive” to be effective.\textsuperscript{229} Sanctions that target individuals or specific industries alone are usually not sufficiently pervasive to be effective.\textsuperscript{230} This was evident in sanctions imposed against Zimbabwean officials and their close associates and relatives\textsuperscript{231} in the early 2000’s.\textsuperscript{232} Despite these sanctions, the human rights situation in Zimbabwe remains dire.\textsuperscript{233} For instance, most individuals banned from visiting the United States under the auspices of those sanctions\textsuperscript{234} had little prospect of travelling to the United States even before the ban\textsuperscript{235} rendering the sanctions of little consequence.\textsuperscript{236} Additionally, these sanctions are (were) ineffective because Zimbabwe is not tied into the global economy in a significant way so it was effectively immune from the effects of collective sanctions.\textsuperscript{237} States are considerably more vulnerable if they have a modern economy deeply embedded in the international trading system.\textsuperscript{238} Therefore, the failure of the sanctions to effectively influence the government of Zimbabwe


\textsuperscript{232} The Guardian, \textit{supra} note 231.

\textsuperscript{233} See generally Joshua Chakawa, \textit{Why sanctions have not worked: Zimbabwe’s experience from 2001–2021}, 8 Third World Econ. 205 (2022).


\textsuperscript{236} Jan Grebe, \textit{And They Are Still Targeting: Assessing the Effectiveness of Targeted Sanctions against Zimbabwe}, 45 Africa Spectrum 3 (2010).


\textsuperscript{238} See generally Nicholas L. Miller, \textit{The Secret Success of Nonproliferation Sanctions}, 68 Int’l Org. 913 (2014).
was due, in part, to that government’s invulnerability to trade sanctions and the minimalist character of the sanctions imposed.239

In contrast, the sanctions currently imposed on Russia240 for its aggression against Ukraine241 are having significant effects in its war effort.242 The Russian economy is deeply embedded in the global economy.243 It is the world’s 11th largest economy244 and is the prime commodity exporter among emerging markets.245 Its footprint in global energy, metal markets and agriculture can only be compared to that of the United States, Canada, and Australia.246 Its trade-to-GDP ratio is 46%.247 In 2018, Russia was the world’s 12th largest exporter,248 accounting for 2.3 percent of global exports.249 It mainly exports its commodities to China and the EU,250 whereas its services exports are mostly to the EU and the US.251 This makes Russia vulnerable to measures that restrict its export market.252 It is for this reason that the economy shrank by over 2% after imposition of sanctions over its war in Ukraine.253 Considering that it is deeply embedded in the global economy,254 the sanctions were pervasive enough to affect its economic output.255 For instance, in February 2023, Russia cut its

239. Jan Grebe, supra note 236.
240. Elaine Kurtenbach, Sanctions against Russia and what the G7 may do to fortify them, AP NEWS (May 20, 2023), https://apnews.com/article/russia-ukraine-sanctions-g7-eu-biden-f5ed87c1849548423e8442e69ef14767 [https://perma.cc/3TCT-QJWK].
244. Id. at 628.
246. Id.
247. Id.
249. Id.
250. Id.
254. Dudin, supra note 243; see also Biersteker & van Bergeijk, supra note 172, at 19-20.
255. Miller, supra note 238.
oil output by 5% due to price caps imposed on the country’s seaborne exports.\footnote{256} It is noteworthy that almost all of Russia export-oriented gas pipelines and other infrastructure was oriented towards selling the same to the European market.\footnote{257} This market soaked in 2.5 million barrels a day of crude, another 1 million barrels of refined products and 155 billion cubic meters a year of natural gas.\footnote{258} This market is slowly disappearing. For instance, Russian gas exports via the Nord Stream 1 pipeline totaled a record-low 59.2 billion cubic meters in 2022. This is lower than Gazprom’s (Russia’s oil exporter) previous post-Soviet lows of gas exports at 117.4 billion cubic meters in 1995.\footnote{259} The sanctions have led to Russia’s inability to access spare parts for its ageing military equipment, leading to what some call “Frankenstein tanks,” an effort by which the Russian military creates tanks by cannibalizing other tanks.\footnote{260} Russia is also less capable of sourcing ammunitions\footnote{261} with reports that it is sourcing weapons from as far as South Africa.\footnote{262}

Similarly, the Chinese economy is deeply embedded in the global economy\footnote{263} which makes it vulnerable to export sanctions.\footnote{264} Pervasive sanctions can effectively influence its behavior considering that in 2022, China’s share of exports in gross domestic product (GDP) amounted to


\footnote{264} Id.
approximately 19.8 percent, an increase of 0.8% from the previous year. When coupled with the fact that China takes up 14.7 percent of the global export market and has been leading the world for fourteen consecutive years, collective sanctions can have a big footprint on its economic wellbeing. China’s overreliance on the export market for its growth makes the economy vulnerable to external shocks such as sanctions.

An analysis of the above outlines what ‘effective influence’ means and entails. A state party possessing powerful economic and geopolitical muscle is unilaterally capable of effectively influencing the prevention of genocide occurring within the confines of another state party’s territory. However, the ability to effectively influence is amplified if the powerful state is able to convince other similarly situated states to impose collective sanctions on the target state. Additionally, if the target state is particularly vulnerable and the sanctions are pervasive, the sanctions are more likely than not to lead to measurable compliance.

III. APPLYING THE ICJ’S JUDGEMENT TO THE UK’S TRADE BILL

Provided that economic sanctions to prevent *jus cogens* offenses are consistent with international law, the determination remains as to whether the genocide amendment of the UK Trade bill is reasonable and has the capacity to effectively influence the actions of the Chinese government regarding Xinjiang. Arguably, the UK’s economic status as a developed economy and one of the most powerful countries in the world means that it likely has the capacity to influence the actions of any state committing acts of genocide, even on a

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266. Id.


268. Id.


271. See Majlessi, supra note 78.


standalone basis. As one of China’s biggest trade partners, this influence is heightened. Additionally, China is particularly vulnerable to economic sanctions as they have recently suffered significant economic downturns and face potential, or even likely, serious threats to their future economic health. Furthermore, a UK trade embargo would be a genocide prevention measure that other developed nations would likely collectively join, further threatening the vulnerable Chinese economy.

British historical ties to Europe in fighting expansionism has implications for potential collective trade sanctions on China. Though the UK is no longer a member of the European Union, it has strong historical ties to Europe. These ties are even stronger in the context of fighting for human rights, counter-genocide, and international criminal law generally. A contemporary example of cooperation in imposing trade sanctions in response to the historical perspective is China’s role in the development and adoption of the Rome Statute of International Criminal Court. Though the UK is no longer a member of the European Union, it has strong historical ties to Europe. These ties are even stronger in the context of fighting for human rights, counter-genocide, and international criminal law generally. A contemporary example of cooperation in imposing trade sanctions in response to the historical perspective is China’s role in the development and adoption of the Rome Statute of International Criminal Court.

278. Huang & Lardy, supra note 263.
281. See generally O. V. Prikhodko, Brexit’s Implications for the Transatlantic Relationship, 92 HERALD RUS. ACAD. SCI. S133-41 (2022).
to international crimes (e.g., the crime of aggression) are those leveled against Russia over the Ukrainian invasion.\(^{285}\) China has shown its willingness to cooperate with the Russian leader\(^{286}\) in spite of the sanctions imposed by Western nations against Russia over its war of aggression in Ukraine.\(^{287}\) China’s dalliance with Russia has recently led to calls of ‘severe costs’ for countries helping Russia evade sanctions,\(^{288}\) with China’s role in Moscow’s war economy being the reason for those calls.\(^{289}\) Thus, this is an indication that other European nations may readily join the UK in imposing sanctions against China over alleged genocidal acts in Xinjiang.

The UK has the ability to influence other Sino trade partners because of its economic clout\(^{290}\) and because many of China’s major trade partners have either already imposed non-pervasive sanctions,\(^{291}\) are currently considering imposing sanctions,\(^{292}\) or imposed (and subsequently lifted) sanctions in recent history.\(^{293}\) All measures exhibit a willingness to use trade sanctions against China.\(^{294}\)

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289. Id.


Because these efforts have been fragmented in terms of design (non-pervasive) or grounded in differing causes (trade tit-for-tat,295 Hong Kong296 and Xinjiang,297 etc.) they have met with limited success.298 However, given the implicit tendency of other trade partners to sanction China,299 their abhorrence of genocide,300 especially amongst European states,301 and China’s continued recalcitrance,302 the groundwork is laid for collective action.

The UK was named the world’s third most influential country in 2022303 and the world’s fifth most powerful country in 2022.304 It has the world’s second largest financial center.305 The London Stock Exchange has more than 1,000 companies from 100 countries listed306 which include many of the world’s largest, most successful and dynamic companies.307 The stock exchange market includes the so-called Shanghai-London Stock Connect308 which brings the
Shanghai Stock Exchange together with London\textsuperscript{309} and allows global investors
to benefit from China’s growth through London,\textsuperscript{310} and reciprocal allowances
for the London Stock Exchange listed companies to access Chinese investors
directly.\textsuperscript{311} The UK is the world’s foremost international center for legal
services\textsuperscript{312} and business-related dispute resolution.\textsuperscript{313} While New York,
the world’s largest financial center,\textsuperscript{314} has the largest domestic legal market,\textsuperscript{315} the
UK leads the way as the world’s most international law center.\textsuperscript{316} Indeed, the
English Common Law is the most widespread legal system in the world,\textsuperscript{317} and
many international contracts are drafted using English law,\textsuperscript{318} including
syndicated credits,\textsuperscript{319} bond issues,\textsuperscript{320} and master derivatives contracts.\textsuperscript{321}

Therefore, because of its position as a global financial center, the UK is a
powerful factor in international trade and capital exchange.\textsuperscript{322} Any restrictions
in trade imposed by the United Kingdom can have far-reaching implications on

\textsuperscript{309} Her Majesty’s Treasury & Philip Hammond, \textit{UK-China EFD sees launch of London-
Shanghai Stock Connect} GOV.UK (Jun. 17, 2019), https://www.gov.uk/government/news/uk-
china-efd-sees-launch-of-london-shanghai-stock-connect [https://perma.cc/7ANM-3K33].

\textsuperscript{310} Tom Daly, \textit{Shanghai-London Stock Connect to include Germany, Switzerland}, REUTERs
shanghai-london-stock-connect-2021-12-17/ [https://perma.cc/4SYB-9QL2].

\textsuperscript{311} \textit{Shanghai London Stock Connect}, LONDON STOCK EXCH., https://www.
londonstockexchange.com/discover/china/shanghai-london-stock-connect

\textsuperscript{312} \textit{Legal services industry in the UK - statistics & facts}, STATISTA (Oct. 6, 2022),
https://www.statista.com/topics/8517/legal-services-industry-in-the-uk/#topicOverview
[https://perma.cc/CE4M-653T].

\textsuperscript{313} \textit{International arbitrations, mediations and adjudications in the UK 2009-2019},
STATISTA (Jul. 6, 2022), https://www.statista.com/statistics/611403/international-legal-services-
activity-in-the-united-kingdom-uk/ [https://perma.cc/57RN-22NV].

\textsuperscript{314} \textit{The UK remains global hub for international legal services}, THECITYUK (Dec. 7,
2022), https://www.thecityuk.com/news/the-uk-remains-global-hub-for-international-legal-
services/ [https://perma.cc/A6VH-AP3Z].

\textsuperscript{315} Id.

\textsuperscript{316} Id.

\textsuperscript{317} \textit{English Common Law is the most widespread legal system in the world}, SWEET &
pdf [https://perma.cc/B6KE-ZB8].

\textsuperscript{318} See Michael Joachim Bonell, \textit{The law governing international commercial contracts
and the actual role of the UNIDROIT Principles}, 23 UNIF. L. REV. 15, 23 (2018); see also
Melanie Gassler-Tischlinger & Georg Huber, \textit{English as a Contract Language}, RECHTSANWÄLTE (Jun. 9,
SHZN]; Tsedal Neeley, \textit{Global Business Speaks English}, HARV. BUS. REV. (May 2012),

\textsuperscript{319} Gilles Cuniberti, \textit{The International Market for Contracts: The Most Attractive Contract

\textsuperscript{320} SWEET & MAXWELL, supra note 317.

\textsuperscript{321} Id.

\textsuperscript{322} See generally Britta Klagge & Hans-Martin Zademach, \textit{International capital flows,
stock markets, and uneven development: the case of Sub-Saharan Africa and the Sustainable Stock
not just the target country, but also on the global economy.\(^{323}\) In addition, because of the UK’s position as a major financial destination,\(^{324}\) its capacity to influence other similar minded countries to impose sanctions is significant.\(^{325}\) For instance, third-party countries whose companies want to continue listing on the London Stock Exchange, and who may want to access capital from the market, are obligated to follow financial sanctions imposed against certain countries, individuals and corporations.\(^{326}\) Moreover, the UK is one of the countries that oversees SWIFT, the global payment system.\(^{327}\) Because most banks rely on SWIFT to conduct fast, seamless, secure communication, there is an incentive to remain in good standing with the organization and the EU.\(^{328}\) The latter is because SWIFT is incorporated under Belgian law and must comply with Belgian and EU laws, and follow EU and Belgian sanctions regimes.\(^{329}\) Hence, because of UK influence in Europe and its previous role as a leading EU nation, it plays a key role in how SWIFT operates and in using SWIFT as a sanctions tool.\(^{330}\) The UK’s influence was apparent when it convinced the EU

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326. For instance, under UK’s Regulations 10-15 of the Russia (Sanctions) (EU Exit) Regulations 2019, there is a prohibition of all UK persons from dealing with the funds of these designated persons, as well as from providing them with funds or economic resources, directly or indirectly. See Ali Sallaway, Mark Austin, Ziyad Nassif & Benjamin Ng, *Sanctions: What do they mean for listed companies in the UK in respect of their shareholders?*, FRESHFIELDS BRUCKHAUS DERINGER (Mar. 14, 2022), [https://riskandcompliance.freshfields.com/post/102hmjx/sanctions-what-do-they-mean-for-listed-companies-in-the-uk-in-respect-of-their-s](https://perma.cc/DB8P-PNEJ).


330. It is noteworthy that the EU was the UK’s biggest trading partner, accounting for almost 50% of UK foreign trade in goods in 2019 (48.1%). The UK was the EU’s third biggest trading partner (12.6%), after the United States and China. See *EU trade relations with the United Kingdom. Facts, figures and latest developments*, EUR. COMM’N, [https://policy.trade.ec.europa.eu/eu/trade-relationships-country-and-region/counties-and-regions/united-kingdom_en](https://perma.cc/K8BN-4QCL) (last visited May 4, 2023).
to cut Russian banks from SWIFT. The EU acknowledged that “the decision has been closely coordinated with the EU’s international partners, such as the United States and the United Kingdom.”

Indeed, in a 2017 report, the UK was “widely recognized as playing a leading role in developing the EU’s sanctions policy.” The UK played an important role in the development of EU sanctions on Russia over the crisis in Ukraine. It also helped shape the bloc’s chemical weapons and cyber sanctions regimes. The UK, as an EU member, played a key role in designing and shaping the EU’s regulatory rules. Therefore, the UK has the ability to marshal a coalition of states to impose collective sanctions for the prevention of genocide.

Thus, the UK, as a standalone sanctioning entity and as an important European and global trading partner, has considerable influence on the Chinese economy.

A. UK/Chinese Trade: 1999 - 2019

In 2020, China was among the United Kingdom’s top five trading partners. This trade relationship has a long and significant history. In 1999,
the value of the trade between China and the UK reached $7.874 billion,\textsuperscript{339} a 19.6% increase from the previous year.\textsuperscript{340} It was the second largest trading partner of China within the European Union.\textsuperscript{341} In 1999, British investment in China stood at $9.2 billion with over 2,500 British FDI projects.\textsuperscript{342} A decade later in 2009, the total value of exports from China to the rest of the world were valued at $1,201,647,000,000.\textsuperscript{343} In 1999, the UK imported goods worth $52 billion from China, about 11% of the total imports for that year.\textsuperscript{344} In the same year, China exported goods and services worth $72 billion to the UK.\textsuperscript{345}

In 2018, China was the third top consumer of British travel services, worth $845,050,500.\textsuperscript{346} Other services exported by the UK to China were legal services, accounting, advertising, research and development, engineering, and other technical and professional services.\textsuperscript{347} In the same period, the UK service imports from China were mainly transportation services, which accounted for just over 25% and worth about $557,590,110.\textsuperscript{348} These were mainly passenger and freight transport.\textsuperscript{349} Travel services worth $375,314,800 made up 20% of service imports from China.\textsuperscript{350} These two categories accounted for around 46% of all service imports from China.\textsuperscript{351}

In 2019, the UK’s single largest export to China was non-monetary gold


\textsuperscript{340} Id.

\textsuperscript{341} Id.

\textsuperscript{342} Id.


\textsuperscript{347} Id.

\textsuperscript{348} Id.


\textsuperscript{351} Freya Lawrence & Anthony Myers, Trade and Investment Factsheets, UK DEP’T FOR BUS. & TRADE (Aug. 18, 2023).
valued at $7,725,920,000, which accounted for 27% of all UK goods exported to China for that entire year. Other goods the UK exported to China included petroleum valued at $6,036,250,000, accounting for 19% of all the goods exported to China. Additional goods included road vehicles worth $3,621,735,000 that represented 13% of the total goods exported to China and medicinal and pharmaceutical products valued at $2,414,900,000, which was 7% of the export goods. These goods worth $19,798,395,000 represented 66% of all the goods exported to China in 2019.

In 2019, the UK imported telecommunication equipment from China worth $8,450,225,000 accounting for 16% of all the goods the UK imported from China. In the same period, 11% of goods imported from China were miscellaneous manufactured goods such as toys, sporting goods, etc., worth $6,035,800,000. The UK also imported office machinery worth $6,035,800,000 accounting for 10% of its total Chinese imports. It also imported electrical machinery and equipment worth $4,828,840,000 accounting for 9% of Chinese goods. These goods, worth $19,314,865,000, comprised 46% of the total goods imported to the UK from China in 2019. In 2019, only two other countries and territories, North Macedonia and Gibraltar, imported more from the UK than China. Likewise, only three other countries and territories, the United States, Hong Kong and Japan, imported more from China.

352. Id.
353. Id.
355. Id.
356. Id.
357. Id.
358. Id.
359. Id.
361. Id.
362. Id.
363. Id.
364. Id.

In 2020, China’s goods exports to the UK were worth $72,561,343,000\footnote{284}{Hannah Donnarumma, supra note 346.} while its UK goods imports were worth $19,871,556,000.\footnote{285}{Id.} This represented a positive trade balance of about $52,689,787,000.\footnote{286}{Id.} The UK exported goods worth $18,512,671,000\footnote{287}{Id.} and imported goods worth $75,478,932,000 from China.\footnote{288}{Id.} This represented a negative trade balance worth $56,966,260,000.\footnote{289}{Id.} During the Covid-era in 2022, total exports from the UK to China amounted to $38,407,086,000, representing a 16.1% increase worth $5,330,732,000 from the previous year.\footnote{290}{Id.} In 2022, China was the UK’s fourth largest trade partner with the two countries’ trade accounting for 6.3% of UK’s total trade.\footnote{291}{Id.} Foreign direct investment from the UK to China amounted to $12,953,473,500\footnote{292}{Lawrence & Myers, supra note 351.} accounting for about 0.6% of the total FDI from the UK in 2021.\footnote{293}{Id.} In the same period, the total stock of FDI from China to the United Kingdom was $6,074,800,000, which accounted for 0.3% of total FDI to the UK.\footnote{294}{Id.} These numbers represent a significant downward departure during the pandemic period.

The inward/outward FDI for ASEAN countries generally from 2007 to 2015 presents a similar trend in FDI between China and the UK.\footnote{295}{C. Textor, Annual flow of foreign direct investments from China to the United Kingdom between 2011 and 2021 (in million U.S. dollars), STATISTA (Nov. 28, 2022), \url{https://www.statista.com/statistics/720610/china-outward-fdi-flows-to-the-united-kingdom/} [\url{https://perma.cc/N9AE-54JU}].} There is a steady increase of outward FDI between the two countries.\footnote{296}{Id.} In 2007, the outward FDI to China from the UK amounted to $607,676,020\footnote{297}{See generally Foreign direct investment, net inflows (BoP, current US$) - China, THE WORLD BANK, \url{https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD?locations=CN&} [\url{https://perma.cc/9D6H-X8E7}].} The amount dipped in 2008

trade tilting in favor of the Chinese but which puts China at a greater disadvantage if the UK imposes an embargo against Chinese goods and services.

IV. ‘Effective Influence’ Revisited

A. Historic Embargoes/Sanctions Against China

Among Western States, there is a significant practice of economic sanctions specifically directed at China and individual sanctions directed against those held responsible for actions in Xinjiang. In 1949, the United States imposed sanctions against the sale of military equipment to China and blocked Chinese currency deposits held in American banks. When China intervened in the Korean War, the United States expanded its sanctions. The United States lifted the sanctions in 1972 pursuant to a joint communique and both countries instituted normal relations. Normal relations persisted until 1989. In retaliation of the Chinese quelling of the 1989 Tiananmen Square protests, the United States imposed a new set of sanctions against China. The sanctions barred U.S.-origin satellites from launching on Chinese launch vehicles and included a ban on the sale of radios and radars, missiles, and other items ejusdem generis.

Similarly, on June 26th, 1989, the European Union’s Council of Ministers...
imposed a significant set of sanctions against China. These sanctions prohibited, *inter alia*, “trade in arms with China.” Though there was divergence on the exact application of the sanctions, it is noteworthy that the (arms) embargo imposed by the UK still persists. It was subsequently extended to Macao and to Hong Kong in July 2020.

On July 9th, 2020, the United States announced sanctions against Chinese politicians it claimed were responsible for human rights violations in the Xinjiang Province. The sanctions targeted the financial interests of the Chinese Communist Party’s leaders in the province and their families. Those targeted included the regional party boss, Chen Quanguo, who also sat in the Party’s national Politburo. Other targeted officials were Wang Mingshan, the director of the Xinjiang Public Security Bureau and Zhu Hailun, a senior party member in Xinjiang, and former security official Huo Liujun.


402. Id.


405. Id.


408. Id.


410. Id.


United States designated any domestic transactions with these officials, criminal acts. The United States extended these sanctions to other officials on March 22nd, and designated Wang Junzheng, the Secretary of the Party Committee of the Xinjiang Production and Construction Corps (XPCC), and Chen Mingguo, Director of the Xinjiang Public Security Bureau (XPSB) as perpetrators of serious human rights abuses under the Global Magnitsky Human Rights Accountability Act.

It is important to note that the sanctions imposed, at least since 1989, have been modest in character as compared to a complete trade embargo contemplated in the UK bill. Indeed, the sanctions imposed for China’s actions in Xinjiang (and Hong Kong) has been largely limited to individuals.

Trade sanctions against China have arguably sparked change in the Chinese government’s behavior both domestically and internationally. The early

sanctions of 1949-50 stymied China’s domestic modernization and innovation, and therefore competitiveness in international trade. China remained reliant on USSR technicians until 1960. Reportedly, assistance from the USSR in their attempts to industrialize was modest as the USSR was still recovering from the effects of World War II. One of the key lessons from the embargo was that for an embargo to be successful and effective, it has to be collective.

The West collectively imposed sanctions against China in 1989. Arguably, this was effective in altering the Chinese government’s behavior at home and abroad. China lost its bid to host the 2000 Olympic Games to Australia. China clearly placed importance on hosting the games and had orchestrated a fierce lobbying campaign for the rights but nonetheless, lost owing to its poor human rights record. During the selection process, China released political prisoners such as Wei Jingsheng, in jail since 1979, and

431. Id. at 185.
433. Li, supra note 424 at 321-27.
a prominent Tiananmen Square protestors, Dan Wang, to signal to the world that it respected individuals’ human rights. In 1998, the Chinese government signed the International Convention on Civil and Political Rights, but it has not ratified the treaty to date. Though reform was modest, China’s actions between 1989 and 2000 point to the pressure applied by the relatively modest sanctions collectively imposed on China by the United States and its allies.

In addition, the sanctions slowed economic growth in China for a decade. In 1990 China’s economic growth sank to 3.9% due to international sanctions sparked by the Tiananmen crackdown. In 1988, China’s GDP growth rate was 11.3%. In 1989, the growth dropped to 4.21%. The numbers were dire in 1990 when China recorded an annual GDP growth of only 3.9%. There was a considerable drop in the years following China’s reopening to the world where in 1984, China reported a growth rate of 15.19%. While the growth rate rebounded in 1992, there was a continued drop in the growth numbers for the rest of the 1990s, an affirmation of the impact that the sanctions had on the Chinese economy.


447. Id. at 5.


449. Id.

450. Id.

B. Ukraine-Based Sanctions as a Model

Effectiveness of collective sanctions increasingly plays a vital role in correcting internationally wrongful acts, particularly as states become more dependent on trade with other states. While collective sanctions have been useful in recent history, such as in the former Yugoslavia, nowhere is this clearer than in relation to the contemporary situation with the Ukrainian War. In response to the international criminal act of aggression visited on Ukraine by Russia, the International Criminal Court issued a warrant of arrest against the Russian president. On 21 February 2022, the United States imposed sanctions on certain persons and certain transactions in respect to the Ukrainian War. Other allied nations followed suit. On 25 February 2022, the EU imposed


455. For instance, under UNSC Resolution 757 passed on 30 May 1992, UNSC banned all international trade, scientific and technical cooperation, and sports and cultural exchange and a ban on government officials in Yugoslavia from travelling abroad. UNSC imposed other sanctions such as Resolution 787 of 16 November 1992 imposing a blockade. The US and the EU imposed sanctions to buttress these sanctions. The sanctions led to a world record daily inflation rate of 65% in 1993 where prices went up by 116.5 thousand billion percent, and by 313 million percent in the first three weeks of 1994. By 1999, GDP had fallen to less than half of the country’s GDP in 1989. By 2000, there was a 50% rate of unemployment among the working population. Life savings disappeared and the average monthly salary dropped to about $7. The sanctions led to the Dayton agreements in which parties agreed to cease hostilities. See generally S.C. Res. 757 (May 30, 1992); Milica Stojković, Hyperinflation in Yugoslavia: An Example in Monetary History, 2 Open J. for Stud. Hist. 43, 44-46 (2019); see also S.C. Res. 787 (Nov. 16, 1992); S.C. Res. 820 (Apr. 17, 1993); The WORLD BANK, SERBIA AND MONTENEGRO COUNTRY BRIEF (2003); IMF, Federal Republic of Yugoslavia: Membership and Use of Fund Resources—Request for Emergency Post-Conflict Assistance, Country Report No. 01/07 (Jan. 2001), https://www.imf.org/external/pubs/ft/scr/2001/cr0107.pdf [https://perma.cc/2XS9-RKSL].


cut as sanctions, particularly from EU States, have forced Russia to trade almost exclusively with China and India. Russia’s natural gas and oil energy sector accounts for approximately 70% of all its exports and 18% of its total GDP. Since the loss of its European markets, Russia’s exports in the energy sector have seen a gross decline by nearly 50%. Moreover, due to its desperation to recoup losses Russia has reportedly been selling at a discount of $33.28, or 39%, to Brent crude, thus devastating its foreign trade and its economy generally. It has been observed that only Russia’s impressive capital reserves at the start of the war has economically sustained


477. Share of the oil and gas industry in the gross domestic product (GDP) of Russia from 1st quarter 2017 to 3rd quarter 2022, STATISTA (Mar. 23, 2023), https://www.statista.com/statistics/1322102/gdp-share-oil-gas-sector-russia/ [https://perma.cc/PL4C-VHL7].


483. EUR. COUNCIL, supra note 253.

it during the conflict.\textsuperscript{485}

Additionally, the sanctions have directly impeded Russia’s ability to prosecute its war in Ukraine because much needed military spare parts,\textsuperscript{486} ammunition,\textsuperscript{487} and access to high-tech components needed for its military sector\textsuperscript{488} have been denied to Russia. Thus, Russia has not only been devastated economically by the sanctions,\textsuperscript{489} it has also been denied the means by which it can engage in the internationally wrongful act.\textsuperscript{490} These sanctions and Western assistance,\textsuperscript{491} along with the fighting capabilities of the Ukrainian people,\textsuperscript{492} have thwarted Russian ambitions\textsuperscript{493} and utterly changed the nature of this conflict.\textsuperscript{494}

As states in the modern era increasingly rely on foreign trade as a bulwark of domestic economic security,\textsuperscript{495} collective economic sanctions become a more effective and feared tool. This increased state reliance should have an important impact in determining the “effective influence” standard, increasing even in the

\textsuperscript{485} Russia built an economy like a fortress but the pain is real, AP NEWS (Mar. 10, 2022), https://apnews.com/article/russia-ukraine-business-europe-global-trade-economy-c99ba45b1e36bb2ab80574eaa9e9e4c [https://perma.cc/KHR5-R3SM].


\textsuperscript{495} Fjäder, supra note 454.
years since the Bosnian Genocide case was decided.496

As seen from the sanctions imposed on Russia, a country’s vulnerability to external shocks such as sanctions increases if the country’s economy is deeply embedded in the global economy. Parallels abound between the Russian situation and China’s. Historically, Western governments have imposed sanctions against China; for instance, after it supported North Korea’s invasion of South Korea during the Korean War.497 The sanctions had a limited impact on the Chinese economy because, at the time, China was an economic backwater, heavily reliant upon the Soviet Union even for its scientific and technological advancement.498 However, upon China’s reopening following Mao Zedong’s death,499 the Chinese economy has grown significantly500 and has heavily embraced foreign trade. Unlike China of the 1950s, contemporary China is deeply embedded in the global economy, and its survival is deeply dependent on foreign trade.

Therefore, sanctions against China can effectively influence its conduct regarding Uighur people in Xinjiang. Judging from China’s conduct towards human rights following imposition of Western sanctions after its crackdown on Tiananmen Square protesters, it is likely that pervasive sanctions against China can help prevent genocidal conduct in the Xinjiang region. In addition, several other economic factors militate against China, making it particularly vulnerable to sanctions at this time.


This section briefly discusses some illustrative countervailing economic factors in China that make it particularly vulnerable and would likely reinforce the effectiveness of economic sanctions imposed by the UK and other likeminded countries. None of these factors are offered as dispositive, nor are they intended as harbingers of economic collapse, but in reviewing Chinese

496. See generally Neil R. Richardson & Charles W. Kegley, Trade Dependence and Foreign Policy Compliance: A Longitudinal Analysis, 24 INT’L STUD. Q. 191 (1980). See also, “A loss of trade can also result in the loss of an important market. Consequently, new outlets for exports must be sought or else the factors involved in the production of the export must be relocated. A nation whose exports are concentrated around a limited number of commodities will face the most severe adjustments should trade cease. With the loss of an export market, a nation must either divert its product to a new partner or else consume the export domestically.” Adrienne Armstrong, The Political Consequences of Economic Dependence, 25 J. CONFLICT RESOL. 401 (1981).
497. Hao & Zhihai, supra note 393.
498. Peng, supra note 425.
vulnerability these factors are relevant as part of the calculus in determining the effective influence trade sanctions would have.

1. Chinese Reliance on the Export Market

The Chinese economy relies extensively on trade for its economic growth and survival. Its biggest trading partner is the European Union, and China runs a huge trade surplus with the economic bloc. Additionally, Europe’s leading companies are among the biggest foreign investors in China. Significantly, China has a relatively weak domestic consumer class compared to countries in the EU, the United States or the UK. Despite a large


504. James Kyenge, Sun Yu & Xinning Liu, Xi Jinping’s plan to reset China’s economy and win back friends, THE FIN. TIMES (Jan. 10, 2023), https://www.ft.com/content/e592033b-9c34-4e3d-a53-1fa34a16009 [https://perma.cc/9T3D-XXFH].


506. America’s middle-class families—those with an income that is two-thirds to double the U.S. median household income—had incomes ranging from about USD 48,500 to USD 145,500 in 2018. See Jesse Bennett, Richard Fry & Rakesh Kochhar, Are you in the American middle class? Find out with our income calculator, PEO RSCH. CTR. (Jul. 23, 2020) https://www.pewresearch.org/short-reads/2020/07/23/are-you-in-the-american-middle-class/ [https://perma.cc/PB28-R6NJ]. In China, a typical Chinese middle-income family of three earns between 100,000 yuan (USD 14,772) and 500,000 yuan (USD 74,000) per year. See Ralph Jennings & He Huieng, Middle-class Chinese, Americans differ in plans for a tough 2023 as some dump property while others cut holidays, S. CHINA MORNING POST (Jan. 31, 2023), https://www.scmp.com/economy/global-economy/article/3208466/middle-class-chinese-americans-differ-plans-tough-2023-some-dump-property-while-others-cut-holidays [https://perma.cc/76LJ-ABS/A].

507. UK’s middle-class earns between GBP 26,800 (USD 33,325) and GBP 54,000 (USD 67,148) annually. This is comparatively a larger amount compared to China’s middle-class
population,\textsuperscript{508} household consumption is still low relative to Western States\textsuperscript{509} and insufficient to drive its own economy.\textsuperscript{510} China relies on external investment and consumerism to sustain its economic growth.\textsuperscript{511}

Low domestic consumption is exacerbated by rising household debt occasioned by property investment, which has further reduced consumption abilities.\textsuperscript{512} In 2021, the Chinese household debt as a percentage of disposable income had reached a record high of 130.9 per cent.\textsuperscript{513} Though its middle-class consists of 29\% of the population, China lacks the robust domestic consumption enjoyed by many Western states, particularly the United States.\textsuperscript{514} This means that China is heavily reliant on income from foreign trade for its economic survival.\textsuperscript{515}

\begin{itemize}
\item 508. China’s middle-class stands at 400 million people, which represents 27.9\% of China’s population, compared with 55.9 percent in the United States and more than 70 percent in Britain, Germany, France and other Western countries. See Middle-income group’s quality matters, CHINA DAILY (Apr. 12, 2022), https://global.chinadaily.com.cn/a/202204/12/WS6254bf80a310fd2b29e5651e.html [https://perma.cc/3BGF-82VF].
\item 514. Lina Batarags, China’s middle class is starting to look a lot like America’s, and that’s not a good thing, BUSINESS INSIDER (Dec. 7, 2021), https://www.businessinsider.com/china-middle-class-starting-to-look-like-americas-2021-12 [https://perma.cc/8K2Q-H9GY].
\item 515. See Li Cui, China’s Growing External Dependence, 44 FIN. & DEV., no. 3, 2007; see also China is trying to protect its economy from Western pressure: The results are mixed, THE ECONOMIST (May. 26, 2022), https://www.economist.com/briefing/2022/05/26/china-is-trying-to-protect-its-economy-from-western-pressure [https://perma.cc/3HEF-AV6M].
\end{itemize}
2. China’s Foreign Debt Crisis

Another factor that makes China vulnerable is its foreign debt crisis. In the 2010s, China embarked on the so-called Belt and Road Initiative (BRI). The initiative intended to shape ocean and land trade through the funding of ports, highways, airports and railways in developing countries without the annoying conditions that Western and multilateral lenders demand.\footnote{516} For instance, in Kenya, pundits refer to a Chinese-funded railway as the ‘Railroad to Nowhere’ as it is incomplete and unviable.\footnote{517} There are fears that most of China’s debtor states will default on their loans.\footnote{518} For instance, China repossessed a seaport in Sri Lanka over the country’s inability to service the port’s construction loan.\footnote{519} These occurrences have had an impact over the Chinese economy since Chinese banks were the principal lenders. By 2017, China Development Bank lent an estimated $100 billion while Bank of China committed $20 billion to the initiative.\footnote{520}

China lent Pakistan $23.3 billion making it the highest of Beijing’s borrowers.\footnote{521} Currently, Pakistan’s falling currency rate and a current-account deficit are pushing Islamabad closer to default.\footnote{522} Since 2013, the value of BRI projects and transactions has reached $838 billion. Reportedly, many of China’s debtor states are unlikely to make payment with high chances of default.\footnote{523} In 2020 and 2021, China had to renegotiate loans worth $52 billion, which was


\footnote{518. Jonathan Wheatley, China's foreign loans are becoming a US burden, THE FIN. TIMES (Feb. 24, 2023), https://www.ft.com/content/e08cf77d-0106-4272-968e-aa0c203b19cc [https://perma.cc/2SY7-MM4J].}


\footnote{522. Id.}

more than thrice the sum in 2018.524 As of 2022, the world’s seventy-four
lowest-income countries had debt-service obligations totaling $35 billion, with
$13.1 billion of that amount (37% of the total) owed to China.525 As of 2022,
China accounted for over 50% of all debt owed by poor countries to official
creditors.526 Some of these countries such as Zambia, Sri Lanka, and Ghana have
had to restructure the loans owed to Western multilateral lenders to avoid
default, which Western lenders blame on China’s predatory lending.527 To stave
off defaults, China issued Pakistan with a fresh $700 million to help it weather
its worst economic crisis in a generation.528 Major defaults would negatively
affect the Chinese economy.529 Thus, if sanctions exacerbate China’s current
precarious situation, they may precipitate a collapse of the Chinese financial
sector.530

3. Chinese Reliance on the Real Estate Market for Revenue

China has relied heavily on the real estate sector for its rapid growth in
recent years.531 Indeed, much of China’s government revenue comes from the
sale of land.532 Local governments lease land parcels to companies for a period

524. Yang Wen & Donald Low, How China’s hubris led to a double debt crisis, despite the
benefits of forging its own path, S. CHINA MORNING POST (Aug. 14, 2022),
h https://www.scmp.com/week-asia/opinion/article/3188664/how-chinas-hubris-led-double-debt-
crisis-despite-benefits-forging [https://perma.cc/P7NM-Z8XV].
525. MARTIN CHORZEMPA & ADNAN MAZAREI, POTERSON INST. FOR INT’L ECON., POL’Y
BRIEF 21-10, IMPROVING CHINA’S PARTICIPATION IN RESOLVING DEVELOPING-COUNTRY DEBT
perma.cc/2PSJ-8CLY].
526. Anne O. Krueger, China and the Sovereign-Debt Bomb, PROJECT SYNDICATE Jan. 13,
2023, https://www.project-syndicate.org/commentary/debt-restructuring-china-paris-club-imf-
by-anne-o-krueger-2023-01 [https://perma.cc/3H9F-KFH3].
527. Alan Rappeport, Defaults Loom as Poor Countries Face an Economic Storm, THE N.Y.
TIMES (Dec. 3, 2022), https://www.nytimes.com/2022/12/03/business/developing-countries-debt-
defaults.html [https://perma.cc/EC5W-YBZE].
528. Amy Hawkins, Pakistan’s fresh £580m loan from China intensifies debt burden fears,
THE GUARDIAN (Feb. 23, 2023), https://www.theguardian.com/world/2023/feb/23/pakistan-loan-
china-intensifies-debt-burden-fears [https://perma.cc/CB2L-YK2C].
529. See generally JOHN HURLEY, SCOTT MORRIS & GAILYN PORTELANCE, CTR. FOR GLOB.
DEV., POLICY PAPER 121, EXAMINING THE DEBT IMPLICATIONS OF THE BELT AND ROAD INITIATIVE
FROM A POLICY PERSPECTIVE (2018), https://www.cgdev.org/sites/default/files/examining-debt-
530. Apostolos Apostolou, Alexander Al-Haschimi & Martino Ricci, Financial risks in
China’s corporate sector: real estate and beyond, EUR. CENT. BANK ECON. BULL., no. 2, 2022,
1a563f.en.html [https://perma.cc/C2AW-R36X];
531. Id.
532. 29% of Chinese Fiscal Revenues Derived from Land Sales, CHINA BANKING NEWS (Jan.
21, 2019), https://www.chinabankingnews.com/2019/01/21/29-of-chinese-fiscal-revenues-
derived-from-land-sales/ [https://perma.cc/N5ZG-DG8A].
of years. These leases accounted for about 41.6% of local governments’ revenues in 2021. When coupled with taxes generated from the land, this forms a sizeable chunk of the government’s revenue. State-owned companies use land value as collateral for loans, which provide revenue to fund, inter alia, public welfare projects. In the first six months of 2022, the government sold land worth only $211.8 billion, a 55% drop from the land sold in 2021. The slump on land prices followed a crackdown by the government, beginning in 2020, on developers’ high reliance on debt despite the sector accounting for 25% of China’s GDP. Consequently, residential floor space prices fell by 27% in 2022 and investments in the sector fell by 10%. This situation negatively affects the Chinese economy.

Since the real estate market is tied to debt, the market’s volatility places the banking industry at risk. Concerns related to the Evergrande Group and


536. Sun Yu, China’s local governments boost revenue by selling land to their own entities, FIN. TIMES (Mar. 9, 2023), https://www.ft.com/content/f68a301a-cdd5-4d9b-aac2-492c6561ebbf[https://perma.cc/ZAJ3-VLH3].


541. Id.


543. Yingzhe, supra note 538.

other Chinese real estate companies’ default on loans in 2022\textsuperscript{545} have had an impact on the housing sector, leading to a fall in home prices.\textsuperscript{546} This has had a domino effect on real estate companies and a knock-on effect on the entire economy.\textsuperscript{547} Additionally, in China, home buyers often purchase homes and begin paying mortgages even prior to the home’s construction.\textsuperscript{548} In many large developments where builders have failed to begin construction even after a long delay,\textsuperscript{549} home buyers are refusing to pay mortgages,\textsuperscript{550} impacting both the construction and lending sectors.\textsuperscript{551}

4. The West’s Technological War with China

These challenges come at a time when the West has restricted Chinese access to some of its technologies.\textsuperscript{552} In August 2022, the United States passed the Chips and Science Act.\textsuperscript{553} The law offers a significant subsidy for semiconductor manufacturers to establish and expand operations in the United States.\textsuperscript{554} At the same time, the law bans the export of advanced chips and chip-

\begin{thebibliography}{99}
\bibitem{550} Id.
\end{thebibliography}
making equipment to China. The Netherlands followed the American ban and restricted the overseas sale of semiconductor technology to China in order to protect its national security. The Netherlands is the home base of ASML Holdings (ASML), Europe’s biggest tech firm, which produces the most advanced chip making machines in the world, including those used in China. Taiwan is the largest manufacturer of the most advanced microchips and they zealously guard their intellectual property attempting to keep mainland China out of the market.

5. Geopolitical Tensions over Taiwan

China continues to be mired in a geopolitical contest over the independence of Taiwan, which has heated up in recent years. This has resulted in an economic decoupling of Taiwan from China. According to Taiwan’s Investment Commission, Taiwanese FDI in China dropped from a high of $9 billion in 2017...


559. Shead, supra note 557.


561. Taiwan’s dominance of the chip industry makes it more important, THE ECONOMIST (Mar. 6, 2023) https://www.economist.com/special-report/2023/03/06/taiwans-dominance-of-the-chip-industry-makes-it-more-important# [https://perma.cc/8DG6-G8FE].

562. Clark, supra note 560.

to a low of $1.7 billion in 2022.564 Thus, China’s importance in the economic fortunes of Taiwan has increasingly diminished.565

6. Effects of Zero-COVID Measures Taken by China

China continues to reel from a long, self-imposed isolation over the COVID-19 pandemic.566 The isolation has had immense effect on Chinese economic growth.567 In 2022, the Chinese GDP only grew by 3%,568 which is a figure significantly below the official target of 5.5%.569 These figures may have informed China’s willingness to open up the country without taking any phased measures regarding the COVID-19 pandemic as continued isolation would have led to more GDP hemorrhage.570

7. Reduced Domestic Growth

Another factor that makes China vulnerable is its reduced domestic growth.571 The reduction in the growth has been linked to increased household

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565. Id.

566. Cf. Laura He, *China’s economic recovery loses steam as factory production contracts further*, CNN BUSINESS (May 31, 2023) (stating that although China ended its zero-covid policy at the end of 2022, its economy was still struggling to recover for various reasons) https://edition.cnn.com/2023/05/30/economy/china-pmi-economy-intl-hnk/index.html [https://perma.cc/3PXG-C2F9].


In 2020, for instance, household debt as a percentage of GDP was 62% at the end of the year’s second quarter. This was a reduction of 0.1% at the end of 2019. By the end of 2020, household debts as a percentage of disposable income had reached a record level of 130.9 percent. This has led to a cash crunch that reduces spending and thus impedes consumer-led growth from consumption of goods and services within China. While Chinese authorities recognize that consumption is key in driving the economy in the face of external shocks, the behavioral responses of households and businesses pose a risk to the long-term stabilization of economic growth through domestic consumption.

8. Demographic Crisis

Perhaps the most challenging and long-term issue bedeviling the Chinese economy is its demographic crisis. In 2022, China’s population declined for the first time in 60 years. The government announced that 9.56 million people were born in China in 2022, while 10.41 million people died. This was the first time that deaths outnumbered births in China since the "Great Leap Forward." In addition, the birth rate fell to a record low while the number of...
the elderly continues to rise.\textsuperscript{584} This situation has the potential of overburdening healthcare infrastructure and destabilizing the pension system.\textsuperscript{585} The state pension pool amounts to less than 10 percent of the country’s gross domestic product,\textsuperscript{586} a rate that is below the 50 to 100 per cent of GDP in “most countries”.\textsuperscript{587} In the past, Chinese economic development relied on the high proportion of working age citizens for its growth.\textsuperscript{588} The aging population slows growth because of structural constraints of a shrinking workforce,\textsuperscript{589} increased government spending\textsuperscript{590} and a strained pension system.\textsuperscript{591} It also fuels shortages in labor supply driving increases in labor costs.\textsuperscript{592} Moreover, this will likely lead to an encroachment of the Chinese markets in offshore manufacturing to other Southeast Asian countries like Viet Nam and India.\textsuperscript{593} There are also fears that an aging population will lead to a path, similar to that of Japan,\textsuperscript{594} where the economy will enter decades of economic stagnation.\textsuperscript{595}


\textsuperscript{587} Id.


\textsuperscript{590} Id.

\textsuperscript{591} Id.

\textsuperscript{592} Id.


CONCLUSION

The question posed is whether unilateral economic sanctions, and enabling legislation, can amount to a binding state obligation under international law as a matter of due diligence in respect to the Genocide Convention. Relying on the Bosnian Genocide case and general principles of international law this essay argues that such sanctions are binding obligations or should be so interpreted. In this respect the UK Parliament was incorrect in not passing the amendment to its trade bill, and other similarly situated states are likewise failing to meet their state obligations under the Convention. Such a reading of the Bosnian Genocide case and the articulation, or even expansion, of state obligation is not lightly offered but rather only binding under certain contextual conditions. Such conditions are foreseeably extant in the scenario proffered in the UK Trade Bill amendment. They include *jus cogens* protections,⁵⁹⁶ binding treaty⁵⁹⁷ and customary international law norms,⁵⁹⁸ state capacity to influence,⁵⁹⁹ the likelihood of collective economic sanctions⁶⁰⁰ and the vulnerability of the offending state.⁶⁰¹

As an initial observation, economic sanctions are a preferred tool as they are easier to carry out,⁶⁰² do not involve military engagement or direct violence⁶⁰³ and are reasonable and proportionate such that the sanctioning state need not make sacrifices beyond its capacity. Economic sanctions are usually temporary.⁶⁰⁴ The elasticity of the international marketplace can offset short-term imbalances and resume eventual economic stasis.⁶⁰⁵ This has become evident in the sanctions placed on Russia and the relatively minimal consequences for the sanctioning states.⁶⁰⁶ Moreover, imposition of economic sanctions is consistent with the principles of international law when they are imposed upon states for violating *jus cogens* norms,⁶⁰⁷ particularly considering states obligations to prevent genocide in the Convention as confirmed in the

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⁵⁹⁶. See Martin, supra note 220.
⁵⁹⁷. Kunz, supra note 32.
⁵⁹⁸. Kayan, supra note 147.
⁵⁹⁹. Heieck, supra note 213.
⁶⁰⁰. Özdamar & Shahin, supra note 23.
⁶⁰¹. Miller, supra note 238.
⁶⁰³. Id. at 20.
⁶⁰⁵. See Özdamar & Shahin, supra note 23 at 1649-52.
Bosnian Genocide case.\textsuperscript{608} Thus, such an obligation is reasonable and consistent with international law norms.

The heart of this issue is the “effective influence” test. Under the Bosnian Genocide case such an obligation can only arise if the state has the capacity to impact the offending conduct.\textsuperscript{609} It is not required to be a complete cure, but only have some effect, and that it would be more likely than not to impact the behavior.\textsuperscript{610} When viewed from a contextual analysis the UK Trade Bill amendment should have been passed. The abundant context in this case includes a significant trade relationship between the UK and China\textsuperscript{611} meaning that UK sanctions would have evident impact even as a standalone initiative. Moreover, as with the pervasive Russian sanctions, also in response to violation of a \textit{jus cogens} norm, such legislation would eventually lead to collective sanctions, which would greatly magnify the consequences for China.\textsuperscript{612} The measure of their effectiveness would be based on the scope of the sanctions, but the amendment to the UK Trade Bill, as drafted, was pervasive and widespread – targeting trade \textit{per se}, not just individuals or certain industries. Pervasive action of this order would have a great effect and not bear the same barren fruit that sanctions imposed on individuals in Hong Kong after the National Security Law\textsuperscript{613} effectively ended the “one country, two systems” principles previously set out.\textsuperscript{614} Such sanctions would also be effective in influencing the offending conduct because historically China has responded to sanctions, such as after the Tiananmen Square event, and eventually moderated its human rights stance.\textsuperscript{615} Thus, there is precedent for economic sanctions influencing Chinese policy.

Moreover, China is particularly vulnerable to economic sanctions, more than during the time of Tiananmen because it is now an economically engaged nascent superpower.\textsuperscript{616} Its economy is heavily dependent upon foreign trade and foreign investment\textsuperscript{617} with lagging domestic earning and spending.\textsuperscript{618} Dependence on foreign trade and investment make China more vulnerable than many other states and more so than at the time of Tiananmen Square.\textsuperscript{619} Additionally, while many states face economic challenges, China faces a virtual Pandora’s box of economic woe in the near future. Most of these issues are

\begin{footnotes}
\item[608] See Bosnian Genocide case (2007), \textit{supra} note 11.
\item[609] Id.
\item[610] See Dupuy, \textit{supra} note 211.
\item[611] See HL Deb (7 Nov. 2022) (825) col. 451, \textit{supra} note 375.
\item[612] See MARTIN, \textit{supra} note 220.
\item[614] Id. at 171.
\item[616] See Huang & Lardy, \textit{supra} note 263.
\item[617] See XINHUA, \textit{supra} note 267.
\item[618] Tobin, \textit{supra} note 571.
\end{footnotes}
publicly available but include structural vulnerability, poor financial management, endangered real estate markets and lending institutions, failed foreign policy initiatives with the debacle of ill-advised massive foreign loans, the arguably failed Belt and Road Initiative, lagging access to technology, etc. Perhaps its most serious problem is the demographic perils it faces with a disproportionately aging population and too few young workers, the product of the multi-generational one child policy.

Considering the relatively low bar for effective influence as an obligation of conduct and not result and viewed under the lens of the UK’s continued economic significance to China, China’s economic vulnerability, the likelihood the trade bill would lead to collective sanctions, and the lessons learned from the sanctions of Russia, this essay postulates that this satisfies the mandates of the Bosnian Genocide case and that the UK was under a state obligation to pass the legislation or otherwise impose similar executive measures. Any other conclusion renders the state obligations under the Genocide Convention as nothing more than a paper tiger, or as Judge Kreca stated in his dissenting opinion as only a “metaphysical duty.”

621. Id.
627. See Bosnian Genocide case (2007), supra note 11.
628. See OBSERVATORY OF ECON. COMPLEXITY, supra note 388.
629. See Huang & Lardy, supra note 263.
630. See Ozdamar & Shahin, supra note 23.
631. See Bosnian Genocide case (2007), supra note 11.