

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

MARK KIELSGARD* & JOSHUA KEMBERO OGEA**

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

* Professor Kielsingard has resided in Hong Kong for 14 years and is tenured at City University of Hong Kong School of Law, where he has taught and researched in Human Rights Law, Criminal Law and International Law subjects.

** Dr. Joshua Kembero Ogega holds a PhD from the City University of Hong Kong's School of Law. His PhD research focused on the interplay between Artificial Intelligence, Human Rights Law, and International Law. He is a licensed attorney in Kenya and teaches law in Kenya, at the Moi University's School of Law.

1. *See Report of the International Law Commission covering its second session, 5 June - 29 July 1950*, [1950] 2 Y.B. Int'l L. Comm'n 374-78, A/1316 (listing the principles of international law recognized in the charter of the Nürnberg Tribunal and in the judgment of the Tribunal, with commentaries).

2. *Responsibility of States for Intentionally Wrongful Acts*, [2001] 2 Y.B. Int'l L. Comm'n 29, A/56/10 (providing in Article 41(1) that states should cooperate in using "lawful means" to end the violation of preemptory norms of international law).

3. DAVID A. HAMBURG, PREVENTING GENOCIDE: PRACTICAL STEPS TOWARD EARLY DETECTION AND EFFECTIVE ACTION 101-04 (2015).

4. *See* Mark Kielsingard & Tam Hey Juan Julian, *Autocatalytic Models of Counter-terrorism in East and Southeast Asia: An International Comparative Analysis of China, Indonesia, and Thailand*, GEO. WASH. INT'L L. REV. 461, 469 (2018).

5. *See generally* Mark D. Kielsingard, *Restorative Justice for the Armenians, Resolved: It's the Least We Can Do*, 24 CONN. J. INT'L L. 1, 1-2 (2008).

6. *See generally* Saul Mendlovitz & John Fousek, *Enforcing the Law on Genocide*, 21(2) ALTS.: GLOB., LOC., POL. 237, 237-58 (1996).

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

8. *Id.* art. 41.

9. GREGORY STANTON, THE TEN STAGES OF GENOCIDE (2016), <http://www.genocidewatch.net/wp-content/uploads/2012/06/The-Ten-Stages-of-Genocide-handout.pdf> [<https://perma.cc/Q9QY-3QN5>].

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 case¹¹ before the International Court of Justice endeavored to address the questions, *inter alia*, concerning both extraterritoriality¹² and the preconditions of “effectively influencing”¹³ the course of the genocide as the legal standard for creating a state obligation.¹⁴ However, the decision arguably left more questions than answers.¹⁵

In the United Kingdom, there has recently been debate regarding heightened state-on-state unilateral economic sanctions.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.¹⁷ Though the measures failed to pass Parliament,¹⁸ proponents argued that the binding effect of the Convention and customary international law obligates states to take such measures.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

11. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. and Herz. v. Serb. and Montenegro), Judgment, 2007 I.C.J. 43 (Feb. 26) [hereinafter Bosnian Genocide case].

12. *Id.* ¶ 183.

13. *Id.* ¶ 430.

14. *Id.* ¶ 432.

15. See generally David Turns, *Application of the Convention on the Prevention of the Crime of Genocide: Bosnia and Herzegovina v Serbia and Montenegro*, 8 MELB. J. INT'L L. 398, 398 (2007); see also Marko Milanović, *State Responsibility for Genocide: A Follow-Up*, 18 EUR. J. INT'L L. 669, 669 (2007).

16. See Aditya Raj, *Questioning the Legality of Unilateral Economic Sanctions*, OBSERVER RSCH. FOUND. (Nov. 23, 2022), <https://www.orfonline.org/expert-speak/questioning-the-legality-of-unilateral-economic-sanctions/> [https://perma.cc/CVK6-LUB8]; see also Idriss Jazairy, *Unilateral Economic Sanctions, International Law, and Human Rights* 33 ETHICS & INT'L AFFS. 291, 291-302 (2019); see generally Chad Bray, *British MPs Call for Government to Take Further Measures Against China over Treatment of Uyghurs*, S. CHINA MORNING POST (Jan. 21, 2022), <https://www.scmp.com/news/china/article/3164154/british-mps-call-government-take-further-measures-against-china-over> [https://perma.cc/VM2H-N4PH]; see also Hilary Clarke, *Britain: Report Calls for Tougher Sanctions Against China over Treatment of Uyghur Muslims*, S. CHINA MORNING POST (Jul. 8, 2021), <https://www.scmp.com/news/world/europe/article/3140235/britain-report-calls-tougher-sanctions-against-china-over> [https://perma.cc/JG5A-EJCB].

17. See HL Deb (25 Nov. 2021) (816), <https://hansard.parliament.uk/lords/2021-11-25/debates/223D9BC0-8758-4DC5-A66D-D0E2753B62F9/ChinaGenocide> [https://perma.cc/M7MB-9SHU].

18. See Patrick Wintour, *UK free to make trade deals with genocidal regimes after Commons vote*, THE GUARDIAN (Jan. 19, 2021), <https://www.theguardian.com/world/2021/jan/19/uk-free-to-make-trade-deals-with-genocidal-regimes-after-commons-vote> [https://perma.cc/2BW2-28VU].

19. See generally INT'L BAR ASS'N'S HUM. RTS. INST., *Legal Considerations Arising from the Proposed Genocide Amendment to the UK Trade Bill Friday* (Jan. 15, 2021), <https://www.leighday.co.uk/media/yvhby5yw/ibahri-briefing-note-on-uk-genocide-amendment-trade-bill-2021jan-final-2.pdf> [https://perma.cc/66WC-YFT7].

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.²⁰ They argue that sanctions make importation of food and medicine impossible and inadvertently lead to unnecessary collateral death.²¹ 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.²² 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.²³

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 construed²⁴ 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.²⁵ This also presupposes that

20. See generally Mary Ellen O’Connell, *Debating the Law of Sanctions*, 13 EUR. J. INT’L L. 63, 63-79 (2002).

21. See arguments about sanctions on the Iraq government during Saddam Hussein’s reign in George Bisharat, *Sanctions as Genocide*, 11 J. TRANSNAT’L L. & CONTEMP. PROBS. 379, 379 (2001). See arguments regarding the effects of sanctions on Zimbabwe in Joshua Chakawa, *Why sanctions have not worked: Zimbabwe’s experience from 2001-2021*, 10 THIRD WORLD THEMATICS 205, 205-18 (2022).

22. See Judge ad hoc Lauterpacht’s observations in Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. and Herz. v. Yugoslavia (Serb. and Montenegro)), Order (Sept. 13, 1993), <https://www.icj-cij.org/sites/default/files/case-related/91/091-19930913-ORD-01-00-EN.pdf>; see generally RICHARD N. HAASS, ECONOMIC SANCTIONS AND AMERICAN DIPLOMACY 201 (1998); Peter Andreas, *The Clandestine Political Economy of War and Peace in Bosnia* 48 INT’L STUD. Q. 29, 33-35 (2004).

23. See generally Özgür Özdamar & Evgeniia Shahin, *Consequences of Economic Sanctions: The State of the Art and Paths Forward*, 23 INT’L STUDS. REV. 1646, 1646-71 (2021).

24. See generally Mark Gibney, *Universal Duties: The Responsibility to Protect, the Duty to Prevent (Genocide) and Extraterritorial Human Rights Obligations*, 3 GLOB. RESP. TO PROTECT 123, 123-51 (2011); see also Abe Chauhan, *A Causal Model for the Extraterritorial Application of Human Rights Treaties* OXFORD U. UNDERGRADUATE L.J. 107, 107-35 (2019); Sheri P. Rosenberg, *Responsibility to Protect: A Framework for Prevention*, 1 GLOB. RESP. TO PROTECT 442, 442-77 (2009); Marko Milanović, *State Responsibility for Genocide: A Follow-Up*, 18 EUR. J. INT’L L. 669, 669-94 (2007).

25. See generally Eyal Mayroz, *The legal duty to ‘prevent’ after the onset of ‘genocide’*, 14(1) J. GENOCIDE RSCH. 79, 79-98 (2012); see also Mohamed S. Helal’s comments on effectively influencing the prevention of genocide in *Symposium: On Territoriality, Power, and Influence—A Review of John Heieck’s A Duty to Prevent Genocide: Due Diligence Obligations among the P5*, OPINIO JURIS (Dec. 12, 2018), <http://opiniojuris.org/2018/12/12/symposium-on-territoriality->

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.²⁶ 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.²⁷ These policies include “enforced disappearances, torture, murder, sexual violence and so on.”²⁸ There are credible reports that the Chinese government's actions in Xinjiang is the

power-and-influence-a-review-of-john-heiecks-a-duty-to-prevent-genocide-due-diligence-obligations-among-the-p5/ [https://perma.cc/L46X-9FBU].

25. See U.N. OFF. HIGH COMM'R FOR HUM. RTS., *China: UN experts deeply concerned by alleged detention, forced labour of Uyghurs* (Mar. 29, 2021), [https://www.ohchr.org/en/press-releases/2021/03/china-un-experts-deeply-concerned-alleged-detention-forced-labour-uyghurs?](https://www.ohchr.org/en/press-releases/2021/03/china-un-experts-deeply-concerned-alleged-detention-forced-labour-uyghurs?LangID=E&NewsID=26957) LangID=E&NewsID=26957.

26. Bosnian Genocide case (2007), *supra* note 11.

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

28. Isaac Chotiner, *Why Hasn't the U.N. Accused China of Genocide in Xinjiang?*, THE NEW YORKER (Sept. 13, 2022) <https://www.newyorker.com/news/q-and-a/why-hasnt-the-un-accused-china-of-genocide-in-xinjiang> [https://perma.cc/U759-T7E4].

largest incarceration of an ethno-religious minority since World War II.²⁹ The Chinese government has subjected Uighurs and other Turkic Muslims to ‘re-education’ and ‘thought transformation’ and ‘forced labour.’³⁰ 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.’³¹

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.³² As a State Party to the Convention³³ and consistent with the objective of genocide prevention, the UK considered sanctioning China³⁴ (and Myanmar) with targeted economic sanctions³⁵ for acts committed against the Uighurs and the Rohingya, respectively through the Trade Bill 2019-21.³⁶ 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.³⁷

When introduced in the House of Commons, the original bill did not contain any provisions on genocide.³⁸ An amendment dated 6 Jan. 2021 in HL Bill 160

29. See Colm Keena, *Mass internment of Uighur people in camps laid bare in leaked documents*, IRISH TIMES (Nov. 24, 2019), <https://www.irishtimes.com/news/world/asia-pacific/china-cables-the-largest-incarceration-of-a-minority-since-the-holocaust-1.4089726> [https://perma.cc/Y2AN-TS5H].

30. Austin Ramzy & Chris Buckley, ‘*Absolutely No Mercy*’: *Leaked Files Expose How China Organized Mass Detentions of Muslims*, THE N.Y. TIMES (Nov. 16, 2019), <https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html> [https://perma.cc/6FPB-T6E7].

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).

32. See generally Josef L. Kunz, *The United Nations Convention on Genocide*, 43 AM. J. INT’L L. 738, 738-46 (1949). See also George A. Finch, *The Genocide Convention*, 43 AM. J. INT’L L. 732, 732-38 (1949).

33. Claire Brader, *Genocide: bringing perpetrators to justice*, HL LIBR. (May 21, 2021), <https://lordslibrary.parliament.uk/genocide-bringing-perpetrators-to-justice/> [https://perma.cc/5HGN-3BYB].

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

35. *Id.*

36. *Id.*

37. See Patrick Wintour, *Rebels aim to insert genocide amendment in UK-China trade bill*, THE GUARDIAN (Jan. 18, 2021), <https://www.theguardian.com/world/2021/jan/18/rebels-aim-to-insert-genocide-amendment-in-uk-china-trade-bill> [https://perma.cc/2WWP-9Z9A].

38. See generally Trade Bill 2020, HC Bill [120] (UK).

first introduced provisions concerning genocide.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).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.⁴¹ On 22 March 2021, UK parliamentarians narrowly voted by 318 to 300 to reject the 'genocide amendment' to the Trade Bill 2019-2021.⁴² The Trade Bill received a royal assent on 29 April 2021.⁴³ 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.⁴⁴

II. OBLIGATION 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 case⁴⁵ at the International Court of Justice in 2007. The court's decision outlined the legal nature⁴⁶ and scope⁴⁷ of the obligation to prevent. It also pronounced itself on the extraterritoriality of the obligation.⁴⁸

A. Legal Nature of the Obligation to Prevent

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

39. U.K. PARLIAMENT, *Lord Alton of Liverpool's amendment, After Clause 2*, <https://bills.parliament.uk/bills/2729/stages/12454/amendments/72479> [https://perma.cc/32K3-S3M5] (last visited March 16 2023).

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/lbill/58-01/164/5801164.pdf> [https://perma.cc/2GYU-8LHL].

41. UK PARLIAMENT, *Lords agrees to Commons Trade Bill compromise*, <https://www.parliament.uk/business/news/2020/september/lords-debates-trade-bill/> (last visited 11 March 2023).

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.

42. *Id.*

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.

44. Genocide Determination Bill 2022, HL Bill [23] (UK).

45. Bosnian Genocide case (2007), *supra* note 11, ¶ 64.

46. *Id.* ¶ 430.

47. *Id.*

48. *Id.* ¶ 183.

ambiguity on whether the duty is legal, social, or political.⁴⁹ In particular, there is obscurity regarding the binding character of Article V obligating State Parties to enact laws⁵⁰ and Article VIII enabling State Parties to call on the competent organs of the UN to take actions⁵¹ for, *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 *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.”⁵²

Eventually, the majority of the Court decided to dispose of the question in the clearest terms possible in its Judgement of 26 February 2007.⁵³ The Court first stated that “Article I does impose distinct obligations over and above those imposed by other Articles of the Convention.”⁵⁴ It further elaborated that the obligation is both “normative” and “compelling,”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.⁵⁶ Judge Kreća, in

49. See generally Orie L. Phillips & Eberhard P. Deutsch, *Pitfalls of the Genocide Convention*, 56 A.B.A. J. 641, 641-46 (1970).

50. For instance, see the discussion on the application of Article V in Wenqi Zhu & Binxin Zhang, *China in Expectation of Prosecuting the Crimes of Genocide in China*, in *CONFRONTING GENOCIDE, IUS GENTIUM: COMPARATIVE PERSPECTIVES ON LAW AND JUSTICE* 7 (R. Provost, P. Akhavan eds., 2011); see also debates on the application of Article V in the United States in Myres S. McDougal and Richard Arens, *The Genocide Convention and the Constitution*, 3 VAND. L. REV. 683, 683-710 (1950); John M. Raymond, *Genocide: An Unconstitutional Human Rights Convention*, 12 SANTA CLARA LAW. 294, 294-318 (1972); Ben Saul, *The Implementation of the Genocide Convention at the National Level*, in *THE UN GENOCIDE CONVENTION: A COMMENTARY* 58 (Paola Gaeta ed., 2009). Saul argues that in “one sense, Article V of the Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter the ‘Genocide Convention’ or ‘Convention’) is an unremarkable (or even superfluous) machinery provision which simply requires the incorporation of the Convention’s obligations into domestic law.” See Scott’s argument on why article V was not fully implemented in Australia in, Shirley Scott, *Why Wasn’t Genocide A Crime in Australia?: Accounting for the Half-century Delay in Australia Implementing the Genocide Convention*, 10 AUSTL. J. HUM. RTS. 159, 159-78 (2004).

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 *alleged acts threatened world peace*.” O.F Polish, *Genocide: A commentary on the Convention*, 58 YALE L.J. 1142, 1148 (1949) (emphasis added).

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

53. See generally Bosnian Genocide case (2007), *supra* note 11.

54. *Id.* ¶ 165.

55. *Id.* ¶ 427.

56. *Id.*

a Separate Opinion, dissented stating that the duty to prevent genocide is a “social, moral, even metaphysical duty,”⁵⁷ but when categorized as a legal duty, it violates the principle of *impossibilia nulla obligatio est*.⁵⁸ 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.⁵⁹

B. Extraterritoriality

Apart from the above, another issue was the extraterritoriality of the obligation to prevent genocide.⁶⁰ Before the 2007 judgment, some of the Court’s judges found the question of extraterritoriality controversial.⁶¹ 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.⁶² 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.⁶³ However, Judge Tarassov questioned this rationale, stating that “extraterritoriality” lacks balance and practicality.⁶⁴

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,⁶⁵ the substantive obligation arising from Articles I and III are not limited by territory.⁶⁶ 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.⁶⁷ Judge Tomka, in the Separate Opinion, also endorsed this view.⁶⁸ He noted that State Parties could

57. *Id.* at 457, ¶ 113 (separate opinion of Kreća, J. *ad hoc*).

58. *Id.*

59. *Id.* at 338, 340 (declaration of Skotnikov, J.).

60. See generally Paola Gaeta, *On What Conditions Can a State Be Held Responsible for Genocide?* 18 EUR. J. INT’L L. 631, 631-48 (2007).

61. See generally the Dissenting Opinion of Judge *ad hoc* Kreća in Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary Objections (Yugoslavia v. Bosnia and Herzegovina) (Feb. 3, 2003), <https://www.icj-cij.org/sites/default/files/case-related/122/122-20030203-JUD-01-00-EN.pdf>.

62. Bosnian Genocide Case (2007), Order, 1993 I.C.J. at 444, ¶ 114 (Sept. 13) (separate opinion of Lauterpacht, J. *ad hoc*).

63. *Id.* ¶ 115.

64. Bosnian Genocide Case (2007), Order, 1993 I.C.J. at 3, 27 (April 8) (declaration of Tarassov, J.).

65. Bosnian Genocide case (2007), *supra* note 11, ¶ 184.

66. *Id.* ¶ 183.

67. *Id.*

68. Bosnian Genocide Case (2007), Judgment, 2007 I.C.J. at 310, ¶ 40 (Feb. 26) (separate opinion of Tomka, J.).

not extend the universality approach as a duty to punish.⁶⁹ Judge Kreca differed and stated that only UN organs have the duty to prevent a genocide occurring outside a particular territory.⁷⁰

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”.⁷¹ Notwithstanding the absence of a dispute between the Parties on the interpretation of the obligation to prevent in *Bosnian Genocide*,⁷² the Court took the initiative to formulate not only the condition precedent for the obligation to arise,⁷³ but also steps that State Parties have to take to discharge the obligation.⁷⁴ 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.⁷⁵ 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.⁷⁶ 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.⁷⁷ Thus, states have a three-prong test: (1) whether the measures are otherwise consistent with international law;⁷⁸ (2) whether the measures are reasonable;⁷⁹ and (3) whether the measures are calculated to effectively influence the course of the genocide.⁸⁰

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*).

71. See WILLIAM A. SCHABAS, *GENOCIDE IN INTERNATIONAL LAW: THE CRIMES OF CRIMES* 72 (2000).

72. *Bosnian Genocide case* (2007), *supra* note 11, ¶ 159.

73. *Id.* ¶ 160-62.

74. *Id.* ¶ 428-32.

75. *Id.* ¶ 431-32 (emphasis added).

76. *Id.* ¶ 430.

77. *Id.*

78. See generally M. Shervin Majlessi, *Use of Economic Sanctions under International Law: A Contemporary Assessment*, 39 CAN. Y.B. INT’L L. 253, 253-331 (2002).

79. See Enzo Cannizzaro, *The role of proportionality in the law of international Countermeasures*, 12 EUR. J. INT’L L. 889, 889-916 (2001).

80. *Bosnian Genocide case* (2007), *supra* note 11, ¶ 430.

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

81. Int'l L. Comm'n, Rep. On the Work of Its Fifty-Third Session, *Responsibility of States for Internationally Wrongful Acts*, Art. 2, U.N. Doc. A/56/10 (2001).

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).

84. *Anglo-Iranian Oil Co. (U.K. v. Iran)*, Judgment, 1952 I.C.J. 93 (July 22).

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.

88. *Case of the monetary gold removed from Rome in 1943 (It. v. Fr., U.K. and U.S.)*, Judgment, 1954 I.C.J. 19 (June 15).

89. See Marko Milanović, *State Responsibility for Genocide*, 17 *EUR. J. INT'L L.* 553, 553-604 (2006).

90. See INT'L L. COMM'N, *Conclusion 17 of Draft conclusions on identification and legal consequences of peremptory norms of general international law (jus cogens)*, 2 *Y.B. INT'L L. COMM'N* (2022).

the imposition of unilateral sanctions.⁹¹ While the UN General Assembly has passed several resolutions prohibiting such sanctions⁹², the resolutions are not binding.⁹³ The resolutions also do not have the force of customary international law due to the many objections by persistent objectors.⁹⁴ Indeed, the PCIJ, in *Lotus*, held that there are no presumptions or assumptions regarding restrictions related to the independence of states.⁹⁵ The only thing that is required under international law is that a state not violate international law restrictions when exercising its jurisdiction.⁹⁶ The ICJ reiterated this in *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.⁹⁷ An economic sanction cannot be presumed as contrary to international law unless that sanction breaches either treaty obligations to which both states are parties⁹⁸, or a violation of customary international law.⁹⁹

In *Nicaragua*, the ICJ reiterated the existence of customary international law as prohibiting states from interfering in the affairs of other countries.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.¹⁰¹ There is a prohibition on external interference seeking to tamper with those decisions.¹⁰² Therefore, economic sanctions imposed by the United States, including cessation of international aid, did not amount to an intervention.¹⁰³ Moreover, the ICJ set up a two-prong test to determine if economic sanctions amounted to

91. See Iryna Bogdanova, *The Legality of Unilateral Economic Sanctions under Public International Law*, in UNILATERAL SANCTIONS IN INTERNATIONAL LAW AND THE ENFORCEMENT OF HUMAN RIGHTS 59-158 (2022).

92. See generally Rebecca Barber, *An Exploration of the General Assembly's Troubled Relationship with Unilateral Sanctions*, 70 INT'L & COMP. L.Q. 343, 343-78 (2021).

93. "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights." G.A. Res. 3281 (XXIX), art. 32 (Sept. 12, 1974).

94. See MATTHEW HAPPOLD, *ECONOMIC SANCTIONS AND INTERNATIONAL LAW: AN INTRODUCTION* 5 (2016).

95. See Hugh Handeyside, *The Lotus Principle in ICJ Jurisprudence: Was the Ship Ever Afloat?*, 29 MICH. J. INT'L L. 71, 71-94 (2007).

96. See *S.S. Lotus (Fr. v. Turk.)*, 1927 P.C.I.J. (ser. A) No. 10, at 19 (Sept. 7).

97. *Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.)*, Judgment, ¶ 276 (June 27, 1986).

98. See generally Tom Ruys, *Sanctions, Retorsions and Countermeasures: Concepts and International Legal Framework*, in RESEARCH HANDBOOK ON UN SANCTIONS AND INTERNATIONAL LAW (Larissa van den Herik ed., 2016).

99. See generally J. Curtis Henderson, *Legality of Economic Sanctions Under International Law: The Case of Nicaragua*, 43 WASH. & LEE L. REV. 167, 167-96 (1986).

100. *Id.* ¶ 202.

101. *Id.* ¶ 205.

102. *Id.* ¶ 202.

103. *Id.* ¶ 245.

a violation of the principle of non-intervention. Firstly, the intervention must target matters that a state should freely determine without outside influence.¹⁰⁴ Secondly, the intervention employed must use methods of coercion.¹⁰⁵ 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.¹⁰⁶ The principle of non-intervention will not apply.¹⁰⁷ This is because all states have an interest in such matters.¹⁰⁸

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.¹⁰⁹ For instance, the sanctions should not violate *jus ad bellum* as mandated by the UN Charter.¹¹⁰ This means that the sanctioning state should not use sanctions in a manner amounting to an act of aggression.¹¹¹ 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.¹¹² These conditions include, firstly, that the targeted states must have committed an internationally wrongful act.¹¹³ Secondly, the sanctioning state must establish that it is an "injured state."¹¹⁴ Thirdly, the measures should aim at inducing the targeted state to comply with its obligations.¹¹⁵ Fourthly, the measures must be proportionate.¹¹⁶ The measures

104. See Maziar Jamnejad & Michael Wood, *The Principle of Non-intervention*, 22 LEIDEN J. INT'L L. 345, 345-81 (2009).

105. *Id.* ¶ 205.

106. Eirini-Erasmia Fasia, *No Provision Left Behind – Law of the Sea Convention's Dispute Settlement System and Obligations Erga Omnes*, 20 L. & PRAC. INT'L CTS. & TRIBUNALS 519, 520 (2021).

107. *Id.* ¶ 194.

108. *Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain)*, Judgment, 1970 I.C.J. 1 (Feb. 5).

109. See Julia Schmidt, *The Legality of Unilateral Extra-territorial Sanctions under International Law*, 27 J. CONFLICT & SEC. L. 53, 71 (2022).

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.

111. See generally Martin Domb, *Defining Economic Aggression in International Law: The Possibility of Regional Action by the Organization of American States*, 11 CORNELL INT'L L. J. 85, 85-105 (1978).

112. See, *Articles on the Responsibility of States for Internationally Wrongful Acts*, 2 Y.B. INT'L L. COMM'N 75, arts. 49-54, A/CN.4/SER.A/2001/Add.1 (Part 2).

113. See James Crawford, *The ILC's Articles on Responsibility of States for Internationally Wrongful Acts: A Retrospect*, 96 AM. J. INT'L L. 874, 880-82 (2002).

114. See Kyoji Kawasaki, *The "Injured State" In the International Law of State Responsibility*, 28 HITOTSUBASHI J. L. & POL. 17, 17-20 (2000).

115. See Eliza Fitzgerald, *Helping states help themselves: Rethinking the Doctrine of Countermeasures*, 16 MACQUARIE L.J. 67, 71 (2016).

116. See Mary Ellen O'Connell, *Debating the Law of Sanctions*, 13 EUR. J. INT'L L. 63, 77 (2002); see generally Thomas M. Franck, *On Proportionality of Countermeasures in International Law*, 102 AM. J. INT'L L. 715, 715-67 (2008).

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 perspective¹²⁸ by permitting a court to consider various principles or methods as

117. Oscar Schachter, *Dispute Settlement and Countermeasures in the International Law Commission*, 88 AM. J. INT’L L. 471, 471-77 (1994).

118. *Id.*

119. Barcelona Traction, *supra* note 108, ¶ 34.

120. *Id.* ¶ 33.

121. See Talya Ucaryilmaz, *The Principle of Proportionality in Modern Ius Gentium*, 36 UTRECHT J. INT’L EUR. L. 14, 16 (2021).

122. *Id.*

123. See Thomas Cottier, Roberto Echandi, Rachel Leichti-McKee, Tetyana Payosova & Charlotte Sieber, *The Principle of Proportionality in International Law: Foundations and Variations*, 18 J. WORLD INV. & TRADE 628, 629 (2017).

124. See Gabčíkovo-Nagymaros Project (Hung./Slovk.), Judgment, 1997 I.C.J. 7, ¶ 85 (Sept. 25).

125. North Sea Continental Shelf (Fed. Rep. of Ger./Neth.), Judgment, 1969 I.C.J. 3, ¶ 60 (Feb. 20).

126. Oliver Corten, *The Notion of ‘Reasonable’ in International Law: Legal Discourse, Reason and Contradictions*, 48 INT’L COMPAR. L.Q. 613, 615 (1999).

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 rule¹²⁹ in situations the imperative rule did not envisage or take into account.¹³⁰

Reasonableness and proportionality, while closely related, denote different scenarios under the law. Reasonableness covers a wider area compared to proportionality.¹³¹ A measure may be proportional but unreasonable.¹³² Reasonableness requires a test of *rationality* whereas proportionality requires a *relationship* test. Reasonableness requires the application of facts that are enough to induce a certain state of mind in a reasonable person.¹³³ The law assumes that where the basis of a decision are beliefs and actions one considers irrational, then the decision fails the reasonableness test.¹³⁴ These irrational beliefs include but are not limited to unfounded threats, emotions, and anxiety.¹³⁵ An example of an irrational belief is that the red color attracts lightning strikes.¹³⁶ These beliefs also include “superstitions, paranormal and pseudoscientific beliefs, conspiracy theories etc.”¹³⁷ Proportionality requires a judgement of the relationship between “an end, amounting to a need, and a means to satisfy the end.”¹³⁸ When determining the proportionality of a measure, one asks whether the end justifies the means.¹³⁹ 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*.¹⁴⁰ A decision is proportional if its basis is context-specific when looked at from the eyes of an ordinary reasonable person.¹⁴¹

129. *Id.* ¶ 90.

130. *Id.* ¶ 54.

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>].

132. *Id.*

133. *Id.*

134. Giovanni Sartor, Giorgio Bongiovanni & Chiara Valentini, *Reasonableness in international law*, in OXFORD BIBLIOGRAPHIES IN INTERNATIONAL LAW (Tony Carty ed., 2016).

135. See Nanaki 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).

136. 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-mn-17246-story.html> [<https://perma.cc/B6SC-VLPY>].

137. See Iris Žeželj & Ljiljana B. Lazarević, *Irrational Beliefs*, 15 EUR. J. PSYCH. 1, 1 (2019).

138. DOWNES, *supra* note 131 at 12.

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).

140. Sartor, Bongiovanni & Valentini, *supra* note 134.

141. See Janneke Gerards, *How to improve the necessity test of the European Court of Human Rights*, 11 INT'L J. CONST. L. 466, 470-73 (2013).

To determine proportionality, the state actions ought to serve a *legitimate purpose or objective*.¹⁴² Secondly, there must be a *causal link* between the alleged purpose and the action.¹⁴³ Thirdly, the actions must meet the *proportionality criterion*¹⁴⁴ by comparing what is generally done or legally done with the present action.¹⁴⁵ 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.¹⁴⁶

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.¹⁴⁷ This objective arises out of the obligation in Article I of the Genocide Convention¹⁴⁸ and ICJ's ruling in the Bosnian Genocide case.¹⁴⁹ 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.¹⁵⁰ 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.¹⁵¹ An example given to affirm this position is the grain embargo on the Soviet Union over its incursion into Afghanistan in 1980.¹⁵² The embargo raised the cost of grain to the Russians by \$225 million (\$799,435,542

142. See Lori F. Damrosch, *The Legitimacy of Economic Sanctions as Countermeasures for Wrongful Acts*, 37 BERKELEY J. INT'L L. 249, 255 (2019).

143. See Alexander Hofer, *The Proportionality of Unilateral "Targeted" Sanctions: Whose Interests Should Count?*, 89 NORDIC J. INT'L L. 399, 403 (2020).

144. *Id.* at 401.

145. Corten, *supra* note 126, at 623.

146. Hofer, *supra* note 143, at 401.

147. See Joshua M. Kayan, *The Obligation to Use Force to Stop Acts of Genocide: An Overview of Legal Precedents, Customary Norms, and State Responsibility*, 7 SAN DIEGO INT'L L.J., 461, 461-90 (2006); see also Louise Arbour, *The Responsibility to Protect as a Duty of Care in International Law and Practice* 34 REV. INT'L STUD. 445, 445-58 (2008).

148. See Paola Gaeta, *On What Conditions Can a State Be Held Responsible for Genocide?*, 18 EUR. J. INT'L L., 631, 631-48 (2007).

149. Bosnian Genocide case (2007), *supra* note 11, ¶ 430.

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.

151. See generally Farmer's arguments regarding such sanctions. Richard D. Farmer, *Costs of Economic Sanctions to the Sender*, 23 WORLD ECON. 93, 93-117 (2002).

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 AFG. 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 inflation¹⁵³) leading the Soviets to turn to other sources such as Argentina.¹⁵⁴ The embargo cost the United States an estimated \$2.3 billion (\$ 8,882,617,140 when adjusted for inflation¹⁵⁵). It led American farmers to lose their dominant market share in grains imported by the Soviet Union,¹⁵⁶ a position they did not recapture until 2003.¹⁵⁷ Nonetheless, this did not affect the United States enough to qualify as disproportionate as the bar is set high with mass *jus cogens* violations¹⁵⁸ such as military aggression and presumably mass genocide.¹⁵⁹

Another example to buttress this contention is the current sanctions imposed on Russia by most of its trade partner nations around the world.¹⁶⁰ 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 €0.03.¹⁶¹ Motorists paid €2.13 for a litre of gasoline at the pump and €2.225 per litre of diesel, which was an increase of €0.55.¹⁶² 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.¹⁶³ 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.¹⁶⁴ In Germany and the EU, there was a drop of 16% with a litre of petrol selling at €

153. FED. RSRV. BANK OF MINNEAPOLIS, *Inflation Calculator*, <https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator> [https://perma.cc/QCN5-F9M6] (last visited Apr. 30, 2023).

154. Animesh Ghoshal, *The Effect of the Embargo on Grain Exports to the Soviet Union on the Exchange Rate*, 20 NEB. J. ECON. & BUS. 37, 42 (1981).

155. FED. RSRV. BANK OF MINNEAPOLIS, *supra* note 153.

156. ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., BULL. NO. 503, EMBARGOES, SURPLUS DISPOSAL, AND U.S. AGRICULTURE: A SUMMARY 13-15 (1986).

157. Lance Davis & Stanley Engerman, *History Lessons: Sanctions: Neither War nor Peace*, 17 J. ECON. PERS. 187, 194 (2003).

158. *See generally* Kamrul Hossain, *The Concept of Jus Cogens and the Obligation Under the U.N. Charter*, 3 SANTA CLARA J. INT'L L. 72 (2005).

159. *See generally* Thomas Franck, *On Proportionality of Countermeasures in International Law*, 102 AM. J. INT'L L. 715-67 (2008).

160. Minami Funakoshi, Hugh Lawson & Kannaki Deka, *Tracking sanctions against Russia*, REUTERS (Mar. 10, 2022), <https://www.reuters.com/graphics/UKRAINE-CRISIS/SANCTIONS/byvrjenzmve/> [https://perma.cc/94ZS-8Q3J].

161. Tatjana Schweizer, *What's behind rising gas prices in Germany?*, DEUTSCHE WELLE (Mar. 20, 2022), <https://www.dw.com/en/whats-behind-rising-gas-prices-in-germany/a-61193549>.

162. *Germany sees 'highest fuel prices on record' in 2022*, THE LOCAL (Nov. 7, 2022), <https://www.thelocal.de/20221107/germany-sees-highest-fuel-prices-on-record-in-2022>.

163. James Sillars, *Ukraine war: Fuel prices hit new UK records with diesel averaging £1.61 amid warnings of worse to come*, SKY NEWS (Mar. 7, 2022), <https://news.sky.com/story/ukraine-war-fuel-prices-hit-new-uk-records-with-diesel-averaging-1-61-amid-warnings-of-worse-to-come-12559818> [https://perma.cc/AT9M-QRS8].

164. Ben Clatworthy, *Petrol prices fall below 150p a litre for first time since Ukraine invasion*, THE TIMES (Jan. 10, 2023), <https://www.thetimes.co.uk/article/uk-petrol-fuel-price-falls-150p-litre-pump-nq69xzrw9> [https://perma.cc/HM5H-U58B].

1.78 at the pump.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.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.¹⁶⁷

Moreover, trade sanctions are a reasonable alternative compared to other alternatives.¹⁶⁸ While sanctions have often not historically had a particularly good success rate,¹⁶⁹ the United Nations Security Council¹⁷⁰ or a member State acting unilaterally¹⁷¹ can use sanctions as a basis for coercion, to constrain, and for signaling.¹⁷² Even though UNSC sometimes uses sanctions for constraining and signaling, it mainly uses them for coercion.¹⁷³ Nonetheless, UNSC sanctions have only been effective in coercing in 10% of the time¹⁷⁴ and effective in constraining and signaling in 27% of the time.¹⁷⁵ They were only effective 22%

165. Average price for Super E10 fuel in Germany from January 2014 to March 2023 (in euro cents per liter, STATISTA, Mar. 7, 2023, <https://www.statista.com/statistics/1292467/super-10-fuel-average-price-germany/> [<https://perma.cc/23FX-DT5U>].

166. See Jake Epstein, *Putin's army can't figure out how to use tanks, and the battlefield in Ukraine is littered with burnt wrecks*, INSIDER (Mar. 4, 2023), <https://www.businessinsider.com/russias-losing-armor-ukraine-because-cant-use-its-tanks-properly-2023-3> [<https://perma.cc/VFL9-DAMD>]; see also Mark Urban, *The cost of the Ukraine war for one Russian regiment*, BBC (Apr. 6, 2023), <https://www.bbc.com/news/world-europe-65179074> [<https://perma.cc/43DQ-7UAY>].

167. John Psaropoulos, *Europe leaps towards energy autonomy as sanctions undercut Russia*, ALJAZEERA (Feb. 28, 2023), <https://www.aljazeera.com/news/2023/2/28/europe-leaps-towards-energy-autonomy-as-sanctions-undercut-russia> [<https://perma.cc/9255-UMSR>].

168. David Baldwin, *The Sanctions Debate and the Logic of Choice*, 24 INT'L SEC., no. 4, 2000, at 83-84.

169. Jaleh Dashti-Gibson, Patricia Davis & Benjamin Radcliff, *On the Determinants of the Success of Economic Sanctions: An Empirical Analysis*, 41 AM. J. POL. SCI. 608, 608-18 (1997); see also Asif Khan & Andrew Mack, *The Efficacy of UN Sanctions*, 31 SEC. DIALOGUE 279, 279-92 (2000).

170. U.N. Charter art. 39.

171. R. Mohamad, *Unilateral Sanctions in International Law: A Quest for Legality*, in ECONOMIC SANCTIONS UNDER INTERNATIONAL 71, 71-83 (Ali Marossi & Marisa Basset eds., 2015).

172. See generally *id.*; see also David J. Lektzian & Christopher M. Sprecher, *Sanctions, Signals, and Militarized Conflict*, 51 AM. J. POL. SCI. 415, 415-31 (2007); Taehee Whang, Elena McLean & Douglas W. Kuberski, *Coercion, Information, and the Success of Sanction Threats*, 57 AM. J. POL. SCI. 65, 65-81 (2013); Thomas Biersteker & Peter A.G. van Bergeijk, *How and When do Sanctions Work? The Evidence*, in ISS REPORT NO. 25, ON TARGET? EU SANCTIONS AS SECURITY POLICY TOOLS 19-20 (Iana Dreyer & José Luengo-Cabrera eds., 2015).

173. Thomas Biersteker, Sue E Eckert, Marcos Tourinho & Zuzana Hudáková, *UN targeted sanctions datasets (1991-2013)*, 55 J. PEACE RSCH. 404, 404-12 (2018).

174. Dursun Peksen, *When Do Imposed Economic Sanctions Work? A Critical Review of the Sanctions Effectiveness Literature*, 30 DEF. & PEACE ECON. 635, 637 (2019).

175. Biersteker, Eckert, Tourinho & Hudáková, *supra* note 173, at 5.

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 law¹⁷⁸ 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 1979¹⁸⁴ 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.*

177. See Andrew Mack & Asif Khan, *The Efficacy of UN Sanctions*, 31 SEC. DIALOGUE 279, 290 (2000).

178. See generally George A. Lopez & David Cortright, *The Sanctions Era: An Alternative to Military Intervention*, 19 FLETCHER F WORLD AFFS. 65, 65 (1995).

179. Anu Bradford & Omri Ben-Shahar, *Efficient Enforcement in International Law*, 12 CHI. J. INT'L L. 375, 380-81 (2012).

180. Ohyun Kwon, Constantinos Syropoulos & Yoto Yotov, *The Extraterritorial Effects of Sanctions* 31 (CESifo, Working Paper No. 9578, 2022).

181. *Id.*

182. The Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, 22 U.S.C. §§ 6021-6091.

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].

184. *Iran Hostage Crisis*, ENCYCLOPAEDIA BRITANNICA, <https://www.britannica.com/event/Iran-hostage-crisis> [https://perma.cc/FY3V-3H9R] (last visited Feb. 8, 2024).

185. *Id.*

186. See Werner Wiskari, *Allies Move to End Sanctions Against Iran*, THE N.Y. TIMES (Jan. 21, 2017), <https://www.nytimes.com/1981/01/21/us/allies-move-to-end-sanctions-against-iran.html> [https://perma.cc/48Z3-3PTF].

187. GARY SAMORE, SANCTIONS AGAINST IRAN: A GUIDE TO TARGETS, TERMS, AND TIMETABLES 3-5 (2015).

extension of those sanctions to firms dealing with the Iranian government.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 1696.¹⁸⁹ Other allied countries including Australia,¹⁹⁰ Canada,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 2012.¹⁹² The sanctions negatively affected the Iranian economy leading to its adoption of the Joint Comprehensive Plan of Action on 18 October 2015.¹⁹³

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,¹⁹⁴ the prices eased as soon as Europe and the UK were able to access oil from sources other than Russia.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.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.¹⁹⁷ To effectively influence does not

188. *Id.* at 5.

189. S.C. Res. 1737, (Dec. 23, 2006).

190. AUSTL. DEP'T OF FOREIGN AFF. AND TRADE, SNAPSHOT IRAN SANCTIONS REGIME (2019).

191. *Canadian Sanctions Related to Iran*, GOVERNMENT OF CANADA (Nov. 11, 2008), https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/iran.aspx?lang=eng [<https://perma.cc/GE9U-6KDE>].

192. SAMORE, *supra* note 187, at 9.

193. The Joint Comprehensive Plan of Action is Commonly Known as the Iran Nuclear Deal. Joint Comprehensive Plan of Action, July 14, 2015.

194. Sillars, *supra* note 163.

195. See Stanley Reed, *Natural Gas Prices in Europe Fall to Pre-Invasion Levels*, THE N.Y. TIMES (Jan. 3, 2023), <https://www.nytimes.com/2023/01/03/business/europe-natural-gas-prices.html> [<https://perma.cc/SS6W-3UYZ>].

196. See Stanley Reed, *A Parade of Tankers Has Eased Europe's Energy Crisis*, THE N.Y. TIMES (Nov. 21, 2022), <https://www.nytimes.com/2022/11/16/business/europe-energy-natural-gas.html> [<https://perma.cc/7P75-B6CA>].

197. Whitney K. Taylor & Hollie Nyseth Brehm, *Sanctioning Genocide: To What Effect?* 64 SOCIO. PERSP. 1081, 1083 (2021).

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.*

202. Advaya Hari Singh Singh, *A Clear Standard of Proof in Disputes Before the ICJ: Are We There Yet?* CAMBRIDGE INT'L L.J. (Mar. 5, 2021), <http://cilj.co.uk/2021/03/05/a-clear-standard-of-proof-in-disputes-before-the-icj-are-we-there-yet/> [<https://perma.cc/YS9K-A3Q6>]; see also Sharngan Aravindakshan, *Cyberattacks: a look at evidentiary thresholds in International Law*, 59 INDIAN J. INT'L L. 285, 285-99 (2021).

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.²⁰⁷ Russell clarifies the duty as being only as *contributing* (emphasis added) to avoiding the damage (harm).²⁰⁸ The phrase “effectively influence,” while arguably vague, should be interpreted as persuading the target state to take some positive steps in correcting offending behavior.²⁰⁹ This doesn’t require a showing of complete cessation of offending conduct²¹⁰ but at least a reduction of same.²¹¹ 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.²¹²

A residual consideration in the interpretation of the phrase ‘effective influence’ is capacity.²¹³ The state obligation becomes operative only if the sanctioning state has the capacity to effectively influence the course of the genocide.²¹⁴ 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.²¹⁵ Despite growing international economic interdependence²¹⁶ 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).

209. See generally Serena Forlati, *The Legal Obligation to Prevent Genocide: Bosnia v. Serbia and Beyond*, 31 POL. Y.B. INT’L L. 189 (2011).

210. See Bosnia 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.*

211. See Pierre-Marie Dupuy, *Reviewing the Difficulties of Codification: On Ago’s Classification of Obligations of Means and Obligations of Result in Relation to State Responsibility*, 10 EUR. J. INT’L L. 371, 380 (1999), <http://www.ejil.org/pdfs/10/2/587.pdf> [<https://perma.cc/ZRD3-V4SK>].

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.*

213. See JOHN HEIECK, A DUTY TO PREVENT GENOCIDE 13-71 (2018).

214. *Id.* at 28.

215. Michael Brzoska, *The Power and Consequences of International Sanctions*, E-INT’L RELS. (May 19, 2014), <https://www.e-ir.info/2014/05/19/the-power-and-consequences-of-international-sanctions/> [<https://perma.cc/5V88-WMEQ>].

216. Henry Farrell & Abraham L. Newman, *Weaponized Interdependence: How Global Economic Networks Shape State Coercion*, 44 INT’L SEC. 42 (2019).

other states to halt conduct the other states regard as matters of national competence.²¹⁷ However, in the course of the most significant *jus cogens* violations such as aggression²¹⁸ or genocide,²¹⁹ unilateral economic sanctions can gain traction amongst other states to impose similar sanctions or “collective economic sanctions.”²²⁰ 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.²²¹ 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 states²²² and the likelihood of collective economic sanctions.²²³ Reference is made to other measures in place by the United States,²²⁴ EU,²²⁵ Australia,²²⁶ and Canada²²⁷ 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 Power Competition*, 6 J. GLOB. SEC. STUD., no. 4, 2021.

218. Roger S. Clark, *Negotiating Provisions Defining the Crime of Aggression, its Elements and the Conditions for ICC Exercise of Jurisdiction Over It*, 20 EUR. J. INT’L L. 1103 (2009).

219. Rachel K. Fischer and Kelly Myer Polacek, *Genocide*, 52 REFERENCE & USER SERVS. Q. 291 (2013).

220. LISA L. MARTIN, COERCIVE COOPERATION: EXPLAINING MULTILATERAL ECONOMIC SANCTIONS 40-43 (1992).

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 HEIECK, *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*, EURONEWS (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 Chinese firms aiding Russia’s war machine*, REUTERS (May 8, 2023), <https://www.reuters.com/world/brussels-plans-slap-sanctions-chinese-companies-aiding-russias-war-machine-ft-2023-05-07/> [<https://perma.cc/868W-BDGA>].

226. Chris Buckley and Damien Cave, *Australia Took on China. Did It Get It Right?*, THE N.Y. TIMES (Oct. 6, 2021), <https://www.nytimes.com/2021/09/27/world/australia/australia-china-relations.html>.

227. Ryan Patrick Jones, *Canada sanctions 4 Chinese officials for human rights abuses in Xinjiang*, CBC NEWS (Mar. 22, 2021), <https://www.cbc.ca/news/politics/canada-china-sanctions-xinjiang-1.5959080> [<https://perma.cc/9WJD-3AJR>].

Moreover, “capacity” can also be determined in the nature of the sanctions.²²⁸ Whether unilateral or collective, sanctions must be “pervasive” to be effective.²²⁹ Sanctions that target individuals or specific industries alone are usually not sufficiently pervasive to be effective.²³⁰ This was evident in sanctions imposed against Zimbabwean officials and their close associates and relatives²³¹ in the early 2000’s.²³² Despite these sanctions, the human rights situation in Zimbabwe remains dire.²³³ For instance, most individuals banned from visiting the United States under the auspices of those sanctions²³⁴ had little prospect of travelling to the United States even before the ban²³⁵ rendering the sanctions of little consequence.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.²³⁷ States are considerably more vulnerable if they have a modern economy deeply embedded in the international trading system.²³⁸ Therefore, the failure of the sanctions to effectively influence the government of Zimbabwe

228. Jaleh Dashti-Gibson, Patricia Davis, and Benjamin Radcliff, *On the Determinants of the Success of Economic Sanctions: An Empirical Analysis*, 41 AM. J. POL. SCI. 608 (1997).

229. Elizabeth Rosenberg, Zachary K. Goldman, Daniel Drezner & Julia Solomon-Strauss, *New Data on the Effects of Sanctions Targeting States*, in THE NEW TOOLS OF ECONOMIC WARFARE 18-24 (2016).

230. Cynthia Chipanga & Torque Mude, *An Analysis of the Effectiveness of Sanctions as a Law Enforcement Tool in International Law: A Case Study of Zimbabwe from 2001 to 2013*, 5 OPEN J. POL. SCI. 291, 300-02 (2015).

231. *EU imposes sanctions on Zimbabwe*, THE GUARDIAN (Feb. 18, 2002), <https://www.theguardian.com/world/2002/feb/18/zimbabwe> [<https://perma.cc/ED55-BZ3Z>]; see also Eric Oteng, *SADC urges US, EU to lift Zimbabwe sanctions*, AFRICA NEWS (Aug. 18, 2019), <https://www.africanews.com/2019/08/18/sadc-urges-us-eu-to-lift-zimbabwe-sanction/> [<https://perma.cc/3C8L-LF6F>]; *U.S. Zimbabwe*, CNN (Feb. 22, 2002), <https://edition.cnn.com/2002/WORLD/africa/02/22/us.zimbabwe/index.html> [<https://perma.cc/YV2G-AF4N>].

232. THE GUARDIAN, *supra* note 231.

233. See generally Joshua Chakawa, *Why sanctions have not worked: Zimbabwe’s experience from 2001-2021*, 8 THIRD WORLD THEMATICS 205 (2022).

234. See *Zimbabwe sanctions: Sadc calls on US and EU to drop policy*, BBC (Aug. 18, 2019), <https://www.bbc.com/news/world-africa-49386829> [<https://perma.cc/MH23-VMJJ>].

235. See generally ISS Pretoria, *The curious case of Zimbabwe sanctions*, ISS TODAY (Oct. 25, 2022), <https://issafrica.org/iss-today/the-curious-case-of-zimbabwe-sanctions> [<https://perma.cc/4QS4-QHRP>].

236. Jan Grebe, *And They Are Still Targeting: Assessing the Effectiveness of Targeted Sanctions against Zimbabwe*, 45 AFRICA SPECTRUM 3 (2010).

237. In 2000, when Zimbabwe started receiving most of its sanctions, its GDP was USD 8,135,800,000. See Chidochashe L. Munangagwa, *The Economic Decline of Zimbabwe*, 3 GETTYSBURG ECON. REV. 113 (2009). Contrast this GDP with that of the US at the time which stood at USD 9.26 trillion. Therefore, Zimbabwe’s economic output was a negligible part of the world’s GDP. See Virginia H. Mannerling, *Gross Domestic Product, Fourth Quarter 2000 “advance” estimate*, BUREAU OF ECON. ANALYSIS (Jan. 31, 2001), <https://www.bea.gov/news/2001/gross-domestic-product-fourth-quarter-2000-advance-estimate> [<https://perma.cc/C2YB-N7YG>].

238. See generally Nicholas L. Miller, *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-f5edb7c1849548423e8442e69ef14767> [<https://perma.cc/3TCT-QJWK>].

241. G.A. Res. A/RES/ES-11/1 (Mar. 2, 2022).

242. Jeanne Whalen, *Sanctions forcing Russia to use appliance parts in military gear*, U.S. SAYS, THE WASH. POST (May 11, 2022), <https://www.washingtonpost.com/technology/2022/05/11/russia-sanctions-effect-military/> [<https://perma.cc/ZB25-SRZE>].

243. Mihail Nikolaevich Dudin, *Russia's Integration in the World Economy and its Economic Security*, 21 EUR. RES. STUD. J. 624 (2018).

244. *Id.* at 628.

245. Nicholas Mulder, *The Sanctions Weapon*, INT'L MONETARY FUND FIN. & DEV. (June 2022), <https://www.imf.org/-/media/Files/Publications/Fandd/Article/2022/June/Mulder.ashx> [<https://perma.cc/S5CH-2WLE>].

246. *Id.*

247. *Id.*

248. U.S. DEP'T AGRIC., GAIN REPORT NO. RS1911, RUSSIAN FEDERATION EXPORTER GUIDE ANNUAL 2018 at 2 (2019).

249. *Id.*

250. *Id.*

251. THE WORLD BANK, RUSSIA INTEGRATES: DEEPENING THE COUNTRY'S INTEGRATION IN THE GLOBAL ECONOMY 11 (2020), <https://documents1.worldbank.org/curated/en/921181607959469524/pdf/Russia-Integrates-Deepening-the-Country-s-Integration-in-the-Global-Economy.pdf> [<https://perma.cc/ZNT5-JKUL>].

252. U.N. DEV. PROGRAMME, *Export Dependence and Export Concentration*, in TOWARDS HUMAN RESILIENCE: SUSTAINING MDG PROGRESS IN AN AGE OF ECONOMIC UNCERTAINTY 20-21 (2011).

253. *Infographic - Impact of sanctions on the Russian economy*, EUR. COUNCIL, <https://www.consilium.europa.eu/en/infographics/impact-sanctions-russian-economy/> [<https://perma.cc/R7BR-4LC8>] (last visited Apr. 30, 2023).

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.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.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.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 1995.²⁵⁹ 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.²⁶⁰ Russia is also less capable of sourcing ammunitions²⁶¹ with reports that it is sourcing weapons from as far as South Africa.²⁶²

Similarly, the Chinese economy is deeply embedded in the global economy²⁶³ which makes it vulnerable to export sanctions.²⁶⁴ Pervasive sanctions can effectively influence its behavior considering that in 2022, China's share of exports in gross domestic product (GDP) amounted to

256. Anna Cooban & Radina Gigova, *Russia to cut oil output by 5% as sanctions bite*, CNN BUSINESS (Feb. 10, 2023), <https://edition.cnn.com/2023/02/10/energy/russia-oil-output-cut/index.html> [https://perma.cc/ZE67-RL4N].

257. Andrey Gurkov, *How Putin's war destroyed Russia's business model*, DEUTSCHE WELLE, (Dec. 28, 2022) <https://www.dw.com/en/how-putins-war-destroyed-russias-business-model/a-64224006> [https://perma.cc/ZZ7D-MLWA].

258. Julian Lee, *Russia Can't Replace the Energy Market Putin Broke*, BLOOMBERG (Jan. 30, 2023), <https://www.bloomberg.com/opinion/articles/2023-01-29/russia-can-t-replace-the-energy-market-putin-broke?embedded-checkout=true> [https://perma.cc/7QYS-PJPY].

259. Vladimir Soldatkin, *Russian pipeline gas exports to Europe collapse to a post-Soviet low*, REUTERS (Dec. 28, 2022), <https://www.reuters.com/business/energy/russian-pipeline-gas-exports-europe-collapse-post-soviet-low-2022-12-28/>.

260. Jon Jackson, *Russia Forced to Create 'Frankenstein' Tanks from Spare Parts: Report*, NEWSWEEK (Mar. 8, 2023), <https://www.newsweek.com/russia-forced-frankenstein-tanks-spare-parts-1786430> [https://perma.cc/76L3-V39P]; see also Christiaan Hetzner, *Russia's largest tank manufacturer may have run out of parts*, FORTUNE (Mar. 22, 2022), <https://fortune.com/2022/03/22/russian-tank-manufacturer-sanctions-ukraine-war/> [https://perma.cc/VW7J-TJ7Z].

261. Brad Lendon, *Russia having difficulty making new weapons, but might have enough older ones, report says*, CNN NEWS (Apr. 19, 2023), <https://edition.cnn.com/2023/04/19/europe/russia-weapons-production-report-intl-hnk-ml/index.html> [https://perma.cc/3XL4-EVUN].

262. Kopano Gumbi, Wendell Roelf & Daphne Psalidakis, *South Africa rejects U.S. accusations of arms shipment to Russia*, REUTERS (May. 12, 2023), <https://www.reuters.com/world/africa/south-african-minister-we-didnt-approve-any-arms-shipment-russia-2023-05-12/> [https://perma.cc/Q7Z4-CXCL].

263. Tianlei Huang & Nicholas R. Lardy, *China is Too Tied to the Global Economy to Risk Helping Russia*, PETERSON INST. FOR INT'L ECON. (Mar. 15, 2022), <https://www.piie.com/blogs/realtime-economic-issues-watch/china-too-tied-global-economy-risk-helping-russia> [https://perma.cc/7TJF-6RQU].

264. *Id.*

approximately 19.8 percent,²⁶⁵ an increase of 0.8% from the previous year.²⁶⁶ When coupled with the fact that China takes up 14.7 percent of the global export market²⁶⁷ and has been leading the world for fourteen consecutive years,²⁶⁸ collective sanctions can have a big footprint on its economic wellbeing.²⁶⁹ China's overreliance on the export market for its growth²⁷⁰ 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,²⁷¹ 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 economy²⁷² and one of the most powerful countries in the world²⁷³ means that it likely has the capacity to influence the actions of any state committing acts of genocide, even on a

265. Yihan Ma, *Share of exports in gross domestic product (GDP) in China in selected years from 2000 to 2022*, STATISTA (Mar. 2, 2023), <https://www.statista.com/statistics/256591/share-of-chinas-exports-in-gross-domestic-product/> [<https://perma.cc/7YEE-PDHG>].

266. *Id.*

267. *China's Foreign Trade Hits Record High in Challenging Year*, XINHUA (Jan. 14, 2023), <https://english.news.cn/20230114/dd9d7df9d8a34d4caa0b9621494e3abd/c.html> [<https://perma.cc/RW7K-W9JR>].

268. *Id.*

269. See Matteo Pinna Pintor, Marc Suhrcke & Christoph Hamelmann, *The impact of economic sanctions on health and health systems in low-income and middle-income countries: a systematic review and narrative synthesis*, 8 *BMJ GLOBAL HEALTH* (2023), <https://gh.bmj.com/content/bmjgh/8/2/e010968.full.pdf> [<https://perma.cc/8CGC-9AZU>].

270. Ellen Zhang & Ryan Woo, *Chinese economy's export pillar shows cracks from global slowdown*, REUTERS (Sept. 15, 2022), <https://www.reuters.com/world/china/chinese-economy-export-pillar-shows-cracks-global-slowdown-2022-09-15/> [<https://perma.cc/GAR6-C7CG>].

271. See Majlessi, *supra* note 78.

272. See *High income*, THE WORLD BANK, <https://data.worldbank.org/income-level/high-income?view=chart>.

273. *Power*, US NEWS, <https://www.usnews.com/news/best-countries/rankings/power> [<https://perma.cc/298Q-3ZX4>] (last visited Apr. 30, 2023).

standalone basis. As one of China's biggest trade partners,²⁷⁴ this influence is heightened. Additionally, China is particularly vulnerable to economic sanctions as they have recently suffered significant economic downturns²⁷⁵ and face potential, or even likely, serious threats to their future economic health.²⁷⁶ Furthermore, a UK trade embargo would be a genocide prevention measure that other developed nations would likely collectively join,²⁷⁷ further threatening the vulnerable Chinese economy.²⁷⁸

British historical ties to Europe in fighting expansionism has implications for potential collective trade sanctions on China.²⁷⁹ Though the UK is no longer a member of the European Union,²⁸⁰ it has strong historical ties to Europe.²⁸¹ These ties are even stronger in the context of fighting for human rights,²⁸² counter-genocide,²⁸³ and international criminal law generally.²⁸⁴ A contemporary example of cooperation in imposing trade sanctions in response

274. *China trade balance, exports and imports by country 2020*, WORLD INTEGRATED TRADE SOL., <https://wits.worldbank.org/CountryProfile/en/Country/CHN/Year/2020/TradeFlow/EXPI MP/Partner/by-country> [<https://perma.cc/WBK7-WSZL>] (last visited Aug. 23, 2023).

275. See generally Milton Ezrati, *China Is Suffering a Major Financial Crisis*, FORBES (Oct. 3, 2022), <https://www.forbes.com/sites/miltonezrati/2022/10/03/china-is-suffering-a-major-financial-crisis/?sh=46403a864775> [<https://perma.cc/B5GB-WSKP>]; see also *Five reasons why China's economy is in trouble*, BBC (Oct. 5, 2022), <https://www.bbc.com/news/world-asia-china-62830775> [<https://perma.cc/L2FW-EZAN>].

276. Ji Siqu, *China wary of Russia-type sanctions, but Beijing's 'financial nuclear bombs' are a powerful deterrent*, S. CHINA MORNING POST (May 4, 2022, 12:00 AM), <https://www.scmp.com/economy/china-economy/article/3176397/china-wary-russia-type-sanctions-beijings-financial-nuclear> [<https://perma.cc/7ESF-XDV2>]; see also Frank Tang and Luna Sun, *China's Xi Jinping rails against 'cold war mentality' and US hegemony in call for global cooperation*, S. CHINA MORNING POST (Apr. 21, 2022), <https://www.scmp.com/economy/china-economy/article/3174990/chinas-xi-jinping-rails-against-cold-war-mentality-us> [<https://perma.cc/42ER-8ZRH>].

277. Joseph A. Keeler, *Genocide: Prevention through Nonmilitary Measures*, 171 MIL. L. REV. 135 (2002).

278. Huang & Lardy, *supra* note 263.

279. See generally Vernon Bogdanor, *Footfalls echoing in the memory. Britain and Europe: the historical perspective*, 18 INT'L AFFS. 689, 689-701 (2005).

280. *The EU-UK Withdrawal Agreement*, EUR. COMM'N, https://commission.europa.eu/strategy-and-policy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement_en [<https://perma.cc/H7XX-R5UG>].

281. See generally O. V. Prikhodko, *Brexit's Implications for the Transatlantic Relationship*, 92 HERALD RUSS. ACAD. SCIS. S133-41 (2022).

282. See ALFRED WILLIAM BRIAN SIMPSON, *HUMAN RIGHTS AND THE END OF EMPIRE: BRITAIN AND THE GENESIS OF THE EUROPEAN CONVENTION 19-47* (2004).

283. See Antony Grenville, *The Kindertransports: An Introduction*, in THE KINDERTRANSPORT TO BRITAIN 1938/39: NEW PERSPECTIVES 15-27 (2012); see also Alfred Traum, *Britain's Response*, U.S. HOLOCAUST MEM'L MUSEUM (Oct. 23, 2019), <https://www.ushmm.org/remember/holocaust-reflections-testimonies/echoes-of-memory/britains-response> [<https://perma.cc/82ZE-7A6S>].

284. See generally W.L. Cheah & Moritz Vormbaum, *British War Crimes Trials in Europe and Asia, 1945-1949: A Comparative Study*, 31 LEIDEN J. INT'L. L. 669 (2018); for more on Britain's role in the development and adoption of the Rome Statute of International Criminal Court, see also Douglas E. Edlin, *The Anxiety of Sovereignty: Britain, The United States and the International Criminal Court*, 29 B.C. INT'L & COMP. L. REV. 1, 5 (2006).

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 leader²⁸⁶ 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 clout²⁹⁰ 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

285. Foreign, Commonwealth & Dev. Off., Att'y Gen.'s Off., James Cleverly & Victoria Prentis, *UK joins core group dedicated to achieving accountability for Russia's aggression against Ukraine* (Jan. 20, 2023) <https://www.gov.uk/government/news/ukraine-uk-joins-core-group-dedicated-to-achieving-accountability-for-russias-aggression-against-ukraine> [https://perma.cc/26EJ-KSB4].

286. Karl Ritter, *China's Xi to meet Putin as Beijing seeks bolder global role*, AP NEWS (Mar. 17, 2023, 12:39 PM EST), <https://apnews.com/article/russia-china-xi-putin-ukraine-war-2f0d035942cfca14ae5a42d82f5e8627> [https://perma.cc/63RE-HBB9].

287. Laura He, *China is helping to prop up the Russian economy. Here's how*, CNN NEWS (Feb. 26, 2023), <https://edition.cnn.com/2023/02/22/economy/china-russia-economic-ties-ukraine-intl-hnk/index.html> [https://perma.cc/P2V2-SCF2].

288. Ana Swanson, *China's Economic Support for Russia Could Elicit More Sanctions*, THE N.Y. TIMES (Feb. 22, 2023), <https://www.nytimes.com/2023/02/22/us/politics/china-russia-sanctions.html> [https://perma.cc/WAM4-9L6P].

289. *Id.*

290. *Global Soft Power Index 2022: USA bounces back better to top of nation brand ranking*, BRAND FIN. (Mar. 15, 2022), <https://brandfinance.com/press-releases/global-soft-power-index-2022-usa-bounces-back-better-to-top-of-nation-brand-ranking> [https://perma.cc/4HGG-LXF4]; see also Aaron O'Neill, *Countries with the largest gross domestic product (GDP) 2022*, STATISTA, (May 11, 2023), <https://www.statista.com/statistics/268173/countries-with-the-largest-gross-domestic-product-gdp/> [https://perma.cc/3QHH-WN2D].

291. See Robin Emmott & David Brunnstrom, *West sanctions China over Xinjiang abuses, Beijing hits back at EU*, REUTERS (Mar. 23, 2021), <https://www.reuters.com/article/uk-usa-china-eu-sanctions-idUSKBN2BE2LF> [https://perma.cc/X5N5-ZX6T].

292. See Yasuo Takeuchi & Ryo Nakamura, *Transatlantic allies unite in sanctions on China over Xinjiang*, NIKKEI ASIA (Mar. 22, 2021), <https://asia.nikkei.com/Politics/International-relations/Transatlantic-allies-unite-in-sanctions-on-China-over-Xinjiang> [https://perma.cc/64VZ-UB8Z].

293. See Legu Zhang & Adrianna Zhang, *China Faces New Multi-Country Sanctions Over Xinjiang Policies*, VOA (Mar. 23, 2021), https://www.voanews.com/a/east-asia-pacific_china-faces-new-multi-country-sanctions-over-xinjiang-policies/6203666.html [https://perma.cc/5KWK-K5CT].

294. See Jacob Fromer & Finbarr Bermingham, *China's support for Russia galvanises US, Europe as Washington examines once-unthinkable sanctions against Beijing*, S. CHINA MORNING POST (Apr. 12, 2022), <https://www.scmp.com/news/china/article/3173916/chinas-support-russia-galvanises-us-europe-washington-examines-once-unthinkable-sanctions-against-beijing> [https://perma.cc/HF3B-A3DC].

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

295. See Amber Wang, *Beijing sanctions 2 in US-China tit-for-tat over human rights in Tibet*, S. CHINA MORNING POST (Dec. 3, 2022), <https://www.scmp.com/news/china/diplomacy/article/3204347/beijing-sanctions-2-us-china-tit-tat-over-human-rights-tibet> [https://perma.cc/EMP7-5AMM].

296. See Press Release from US Department of Treasury, *Treasury Sanctions Individuals for Undermining Hong Kong's Autonomy* (Aug. 7, 2020), <https://home.treasury.gov/news/press-releases/sm1088> [https://perma.cc/GH8Y-CC2T].

297. *Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Executive Order*, U.S. DEP'T OF THE TREASURY (July 31, 2020), <https://home.treasury.gov/news/press-releases/sm1073> [https://perma.cc/5YR8-ZGTB].

298. Ian Talley & Laurence Norman, *U.S. and Its Allies Sanction China Over Treatment of Uyghurs in a Collective Action*, WALL STREET JOURNAL (Mar. 22, 2021), <https://www.wsj.com/articles/u-s-and-its-allies-sanction-china-over-treatment-of-uyghurs-in-collective-action-11616440582> [https://perma.cc/A8HF-ZZLJ].

299. See generally MARY E. LOVELY & JEFFREY J. SCHOTT, PETERSON INST. FOR INT'L ECON., CAN CHINA BLUNT THE IMPACT OF NEW US ECONOMIC SANCTIONS? (2021).

300. See generally Ditte Marie Munch-Jurišić, *Perpetrator Abhorrence: Disgust as a Stop Sign*, 45 METAPHILOSOPHY 270 (2014).

301. Mark Swatek-Evenstein, *Genocide and the Europeans*, 13 J. GENOCIDE RSCH. 516 (2011).

302. See generally BRUCE JONES & ANDREW YEO, CHINA AND THE CHALLENGE TO GLOBAL ORDER (2022), https://www.brookings.edu/wp-content/uploads/2022/11/FP_20230214_china_global_order_jones_yeo.pdf [https://perma.cc/LJ2U-MEW3].

303. *Most Influential Countries*, US NEWS, <https://www.usnews.com/news/best-countries/most-influential-countries> [https://perma.cc/H4KV-D9YR] (last visited Apr. 30, 2023).

304. US NEWS, *supra* note 273.

305. Chad Bray, *Hong Kong holds on to fourth spot in global financial centre rankings, while Singapore remains one place higher*, S. CHINA MORNING POST (Mar. 23, 2023), <https://www.scmp.com/business/banking-finance/article/3214624/hong-kong-holds-fourth-place-global-financial-centre-rankings> [https://perma.cc/Y7KQ-HEMU].

306. *Number of listed companies largest stock exchange operators globally 2023*, STATISTA (Apr. 25, 2023), <https://www.statista.com/statistics/1277750/largest-stock-exchange-operators-number-listed-companies-worldwide/> [https://perma.cc/6TBT-BL5U].

307. *Main Market*, LONDON STOCK EXCH., <https://www.londonstockexchange.com/raise-finance/equity/main-market> [https://perma.cc/7H6X-ZNAR] (last visited Apr. 30, 2023).

308. *London Stock Exchange Stock Connect*, LONDON STOCK EXCH., <https://www.londonstockexchange.com/discover/china/shanghai-london-stock-connect> [https://perma.cc/VE6F-TZ4C] (last visited Aug. 26, 2023).

Shanghai Stock Exchange together with London³⁰⁹ and allows global investors to benefit from China's growth through London,³¹⁰ and reciprocal allowances for the London Stock Exchange listed companies to access Chinese investors directly.³¹¹ The UK is the world's foremost international center for legal services³¹² and business-related dispute resolution.³¹³ While New York, the world's largest financial center,³¹⁴ has the largest domestic legal market,³¹⁵ the UK leads the way as the world's most international law center.³¹⁶ Indeed, the English Common Law is the most widespread legal system in the world,³¹⁷ and many international contracts are drafted using English law,³¹⁸ including syndicated credits,³¹⁹ bond issues,³²⁰ and master derivatives contracts.³²¹

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

309. Her Majesty's Treasury & Philip Hammond, *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>].

310. Tom Daly, *Shanghai-London Stock Connect to include Germany, Switzerland*, REUTERS (Dec. 17, 2021), <https://www.reuters.com/business/china-securities-regulator-says-broaden-shanghai-london-stock-connect-2021-12-17/> [<https://perma.cc/4SYB-9QL2>].

311. *Shanghai London Stock Connect*, LONDON STOCK EXCH., <https://www.londonstockexchange.com/discover/china/shanghai-london-stock-connect> [<https://perma.cc/C9ST-P3LD>] (last visited Apr. 30, 2023).

312. *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>].

313. *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>].

314. *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>].

315. *Id.*

316. *Id.*

317. *English Common Law is the most widespread legal system in the world*, SWEET & MAXWELL (Nov. 2008), <https://www.sweetandmaxwell.co.uk/about-us/press-releases/061108.pdf> [<https://perma.cc/B6KE-Z9B8>].

318. See Michael Joachim Bonell, *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, *English as a Contract Language*, RECHTSANWÄLTE (Jun. 9, 2020), <https://www.lawfirm.at/en/news/english-as-a-contract-language> [<https://perma.cc/LJB3-SHZN>]; Tsedal Neeley, *Global Business Speaks English*, HARV. BUS. REV. (May 2012), <https://hbr.org/2012/05/global-business-speaks-english> [<https://perma.cc/9BLL-HNJC>].

319. Gilles Cuniberti, *The International Market for Contracts: The Most Attractive Contract Laws*, 34 NW. J. INT'L L. & BUS. 455, 502 (2014).

320. SWEET & MAXWELL, *supra* note 317.

321. *Id.*

322. See generally Britta Klagge & Hans-Martin Zademach, *International capital flows, stock markets, and uneven development: the case of Sub-Saharan Africa and the Sustainable Stock Exchanges Initiative (SSEI)*, 62 ZEITSCHRIFT FÜR WIRTSCHAFTSGEOGRAPHIE 92 (2018).

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

323. *The Russia-Ukraine Crisis: What Does It Mean for Markets?*, JPMORGAN CHASE & CO. (Mar. 22, 2022), <https://www.jpmorgan.com/insights/global-research/current-events/russia-ukraine-crisis-market-impact> [https://perma.cc/8WEQ-XHZD].

324. Victoria Luttig, *The UK remains Europe's most attractive destination for financial services investment, but the gap with France narrows further*, ERNST AND YOUNG (Jun. 13, 2022), https://www.ey.com/en_uk/news/2022/06/the-uk-remains-europe-s-most-attractive-destination-for-financial-services-investment-but-the-gap-with-france-narrows-further [https://perma.cc/N9KN-EV34].

325. See generally Emily Meierding & Rachel Sigman, *Understanding the Mechanisms of International Influence in an Era of Great Power Competition*, 6 J. OF GLOB. SEC. STUD., no. 4, 2021.

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/102hkmr/sanctions-what-do-they-mean-for-listed-companies-in-the-uk-in-respect-of-their-s> [https://perma.cc/DB8P-PNEJ].

327. *Compliance*, SWIFT, <https://www.swift.com/about-us/legal/compliance-0/swift-and-sanctions> [https://perma.cc/FU7V-5G6D] (last visited May 4, 2023).

328. See generally Tara Rice, Goetz von Peter & Codruta Boar, *On the global retreat of correspondent banks*, BANK FOR INT'L SETTLEMENTS Q. REV., Mar. 2020, at 37.

329. See Marco Cipriani, Linda S. Goldberg & Gabriele La Spada, *Financial Sanctions, SWIFT, and the Architecture of the International Payments System*, 37 J. ECON. PERSPS. 31 (2023).

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/countries-and-regions/united-kingdom_en [https://perma.cc/K8BN-4QCL] (last visited May 4, 2023).

to cut Russian banks from SWIFT.³³¹ 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.”³³²

Indeed, in a 2017 report, the UK was “widely recognized as playing a leading role in developing the EU’s sanctions policy.”³³³ The UK played an important role in the development of EU sanctions on Russia over the crisis in Ukraine.³³⁴ It also helped shape the bloc’s chemical weapons and cyber sanctions regimes.³³⁵ The UK, as an EU member, played a key role in designing and shaping the EU’s regulatory rules.³³⁶ 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.³³⁷

A. UK/Chinese Trade: 1999 - 2019

In 2020, China was among the United Kingdom’s top five trading partners.³³⁸ This trade relationship has a long and significant history. In 1999,

331. Patrick Wintour, *UK says it will work ‘all day’ to persuade Europe to cut Russia off from Swift*, THE GUARDIAN (Feb. 25, 2022), <https://www.theguardian.com/world/2022/feb/25/uk-says-it-will-work-all-day-to-persuade-europe-to-cut-russia-off-from-swift-ukraine> [https://perma.cc/CD5H-Y4SF].

332. *Ukraine: EU agrees to exclude key Russian banks from SWIFT*, EUR. COMM’N (Mar. 2, 2022), https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1484 [https://perma.cc/V9U3-ZYPW].

333. *European Union Committee Brexit: sanctions policy, 8th Report of Session 2017-19*, U.K. PARLIAMENT (Dec. 17, 2017), <https://publications.parliament.uk/pa/ld201719/ldselect/ldcom/50/5006.htm> [https://perma.cc/9678-UYDX].

334. *Id.*

335. Matthew Moran, *UK Sanctions Policy*, in BREXIT AND BEYOND 161 (Anand Menon ed., 2020), <https://ukandeu.ac.uk/wp-content/uploads/2021/01/Brexit-and-Beyond-report-compress-ed.pdf> [https://perma.cc/BXT8-KJLE].

336. See GEORGINA WRIGHT, ALEX STOJANOVIC, & DAVID KLEMPERER, *INFLUENCING THE EU AFTER BREXIT* 9 (2020), https://www.instituteforgovernment.org.uk/sites/default/files/publications/influencing-EU-after-brexit_2.pdf [https://perma.cc/6ZFW-68RB]; see also CHRISTY ANN PETIT & THORSTEN BECK, *RECENT TRENDS IN UK FINANCIAL SECTOR REGULATION AND POSSIBLE IMPLICATIONS FOR THE EU, INCLUDING ITS APPROACH TO EQUIVALENCE* (2023), [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740067/IPOL_STU\(2023\)740067_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740067/IPOL_STU(2023)740067_EN.pdf) [https://perma.cc/7HZ7-3AES].

337. Justin Harper, *How strong are Britain and China’s economic ties?*, BBC (Jul. 22, 2020), <https://www.bbc.com/news/business-53468925> [https://perma.cc/943W-YDB4].

338. See generally Chris Goldworthy, *UK trading partners and trade relationships: 2020*, OFF. FOR NAT’L STAT. (Dec. 2, 2020), <https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/articles/uktradingpartnersananalysisoftraderelationships/2020> [https://perma.cc/6Y62-DACN].

the value of the trade between China and the UK reached \$7.874 billion,³³⁹ a 19.6% increase from the previous year.³⁴⁰ It was the second largest trading partner of China within the European Union.³⁴¹ In 1999, British investment in China stood at \$9.2 billion with over 2,500 British FDI projects.³⁴² A decade later in 2009, the total value of exports from China to the rest of the world were valued at \$1,201,647,000,000.³⁴³ In 1999, the UK imported goods worth \$52 billion from China, about 11% of the total imports for that year.³⁴⁴ In the same year, China exported goods and services worth \$72 billion to the UK.³⁴⁵

In 2018, China was the third top consumer of British travel services, worth \$845,050,500.³⁴⁶ Other services exported by the UK to China were legal services, accounting, advertising, research and development, engineering, and other technical and professional services.³⁴⁷ In the same period, the UK service imports from China were mainly transportation services, which accounted for just over 25% and worth about \$557,590,110.³⁴⁸ These were mainly passenger and freight transport.³⁴⁹ Travel services worth \$375,314,800 made up 20% of service imports from China.³⁵⁰ These two categories accounted for around 46% of all service imports from China.³⁵¹

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

339. *All-round Partnership between China and UK*, MINISTRY OF FOREIGN AFFS. OF THE PEOPLE'S REPUBLIC CHINA, https://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602_665543/3604_665547/200011/t20001117_697891.html [<https://perma.cc/49NU-J7LK>] (last visited Aug. 25, 2023).

340. *Id.*

341. *Id.*

342. *Id.*

343. *United Kingdom Trade Summary 2009 Data*, WORLD INTEGRATED TRADE SOL., <https://wits.worldbank.org/CountryProfile/en/Country/GBR/Year/2009/Summary> [<https://perma.cc/QAZ6-TF47>] (last visited Aug. 25, 2023).

344. *United Kingdom Imports by country and region in US\$ Thousand 2006-2010*, WORLD INTEGRATED TRADE SOL., <https://wits.worldbank.org/CountryProfile/en/Country/GBR/StartYear/2006/EndYear/2010/TradeFlow/Import/Partner/ALL/Indicator/MPRT-TRD-VL> [<https://perma.cc/3MZ7-UVM9>] (last visited Aug. 25, 2023).

345. *China Export Share in Total Products to United Kingdom in percentage 2006-2010*, WORLD INTEGRATED TRADE SOL., <https://wits.worldbank.org/CountryProfile/en/Country/CHN/StartYear/2006/EndYear/2010/TradeFlow/Export/Partner/GBR/Indicator/XPRT-SHR-TTL-PRDCT> [<https://perma.cc/S37X-DKMB>] (last visited on Aug. 25, 2023).

346. Hannah Donnarumma, *UK trade with China: 2021*, OFF. OF NAT'L STAT. (Jun. 1, 2022), <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/articles/uktradewithchina2021/2022-06-01> [<https://perma.cc/22W4-XJWV>] (last visited Aug. 25, 2023).

347. *Id.*

348. *Id.*

349. MOHAN DELL, U.K. DEP'T FOR TRANSP., UK PORT FREIGHT STATISTICS: 2019 (2020), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908558/port-freight-statistics-2019.pdf [<https://perma.cc/NQE2-8M9S>].

350. Nathan Beck-Samuels, *UK-China Post-Brexit Trade Relations*, BRIT. CHAMBER OF COM. IN CHINA (Aug. 30, 2022), <https://www.britishchamber.cn/en/uk-china-post-brexit-trade-relations/> [<https://perma.cc/YQ2U-WVX4>].

351. Freya Lawrence & Anthony Myers, *Trade and Investment Factsheets*, UK DEP'T FOR BUS. & TRADE (Aug. 18, 2023).

valued at \$7,725,920,000,³⁵² which accounted for 27% of all UK goods exported to China for that entire year.³⁵³ Other goods the UK exported to China included petroleum valued at \$6,036,250,000,³⁵⁴ accounting for 19% of all the goods exported to China.³⁵⁵ Additional goods included road vehicles worth \$3,621,735,000³⁵⁶ that represented 13% of the total goods exported to China³⁵⁷ and medicinal and pharmaceutical products valued at \$2,414,490,000,³⁵⁸ which was 7% of the export goods.³⁵⁹ These goods worth \$19,798,395,000 represented 66% of all the goods exported to China in 2019.³⁶⁰

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.³⁶¹ In the same period, 11% of goods imported from China were miscellaneous manufactured goods such as toys, sporting goods, etc., worth \$6,035,800,000.³⁶² The UK also imported office machinery worth \$6,035,800,000 accounting for 10% of its total Chinese imports.³⁶³ It also imported electrical machinery and equipment worth \$4,828,840,000 accounting for 9% of Chinese goods.³⁶⁴ These goods, worth \$19,314,865,000, comprised 46% of the total goods imported to the UK from China in 2019.³⁶⁵ In 2019, only two other countries and territories, North Macedonia and Gibraltar, imported more from the UK than China.³⁶⁶ Likewise, only three other countries and territories, the United States, Hong Kong and Japan, imported more from China

352. *Id.*

353. *Id.*

354. Peter Holmes, Julia Magntorn Garrett, & Jim Rollo, *Written submission from the UK Trade Policy Observatory (UKTPO) (TWC0026)*, THE UK TRADE POL'Y OBSERVATORY (Oct. 2019), <https://committees.parliament.uk/writtenevidence/105686/html/> [<https://perma.cc/4S43-8655>].

355. *Id.*

356. *Id.*

357. *Id.*

358. *Id.*

359. *Id.*

360. MATTHEW WARD, HOUSE OF COMMONS LIBR. BRIEFING PAPER NO. 7379, STATISTICS ON UK TRADE WITH CHINA (2020), <https://researchbriefings.files.parliament.uk/documents/CBP-7379/CBP-7379.pdf> [<https://perma.cc/87ET-KA3V>].

361. *Id.*

362. *Id.*

363. *Id.*

364. *Id.*

365. Tugba Sabanoglu, *Value of UK imports of trade goods from China from 2012 to 2020 (in million U.S. dollars)*, STATISTA (Sept. 6, 2022), <https://www.statista.com/statistics/477961/united-kingdom-uk-import-value-trade-goods-from-china/> [<https://perma.cc/B7DB-42YK>].

366. *United Kingdom Exports: Telecommunication Equipment*, CEIC, <https://www.ceicdata.com/en/indicator/united-kingdom/exports-telecommunication-equipment> [<https://perma.cc/3XWD-RKM4>] (last visited Mar. 2, 2024).

than the UK.³⁶⁷

In 2020, China's goods exports to the UK were worth \$72,561,343,000³⁶⁸ while its UK goods imports were worth \$19,871,556,000.³⁶⁹ This represented a positive trade balance of about \$52,689,787,000.³⁷⁰ The UK exported goods worth \$18,512,671,000³⁷¹ and imported goods worth \$75,478,932,000 from China.³⁷² This represented a negative trade balance worth \$56,966,260,000.³⁷³ 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.³⁷⁴ 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.³⁷⁵ Foreign direct investment from the UK to China amounted to \$12,953,473,500 accounting for about 0.6% of the total FDI from the UK in 2021.³⁷⁶ 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.³⁷⁷ 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.³⁷⁸ There is a steady increase of outward FDI between the two countries.³⁷⁹ In 2007, the outward FDI to China from the UK amounted to \$607,676,020.³⁸⁰ The amount dipped in 2008

367. *United Kingdom / China*, OBSERVATORY OF ECON. COMPLEXITY (Apr. 2023), <https://oec.world/en/profile/bilateral-country/gbr/partner/chn?dynamicProductBalanceYearSelector=year2007&dynamicYearGeomapSelector=year2009&serviceCountry1Selector=2009> [https://perma.cc/5CW4-2RXZ].

368. Hannah Donnarumma, *supra* note 346.

369. *Id.*

370. *China trade balance, exports and imports by country and region 2020*, WORLD INTEGRATED TRADE SOL., <https://wits.worldbank.org/CountryProfile/en/Country/CHN/Year/2020/TradeFlow/EXPIMP> [https://perma.cc/XVT7-5J7E].

371. *Id.*

372. *Id.*

373. *Id.*

374. Hannah Donnarumma, *UK trade: October 2022*, OFF. FOR NAT'L STAT. (Dec. 12, 2022), <https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/bulletins/uktrade/october2022> [https://perma.cc/5XAY-7D7R].

375. HL Deb (7 Nov. 2022) (825) col. 451 (U.K.).

376. Lawrence & Myers, *supra* note 351.

377. *Id.*

378. Doris Fung, *The Growing China-ASEAN Economic Ties*, H.K. TRADE DEV. COUNCIL RSCH. (Jan. 7, 2022), <https://research.hktdc.com/en/article/OTUxMzk0NDE0> [https://perma.cc/9D6H-X8E7].

379. 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), <https://www.statista.com/statistics/720610/china-outward-fdi-flows-to-the-united-kindom/> [https://perma.cc/V9AE-54JU].

380. *See generally Foreign direct investment, net inflows (BoP, current US\$) - China*, THE WORLD BANK, <https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD?locations=CN&>

because of the global financial crisis of that year³⁸¹ and then steadily increased to a high of \$1,438,038,360 in 2015.³⁸² On the other hand, the amount of inward FDI from China to the UK has followed a similar trend³⁸³ initially dipping in 2008. Outward FDI from China to the UK began at \$26,631,638 in 2007³⁸⁴ and peaked at \$610,558,009 in 2015.³⁸⁵

These numbers show that the Chinese economy has heavily relied on trade with the UK, that this reliance has persisted since the last century, and that breaks have only occurred during the global financial crisis of 2008³⁸⁶ and the more recent COVID pandemic.³⁸⁷ China has a positive trade balance with the UK.³⁸⁸ Therefore, sanctions against China can have far-reaching ramifications on Chinese manufacturers and its economy.³⁸⁹ This translates to a balance of

most_recent_year_desc=false [https://perma.cc/5FEL-33WG] (last visited Apr. 19, 2023); see also *Foreign direct investment, net inflows (BoP, current US\$) - United Kingdom*, https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD?locations=GB&most_recent_year_desc=false [https://perma.cc/XPK5-2QT8] (last visited Apr. 19, 2023).

381. Federico Carril-Caccia & Elena Pavlova, *Foreign direct investment and its drivers: a global and EU perspective*, EUR. CENT. BANK ECON. BULL., no. 4, 2018, https://www.ecb.europa.eu/pub/economic-bulletin/articles/2018/html/ecb.ebart201804_01.en.html [https://perma.cc/HW2B-84J7].

382. THE WORLD BANK, *supra* note 380.

383. C. Textor, *Annual outflow of foreign direct investment (FDI) from China between 2012 and 2022 (in billion U.S. dollars)*, STATISTA (July 13, 2023) https://www.statista.com/statistics/858019/china-outward-foreign-direct-investment-flows/ [https://perma.cc/DF8R-832D].

384. *Inward and Outward Foreign Direct Investment for ASEAN countries, China and Japan for Earnings, Flows and Positions, 2007 to 2015*, OFF. FOR NAT'L STAT. (Apr. 11, 2017), https://www.ons.gov.uk/economy/nationalaccounts/balanceofpayments/adhocs/006924inwardandoutwardforeigndirectinvestmentforaseancountrieschinaandjapanforearningsflowsandpositions2007to2015 [https://perma.cc/Z893-E9XG].

385. *Id.*

386. Linyue Li, Thomas D. Willett & Nan Zhang, *The Effects of the Global Financial Crisis on China's Financial Market and Macroeconomy*, ECON. RSCH. INT'L, 2012.

387. See David C. Wolf, *To Secure a Convenience': Britain Recognizes China - 1950*, 18 J. CONTEMP. HIST. 299, 300-01 (1983); see generally Wolfgang Keller & Carol H. Shiue, *China's Foreign Trade and Investment, 1800-1950* (NAT'L BUR. ECON. RSCH. WORKING PAPER 27558, 2020), https://www.nber.org/system/files/working_papers/w27558/w27558.pdf [https://perma.cc/B7AL-FPR6]; Jürgen Osterhammel, *British business in China, 1860s-1950s*, in BRITISH BUSINESS IN ASIA SINCE 1860, at 189-216 (R.P.T. Davenport-Hines ed., 1989); *British Business in China: Covid-19 Impact Report*, BRITISH CHAMBER OF COM. IN CHINA (Apr. 2022), https://www.britishchamber.cn/wp-content/uploads/2022/04/British-Business-in-China-Impact-of-COVID-19-on-business.pdf [https://perma.cc/9QVZ-T2YZ].

388. *China / United Kingdom*, OBSERVATORY OF ECON. COMPLEXITY, https://oec.world/en/profile/bilateral-country/chn/partner/gbr [https://perma.cc/CDX2-3ULQ] (last visited June 1, 2023).

389. See Biersteker & van Bergeijk, *supra* note 172; see *China protests US sanctioning of firms dealing with Russia*, AP NEWS (Apr. 15, 2023), https://apnews.com/article/china-russia-us-ukraine-sanctions-59fa76b79b69b7489039b4d0ee5dd14b [https://perma.cc/9DXZ-UQPJ].

trade tilting in favor of the Chinese³⁹⁰ 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.³⁹¹ In 1949, the United States imposed sanctions against the sale of military equipment to China and blocked Chinese currency deposits held in American banks.³⁹² When China intervened in the Korean War,³⁹³ the United States expanded its sanctions.³⁹⁴ The United States lifted the sanctions in 1972 pursuant to a joint communique and both countries instituted normal relations.³⁹⁵ Normal relations persisted until 1989.³⁹⁶ In retaliation of the Chinese quelling³⁹⁷ of the 1989 Tiananmen Square protests,³⁹⁸ the United States imposed a new set of sanctions against China.³⁹⁹ 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*.⁴⁰⁰

Similarly, on June 26th, 1989, the European Union's Council of Ministers

390. William Barns-Graham, *UK trade deficit with China triples prompting fears of becoming 'heavily dependent' on Chinese goods*, INST. OF EXP. & INT'L TRADE (Jan. 5, 2022), <https://www.export.org.uk/news/591429/UK-trade-deficit-with-China-triples-prompting-fears-of-becoming-heavily-dependent-on-Chinese-goods.htm> [<https://perma.cc/8QJJ-QZMA>].

391. Pranshu Verma, *U.S. Joins Allies to Punish Chinese Officials for Human Rights Abuses*, THE N.Y. TIMES (Mar. 22, 2021), <https://www.nytimes.com/2021/03/22/us/politics/sanctions-china-ughurs.html> [<https://perma.cc/J66A-2AV5>].

392. Frank Cain, *America's trade embargo against China and the East in the Cold War Years*, 18 J. TRANSATLANTIC STUD. 23, 23-24 (Mar. 2020).

393. Hao Yufan & Zhai Zhihai, *China's Decision to Enter the Korean War: History Revisited*, 121 CHINA Q. 94 (1990).

394. Allan R. Millett, *Korean War*, ENCYCLOPAEDIA BRITANNICA (Aug. 16, 2023), <https://www.britannica.com/event/Korean-War> [<https://perma.cc/LSK6-RXKQ>].

395. *Id.* at 34.

396. See generally EZRA F. VAGEL, YUAN MING & TANAKA AKIHIKO, *THE GOLDEN AGE OF THE U.S.-CHINA-JAPAN TRIANGLE, 1972-1989*, at 77-108 (2002).

397. See generally Jacob Kovalio, *The 1989 Tiananmen Square Incident: Retrospective and Prospective Considerations*, 15 ASIAN PERSP. 5 (1991).

398. See generally Damodar Panda, *Sino-U.S. Relations After Tiananmen Incident*, 8/9 INDIAN J. ASIAN AFFS. 80 (1995).

399. James D. Seymour, *Sanctions or Subdued Relations: The International Response to the 1989 Massacre*, 14 FLETCHER J. WORLD AFFS. 55 (1990).

400. U.S. GEN. ACCT. OFF., *U.S. AND EUROPEAN UNION ARMS SALES SINCE THE 1989 EMBARGOES* (1998), <https://www.govinfo.gov/content/pkg/GAOREPORTS-T-NSIAD-98-171/pdf/GAOREPORTS-T-NSIAD-98-171.pdf> [<https://perma.cc/A33T-HWMX>].

imposed a significant set of sanctions against China.⁴⁰¹ These sanctions prohibited, *inter alia*, “trade in arms with China.”⁴⁰² Though there was divergence on the exact application of the sanctions,⁴⁰³ it is noteworthy that the (arms) embargo imposed by the UK still persists.⁴⁰⁴ It was subsequently extended to Macao in 2000⁴⁰⁵ and to Hong Kong in July 2020.⁴⁰⁶

On July 9th, 2020, the United States announced sanctions against Chinese politicians it claimed were responsible for human rights violations in the Xinjiang Province.⁴⁰⁷ The sanctions targeted the financial interests of the Chinese Communist Party’s leaders in the province and their families.⁴⁰⁸ Those targeted included the regional party boss, Chen Quanguo,⁴⁰⁹ who also sat in the Party’s national Politburo.⁴¹⁰ Other targeted officials were Wang Mingshan,⁴¹¹ the director of the Xinjiang Public Security Bureau⁴¹² and Zhu Hailun, a senior party member in Xinjiang,⁴¹³ and former security official Huo Liujun.⁴¹⁴ The

401. See generally GREG AUSTIN, THE FOREIGN POL’Y CTR., THE 1989 CHINA ARMS BAN: PUTTING EUROPE’S POSITION TO CONGRESS (2005), <https://www.fpc.org.uk/wp-content/uploads/2006/09/444.pdf> [<https://perma.cc/AT5M-AFS3>].

402. *Id.*

403. UK interpretation of the arms embargo against China, STOCKHOLM INT’L PEACE RSCH. INST. (2016), <https://www.sipri.org/sites/default/files/2016-03/UK-interpretation-of-the-arms-embargo-against-China.pdf> [<https://perma.cc/KN8W-UNXS>].

404. UK Foreign, Commonwealth & Dev. Off. & Exp. Control Joint Unit, *UK arms embargo on mainland China and Hong Kong*, GOV.UK (Dec. 31, 2020), <https://www.gov.uk/government/collections/uk-arms-embargo-on-mainland-china-and-hong-kong> [<https://perma.cc/2SA8-HPLS>].

405. *Id.*

406. Foreign & Commonwealth Off. & Dominic Raab, *Hong Kong and China: Foreign Secretary’s statement in Parliament*, GOV.UK (July 20, 2020), <https://www.gov.uk/government/speeches/hong-kong-and-china-foreign-secretarys-statement-in-parliament> [<https://perma.cc/Q74J-QJHQ>].

407. U.S. DEP’T OF THE TREASURY, *supra* note 297.

408. *Id.*

409. See generally Amber Wang, *Sanctioned hardline former Xinjiang chief Chen Quanguo moves to rural affairs role for ‘last job before retirement’*, S. CHINA MORNING POST (June 15, 2022), <https://www.scmp.com/news/china/politics/article/3181820/sanctioned-hardline-former-xinjiang-chief-chen-quanguo-moves> [<https://perma.cc/GT79-22BJ>].

410. *Id.*

411. William Zheng, *China promotes Xinjiang police chief targeted by US human rights sanctions*, S. CHINA MORNING POST (Sept. 21, 2020), <https://www.scmp.com/news/china/politics/article/3102424/china-promotes-xinjiang-police-chief-targeted-us-human-right> [<https://perma.cc/RB4K-S2XX>].

412. See generally James Millward & Dahlia Peterson, *China’s System of Oppression in Xinjiang: How it Developed and How to Curb it*, THE BROOKINGS INST. (Sept. 2020), https://www.brookings.edu/wp-content/uploads/2020/09/FP_20200914_china_oppression_xinjiang_millward_peterson.pdf [<https://perma.cc/6TJR-N6RH>].

413. Sébastien Seibt, *Zhu Hailun, the man behind China’s Uighur prison camps*, FR. 24 (Nov. 26, 2019), <https://www.france24.com/en/20191126-zhu-hailun-the-man-behind-china-s-uighur-prison-camps> [<https://perma.cc/F4D6-AL9R>].

414. *China trades sanctions with the West*, THE ECONOMIST GRP. (Mar. 23, 2021), <https://country.eiu.com/article.aspx?articleid=1800854963&Country=Denmark&topic=Politics&subtopic=Forecast&subsubtopic=International+relations> [<https://perma.cc/9TXG-VWMQ>].

United States designated any domestic transactions with these officials, criminal acts.⁴¹⁵ The United States extended these sanctions to other officials on March 22nd, 2021 and designated Wang Junzheng,⁴¹⁶ the Secretary of the Party Committee of the Xinjiang Production and Construction Corps (XPCC),⁴¹⁷ and Chen Mingguo,⁴¹⁸ Director of the Xinjiang Public Security Bureau (XPSB)⁴¹⁹ as perpetrators of serious human rights abuses under the Global Magnitsky Human Rights Accountability Act.⁴²⁰

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.⁴²¹ Indeed, the sanctions imposed for China's actions in Xinjiang (and Hong Kong)⁴²² has been largely limited to individuals.⁴²³

Trade sanctions against China have arguably sparked change in the Chinese government's behavior both domestically and internationally.⁴²⁴ The early

415. *Xinjiang: US sanctions on Chinese officials over 'abuse' of Muslims*, BBC (July 9, 2020), <https://www.bbc.com/news/world-us-canada-53355697> [<https://perma.cc/2VK6-UBB7>].

416. Jun Mai, *China promotes its most sanctioned official to Tibetan Communist Party chief*, S. CHINA MORNING POST (Oct. 19, 2021), <https://www.scmp.com/news/china/politics/article/3152821/china-promotes-its-most-sanctioned-official-tibetan-party-chief> [<https://perma.cc/RT7F-WEW5>].

417. *See generally* James D. Seymour, *Xinjiang's Production and Construction Corps, and the Sinification of Eastern Turkestan*, 2 INNER ASIA 171 (2000).

418. *Sanctions List Search, Chen Mingguo*, OFF. OF FOREIGN ASSETS CONTROL, <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=31493> [<https://perma.cc/84VN-XCFU>] (last visited 23 April 2023).

419. Reinhard Bütikofer, *Chair's statement of 23 March 2021 on EU sanctions on human rights violations; Counter-sanctions by the PRC*, EUR. PARLIAMENT (Mar. 23, 2021), <https://www.europarl.europa.eu/delegations/en/chair-s-statement-of-23-march-2021-on-eu-product-details/20210324DPU29209> [<https://perma.cc/9BD6-Z3CQ>].

420. *Treasury Sanctions Chinese Government Officials in Connection with Serious Human Rights Abuse in Xinjiang*, U.S. DEP'T OF THE TREASURY (Mar. 22, 2021), <https://home.treasury.gov/news/press-releases/jy0070> [<https://perma.cc/32PM-9FXU>].

421. *Compare* AUSTIN, *supra* note 401, with Patrick Wintour, *Rebels aim to insert genocide amendment in UK-China trade bill*, THE GUARDIAN (Jan. 18, 2021), <https://www.theguardian.com/world/2021/jan/18/rebels-aim-to-insert-genocide-amendment-in-uk-china-trade-bill> [<https://perma.cc/992R-BGWZ>].

422. Jeffie Lam & Jun Mai, *Washington imposes new sanctions against 24 officials over Hong Kong electoral overhaul*, S. CHINA MORNING POST (Mar. 17, 2021), <https://www.scmp.com/news/hong-kong/politics/article/3125749/washington-imposes-new-sanctions-against-14-officials-over> [<https://perma.cc/36T7-RPYN>].

423. *See* Miriam Berger, *The U.S. sanctions against Hong Kong officials, explained*, S. CHINA MORNING POST (Aug. 8, 2020), <https://www.washingtonpost.com/world/2020/08/08/faq-us-sanctions-hong-kong-officials/> [<https://perma.cc/HR74-D2B9>]; *see also* Finbarr Bermingham, *EU set to renew sanctions on Chinese officials accused of human rights violations in Xinjiang*, S. CHINA MORNING POST (Nov. 22, 2022), <https://www.scmp.com/news/china/article/3200478/eu-set-renew-sanctions-chinese-officials-accused-human-rights-violations-xinjiang> [<https://perma.cc/Z6XU-N8XA>].

424. Yitan Li, *US Economic Sanctions against China: A Cultural Explanation of Sanction Effectiveness*, 38 ASIAN PERSP. 311, 321-28 (2014), <https://www.jstor.org/stable/43738091> [<https://perma.cc/TF25-R69D>].

sanctions of 1949-50 stymied China's domestic modernization⁴²⁵ and innovation,⁴²⁶ and therefore competitiveness in international trade.⁴²⁷ China remained reliant on USSR technicians until 1960.⁴²⁸ Reportedly, assistance from the USSR in their attempts to industrialize was modest⁴²⁹ as the USSR was still recovering from the effects of World War II.⁴³⁰ One of the key lessons from the embargo was that for an embargo to be successful and effective, it has to be *collective*.⁴³¹

The West collectively imposed sanctions against China in 1989.⁴³² Arguably, this was effective in altering the Chinese government's behavior at home and abroad.⁴³³ China lost its bid to host the 2000 Olympic Games to Australia⁴³⁴.⁴³⁵ China clearly placed importance on hosting the games and had orchestrated a fierce lobbying campaign for the rights,⁴³⁶ but nonetheless, lost owing to its poor human rights record.⁴³⁷ During the selection process, China released political prisoners such as Wei Jingsheng,⁴³⁸ in jail since 1979,⁴³⁹ and

425. See generally Tao Peng, *Shu Guang Zhang, Economic Cold War: America's Embargo against China and the Sino-Soviet Alliance, 1949-1963*, 8 J. COLD WAR STUD. 144 (2006).

426. SHIPING ZHENG, *PARTY VS. STATE IN POST-1949 CHINA: THE INSTITUTIONAL DILEMMA* 108 (1997).

427. Zhihua Shen & Guy Alitto, *A Historical Examination of the Issue of Soviet Experts in China: Basic Situation and Policy Changes*, 29 RUSS. HIST. 377, 381-85 (2002).

428. Deborah Kaple, *Agents of Change: Soviet Advisers and High Stalinist Management in China, 1949-1960*, 18 J. COLD WAR STUD. 5, 6-8 (2016).

429. See Tao Chen & Jan Zofka, *The Economy of the Sino-Soviet Alliance: Die Ökonomie der sino-sowjetischen Allianz*, 63 ECON. HIST. Y.B. 584 (2022); see also Baichun Zhang, Jiuchun Zhang, & Fang Yao, *Technology Transfer from the Soviet Union to the People's Republic of China 1949-1966*, 4 COMPAR. TECH. TRANSFER & SOC'Y 105 (2006).

430. Xin-zhu J. Chen, *China and the US Trade Embargo, 1950-1972*, 13 AM. J. CHINESE STUD. 169, 180 (2006).

431. *Id.* at 185.

432. See Kristin Archick, Richard F. Grimmett & Shirley Kan, *European Union's Arms Embargo On China: Implications and Options for U.S. Policy*, in *THE EUROPEAN UNION: EXPAND, SHRINK OR STATUS QUO* 17-20 (Bianca C. Hostetler ed., 2006).

433. Li, *supra* note 424 at 321-27.

434. Jinming Zheng, Shushu Chen, Tien-Chin Tan & Patrick Wing Chung Lau, *Beijing's two bids for the Olympics: the political games*, 29(1) INT'L J. HIST. SPORTS 145, 147-49 (2012).

435. Patrick E. Tyler, *Olympics; There's no Joy in Beijing as Sydney gets Olympics*, THE N.Y. TIMES (Sept. 24, 1993), <https://www.nytimes.com/1993/09/24/sports/olympics-there-s-no-joy-in-beijing-as-sydney-gets-olympics.html> [<https://perma.cc/C34K-6V4M>].

436. Lena H. Sun, *China pulls out stops in Olympic Bid*, THE WASH. POST (Jul. 15, 1993), <https://www.washingtonpost.com/archive/sports/1993/07/15/china-pulls-out-stops-in-olympic-bid/a83cc6c1-8563-4f52-b9be-d6ea09e083d2/> [<https://perma.cc/Q32A-QZ4B>].

437. Alan Riding, *2000 Olympics Go to Sydney in Surprise Setback for China*, THE N.Y. TIMES (Sept. 24, 1993), <https://www.nytimes.com/1993/09/24/sports/olympics-2000-olympics-go-to-sydney-in-surprise-setback-for-china.html> [<https://perma.cc/9V75-PLDG>].

438. William C. Jones, *Due Process in China: The Trial of Wei Jingsheng*, 9 REV. SOCIALIST L. 55 (1983).

439. Rone Tempest, *Longtime Prisoner Freed in China*, L.A. TIMES (Sept. 14, 1993), <https://www.latimes.com/archives/la-xpm-1993-09-14-mn-35002-story.html> [<https://perma.cc/P8A4-CYWL>].

a prominent Tiananmen Square protestor, Dan Wang,⁴⁴⁰ to signal to the world that it respected individuals' human rights.⁴⁴¹ In 1998, the Chinese government signed the International Convention on Civil and Political Rights,⁴⁴² but it has not ratified the treaty to date.⁴⁴³ 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%⁴⁴⁴ due to international sanctions sparked by the Tiananmen crackdown.⁴⁴⁵ In 1988, China's GDP growth rate was 11.3%.⁴⁴⁶ In 1989, the growth dropped to 4.21%.⁴⁴⁷ The numbers were dire in 1990 when China recorded an annual GDP growth of only 3.9%.⁴⁴⁸ 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%.⁴⁴⁹ While the growth rate rebounded in 1992,⁴⁵⁰ 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.⁴⁵¹

440. Sheryl Wudunn, *A Portrait of a Young Man as a Beijing Student Leader*, THE N.Y. TIMES (Jun. 3, 1989), <https://www.nytimes.com/1989/06/03/world/a-portrait-of-a-young-man-as-a-beijing-student-leader.html> [<https://perma.cc/5DKF-8FHP>].

441. Dan Wang, *What I Learned Leading the Tiananmen Protests*, THE N.Y. TIMES (Jun. 1, 2009), <https://www.nytimes.com/2019/06/01/opinion/sunday/tiananmen-protests-china-wang-dan.html> [<https://perma.cc/KG8Q-QQWG>].

442. *The Signing of the International Convention on Civil and Political Rights by the Chinese Government*, MINISTRY OF FOREIGN AFFS. OF THE PEOPLE'S REPUBLIC OF CHINA, (last visited Apr. 24, 2023), https://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602_665543/3604_665547/200011/t20001117_697890.html [<https://perma.cc/6GCA-ZCYX>].

443. Ming Wan, *Human Rights Lawmaking in China: Domestic Politics, International Law, and International Politics*, 29 HUM. RTS. Q. 727, 741 (2007).

444. Joe McDonald, *China's 2018 economic growth sinks to 3-decade low*, AP NEWS (Jan. 21, 2019), <https://apnews.com/article/global-trade-government-spending-international-news-china-beijing-b79891ffe1e94bfca0573439a2b46e63> [<https://perma.cc/XQ4X-6UV8>].

445. Reuters Staff, *Timeline - China's post-Tiananmen re-emergence onto the world*, REUTERS (May 27, 2019), <https://www.reuters.com/article/china-tiananmen-timeline-landmarks-idINKCN1SX0IP> [<https://perma.cc/5KSQ-RM7Z>].

446. LIBRARY OF CONG., CONG. RSCH SERV., *China's Economic Rise: History, Trends, Challenges, Implications for the United States* 6 (2019), <https://sgp.fas.org/crs/row/RL33534.pdf> [<https://perma.cc/Z7CL-JLYF>].

447. *Id.* at 5.

448. *GDP growth (annual %) - China*, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=CN> [<https://perma.cc/P4DQ-E3ED>] (last visited Aug. 23, 2023).

449. *Id.*

450. *Id.*

451. *China GDP Growth Rate 1961-2023*, MACROTRENDS, <https://www.macrotrends.net/countries/CHN/china/gdp-growth-rate> [<https://perma.cc/UZ5J-Y2SG>] (last visited Aug. 23, 2023).

B. Ukraine-Based Sanctions as a Model

Effectiveness of collective sanctions increasingly plays a vital role⁴⁵² in correcting internationally wrongful acts,⁴⁵³ particularly as states become more dependent on trade with other states.⁴⁵⁴ While collective sanctions have been useful in recent history, such as in the former Yugoslavia,⁴⁵⁵ nowhere is this clearer than in relation to the contemporary situation with the Ukrainian War.⁴⁵⁶ 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.⁴⁵⁷ On 21 February 2022, the United States imposed sanctions on certain persons and certain transactions in respect to the Ukrainian War.⁴⁵⁸ Other allied nations followed suit.⁴⁵⁹ On 25 February 2022, the EU imposed

452. Christopher C. Joyner, *Collective Sanctions as Peaceful Coercion: Lessons from the United Nations Experience*, 16 AUSTL. Y.B. INT'L L. 241, 243 (1995).

453. See generally Rüdiger Wolfrum, *Internationally wrongful acts*, 10 ENCYCLOPEDIA OF DISPS. INSTALLMENT 271 (1987).

454. See generally Christian O. Fjäder, *Interdependence as dependence: Economic security in the age of global interconnectedness*, in GEO-ECONOMICS AND POWER POLITICS IN THE 21ST CENTURY: THE REVIVAL OF ECONOMIC STATECRAFT (Mikael Wigell, Sören Scholvin & Mika Aaltola eds., 2018).

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/2X59-RKSL>].

456. Oscar Arce, Gerrit Koester & Christiane Nickel, *One year since Russia's invasion of Ukraine – the effects on euro area inflation*, EUR. CENT. BANK (Feb. 24, 2023), <https://www.ecb.europa.eu/press/blog/date/2023/html/ecb.blog20230224~3b75362af3.en.html> [<https://perma.cc/B74B-LWBC>].

457. *Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova*, INT'L CRIM. CT. (Mar. 17, 2023), <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> [<https://perma.cc/KR8V-T5TJ>].

458. Executive Order 14065, 87 Fed. Reg. 10293 (Feb. 21, 2022).

459. Michael D. Shear, Richard Pérez-Peña, Zolan Kanno-Youngs & Anton Troianovski, *U.S. and Allies Impose Sanctions on Russia as Biden Condemns 'Invasion' of Ukraine*, THE N.Y. TIMES (Feb. 22, 2022), <https://www.nytimes.com/2022/02/22/us/politics/us-russia-ukraine-sanctions.html> [<https://perma.cc/U3AV-WCSA>].

sanctions on Russia.⁴⁶⁰ While Australia had initially imposed sanctions against Russia in 2014⁴⁶¹ and extended them in 2015,⁴⁶² it further enlarged them in 2022 following Russia's invasion of Ukraine.⁴⁶³ Other allied countries such as Canada and the UK followed suit, citing a breach of international peace and security.⁴⁶⁴⁴⁶⁵ These sanctions have had a significant impact on the Russian economy.⁴⁶⁶ For instance, coal mines in Kemerovo, Russia's main production region, only sold 50-60% of the mined coal in 2022.⁴⁶⁷ The output of the largest steelmaker in Russia collapsed by 15.4% in 2022.⁴⁶⁸ The Russian economy contracted by 2.1% in 2021⁴⁶⁹ and the ruble weakened by more than 20% in the second half of 2022.⁴⁷⁰ The production of cars fell by 59%.⁴⁷¹

By far, Russia's biggest exports, oil and natural gas,⁴⁷² have been massively

460. Council Regulation 2023/427, 2023 O.J. (L 59) I,6 (EU).

461. Daniel Hurst, *Australia imposes sanctions on Russia after it 'steals' Crimea from Ukraine*, *The Guardian* (Mar. 19, 2014), <https://www.theguardian.com/world/2014/mar/19/australia-imposes-sanctions-on-russia-after-it-steals-crimea-from-ukraine> [<https://perma.cc/E5C6-D24B>].

462. *Autonomous Sanctions (Russia, Crimea and Sevastopol) Specification 2015*, AUSTL. GOV'T FED. REG. OF LEGIS., <https://www.legislation.gov.au/Details/F2017C00697> [<https://perma.cc/XKJ6-BYJ3>] (last visited 24 April 2023).

463. AUSTL. GOV'T, DEP'T OF FOREIGN AFFS. & TRADE, *SNAPSHOT: RUSSIA/UKRAINE SANCTIONS REGIME*, <https://www.dfat.gov.au/sites/default/files/sanctions-snapshot-russia-ukraine-regime.pdf> [<https://perma.cc/8T2M-7RE2>] (last visited Mar. 13, 2024).

464. Regulations Amending the Special Economic Measures (Russia) Regulations: SOR/2022-27, *C. Gaz.* pt. 2, vol. 156, no. 6 (Can.).

465. CLAIRE MILLS, HOUSE OF COMMONS LIBR., *SANCTIONS AGAINST RUSSIA* (2023), <https://researchbriefings.files.parliament.uk/documents/CBP-9481/CBP-9481.pdf>.

466. Gubad Ibadoghlu, *What impact have EU sanctions had on the Russian economy?*, *THE LONDON SCH. OF ECON. & POL. SCI.* (Mar. 13, 2023), <https://blogs.lse.ac.uk/europpblog/2023/03/13/what-impact-have-eu-sanctions-had-on-the-russian-economy/> [<https://perma.cc/Q5ZW-6FZD>].

467. András Tóth-Czifra, *Political Implications of Looming Problems with Wages and Jobs in Russia*, *FOREIGN POL'Y RSCH. INST.* (Sept. 19, 2022), <https://www.fpri.org/article/2022/09/political-implications-of-looming-problems-with-wages-and-jobs-in-russia/> [<https://perma.cc/F6VM-LU9H>].

468. *Novolipetsk Steel: Q3 & 9M 2022 NLMK Group Trading Update*, *LONDON STOCK EXCH.* (Oct. 17, 2022), <https://www.londonstockexchange.com/news-article/NLMK/novolipetsk-steel-q3-9m-2022-nlmk-group-trading-update/15675395> [<https://perma.cc/4JZW-YCWP>].

469. *Russia's economy contracted 2.1% in 2022, less than expected*, *AL JAZEERA* (Feb. 21, 2023), <https://www.aljazeera.com/news/2023/2/21/russias-economy-contracted-2-1-in-2022> [<https://perma.cc/QBM2-LEWH>].

470. Alexander Marrow, *Rouble slumps to weakest vs dollar since May*, *REUTERS* (Dec. 21, 2022), <https://www.reuters.com/markets/currencies/rouble-slumps-past-70-vs-dollar-first-time-since-may-2022-12-21/> [<https://perma.cc/7REV-8TQK>].

471. Sergey Aleksashenko, *Russia after a year of sanctions: The Russian economy has fallen into a recession, but economic and political instability are not yet on the horizon*, *AL JAZEERA* (Feb. 28, 2023), <https://www.aljazeera.com/opinions/2023/2/28/russia-after-a-year-of-sanctions> [<https://perma.cc/98BE-U5BK>].

472. *Infographic: How much of your country's gas comes from Russia?*, *AL JAZEERA* (Mar. 17, 2022), <https://www.aljazeera.com/news/2022/3/17/infographic-how-much-of-your-countrys-gas-comes-from-russia-interactive> [<https://perma.cc/9MPP-VZJQ>].

cut as sanctions, particularly from EU States,⁴⁷³ have forced Russia to trade almost exclusively with China⁴⁷⁴ and India.⁴⁷⁵ Russia's natural gas and oil energy sector accounts for approximately 70% of all its exports⁴⁷⁶ and 18% of its total GDP.⁴⁷⁷ Since the loss of its European markets,⁴⁷⁸ Russia's exports in the energy sector have seen a gross decline by nearly 50%.⁴⁷⁹ Moreover, due to its desperation to recoup losses⁴⁸⁰ Russia has reportedly been selling at a discount of \$33.28, or 39%, to Brent crude,⁴⁸¹ thus devastating its foreign trade⁴⁸² and its economy generally.⁴⁸³ It has been observed that only Russia's impressive capital reserves at the start of the war⁴⁸⁴ has economically sustained

473. Jake Horton & Daniele Palumbo, *Russia sanctions: What impact have they had on its oil and gas exports?*, BBC (Jan. 26, 2023), <https://www.bbc.com/news/58888451> [<https://perma.cc/QWT2-4QSA>].

474. *China's 2022 trade with Russia hit record \$190 bln – customs*, REUTERS (Jan. 13, 2023), <https://www.reuters.com/world/china-customs-says-trade-with-russia-hit-new-high-2022-2023-01-13/> [<https://perma.cc/S4UP-BFUA>].

475. Kiran Sharma, *India's Russian imports soar 400% as U.S. offers little resistance*, NIKKEI ASIA (Feb. 17, 2023), <https://asia.nikkei.com/Economy/Trade/India-s-Russian-imports-soar-400-as-U.S.-offers-little-resistance> [<https://perma.cc/YW63-AFGJ>].

476. Angelina Davydova, *Will Russia ever leave fossil fuels behind?*, BBC (Nov. 24, 2021), <https://www.bbc.com/future/article/20211115-climate-change-can-russia-leave-fossil-fuels-behind> [<https://perma.cc/8YSN-HXET>].

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/FL4C-VHL7>].

478. Jorge Liboreiro, *Russia is losing €160 million per day due to Western sanctions on oil, new report says*, EURONEWS (Jan. 11, 2023), <https://www.euronews.com/my-europe/2023/01/11/russia-is-losing-160-million-per-day-due-to-western-sanctions-on-oil-new-report-says> [<https://perma.cc/SF35-MTSL>]; see also CTR. FOR RSCH FOR ENERGY AND CLEAN AIR, EU OIL BAN AND PRICE CAP ARE COSTING RUSSIA EUR 160 MN/DAY, BUT FURTHER MEASURES CAN MULTIPLY THE IMPACT (2023), <https://energyandcleanair.org/publication/eu-oil-ban-and-price-cap-are-costing-russia-eur160-mn-day-but-further-measures-can-multiply-the-impact/> [<https://perma.cc/RPC5-TB9N>].

479. Julian Lee, *Russia Loses 90% of Its Key European Oil Market Before Sanctions*, BLOOMBERG (Nov. 21, 2023), <https://www.bloomberg.com/news/articles/2022-11-21/russia-loses-90-of-its-key-european-market-before-sanctions#xj4y7vzkg> [<https://perma.cc/T7WV-JR DG>].

480. Julia Horowitz, *Russia needs to sell oil. It's running out of options*, CNN BUSINESS (May. 9, 2022), <https://edition.cnn.com/2022/05/09/business/europe-g7-russia-oil-embargo/index.html> [<https://perma.cc/T9JF-QRXD>].

481. Julian Lee, *Putin's Few Oil Buyers Demand Deep Discounts*, BLOOMBERG (Nov. 27, 2022), <https://www.bloomberg.com/opinion/articles/2022-11-27/china-india-squeeze-big-oil-discounts-out-of-putin> [<https://perma.cc/E6ED-2BTW>].

482. *EU trade with Russia continues to decline*, EUROSTAT (Mar. 3, 2023), <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20230303-1> [<https://perma.cc/9TRY-5P GM>].

483. EUR. COUNCIL, *supra* note 253.

484. Charles Riley, *Sanctions will put Russia's 'fortress' economy to the test*, CNN BUSINESS (Feb. 27, 2023), <https://edition.cnn.com/2022/02/26/business/russia-economy-sanctions/index.html> [<https://perma.cc/7QLS-HCLQ>].

it during the conflict.⁴⁸⁵

Additionally, the sanctions have directly impeded Russia's ability to prosecute its war in Ukraine because much needed military spare parts,⁴⁸⁶ ammunition,⁴⁸⁷ and access to high-tech components needed for its military sector⁴⁸⁸ have been denied to Russia. Thus, Russia has not only been devastated economically by the sanctions,⁴⁸⁹ it has also been denied the means by which it can engage in the internationally wrongful act.⁴⁹⁰ These sanctions and Western assistance,⁴⁹¹ along with the fighting capabilities of the Ukrainian people,⁴⁹² have thwarted Russian ambitions⁴⁹³ and utterly changed the nature of this conflict.⁴⁹⁴

As states in the modern era increasingly rely on foreign trade as a bulwark of domestic economic security,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

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-cd99ba45b1e36bb2ab80574eeaa69e4c> [<https://perma.cc/KHR5-R5SM>].

486. Alberto Nardelli, *Putin Tried for Years to Stop His Military From Using Western Parts — And Mostly Failed*, BLOOMBERG (Oct. 15, 2022), <https://www.bloomberg.com/news/articles/2022-10-14/putin-tried-for-years-to-stop-his-military-using-western-parts-and-mostly-failed> [<https://perma.cc/U8UZ-AWZ8>].

487. Giulia Carbonaro, *Russia Is Running Out Of Ammo: How Much Longer Can It Keep Fighting?*, NEWSWEEK (Nov. 25, 2022), <https://www.newsweek.com/russia-running-out-ammo-how-much-longer-can-keep-fighting-1762346> [<https://perma.cc/GTG7-57G8>].

488. *What are the sanctions on Russia and are they hurting its economy?*, BBC (Sept. 30, 2022), <https://www.bbc.com/news/world-europe-60125659> [<https://perma.cc/LK9F-9K25>].

489. Jeremy Diamond & Sam Fossom, *US-led sanctions campaign weakened Russia's economy in first year of Ukraine war. Year 2 is about sealing the cracks*, CNN POLITICS (Feb. 24, 2023), <https://edition.cnn.com/2023/02/24/politics/sanctions-russia-ukraine-us-biden-putin/index.html> [<https://perma.cc/7A9L-V3SW>].

490. *General Assembly Adopts Text Recommending Creation of Register to Document Damages Caused by Russian Federation Aggression against Ukraine, Resuming Emergency Special Session*, U.N. GEN. ASSEMBLY (Nov. 14, 2022), <https://press.un.org/en/2022/ga12470.doc.htm> [<https://perma.cc/LY55-R3Y7>].

491. Christoph Trebesch, *Foreign support to Ukraine: Evidence from a database of military, financial, and humanitarian aid*, CTR. FOR ECON. POL'Y RSCH. (Feb. 21, 2023), <https://cepr.org/voxeu/columns/foreign-support-ukraine-evidence-database-military-financial-and-humanitarian-aid> [<https://perma.cc/SGH7-C7X3>].

492. Sam Mednick, *Russia-Ukraine: The civilians fighting on Kyiv's front lines*, Al Jazeera (Mar. 23, 2022), <https://www.aljazeera.com/features/2022/3/23/the-civilian-fighters-taking-up-arms-on-ukraines-front-lines> [<https://perma.cc/9LZS-NH3X>].

493. Frederick W. Kagan & Mark Polyak, *Ukraine's Resilience Transcends the Battlefield*, TIME (Oct. 7, 2022), <https://time.com/6220447/ukraines-resilience-transcends-the-battlefield/> [<https://perma.cc/M4AY-LVNW>].

494. FT Visual Storytelling Team, *How Russia's mistakes and Ukrainian resistance altered Putin's war*, THE FIN. TIMES, (Mar. 18, 2022) <https://ig.ft.com/russias-war-in-ukraine-mapped/> [<https://perma.cc/6D5X-UZLH>].

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.

C. Chinese Vulnerability: Structure, Political Economy and Historic Factors That Make Economic Sanctions Against China More Effective

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.

499. JOHN W. GARVER, *Opening to the Outside World, in CHINA'S QUEST: THE HISTORY OF THE FOREIGN RELATIONS OF THE PEOPLE'S REPUBLIC OF CHINA* (2016).

500. Philip Arestis, Nikolaos Karagiannis & Sangkwon Lee, *The economic growth of China: enabling politico-institutional and socio-cultural factors*, 2 REV. EVOLUTIONARY POL. ECON. 339 (2021).

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.⁵⁰¹ Its biggest trading partner is the European Union,⁵⁰² and China runs a huge trade surplus with the economic bloc.⁵⁰³ Additionally, Europe's leading companies are among the biggest foreign investors in China.⁵⁰⁴ Significantly, China has a relatively weak domestic consumer class compared to countries in the EU,⁵⁰⁵ the United States⁵⁰⁶ or the UK.⁵⁰⁷ Despite a large

501. See generally Frank Tang, *China's new economic strategy to rely on domestic market is not a closed-door policy, Beijing advisers say*, S. CHINA MORNING POST (Aug. 12, 2020), <https://www.scmp.com/economy/china-economy/article/3096941/chinas-new-economic-strategy-rely-domestic-market-not-closed> [<https://perma.cc/9UYP-HT9H>]; see also LI CUI, CHANG SHU & XIAOJING SU, HONG KONG MONETARY AUTH., CHINA ECONOMIC ISSUES, NO. 1/09, HOW MUCH DO EXPORTS MATTER FOR CHINA'S GROWTH? (2009), https://www.hkma.gov.hk/media/eng/publication-and-research/research/china-economic-issues/CEI_200901.pdf [<https://perma.cc/W52V-VG9G>].

502. See Eric Chu, *Economic and Trade Information on China*, H.K. TRADE DEV. COUNCIL RSCH. (Apr. 18, 2023), <https://research.hktdc.com/en/article/MzIwNjcyMDYx> [<https://perma.cc/5CR3-JQJL>].

503. *China-EU - international trade in goods statistics*, EUROSTAT (February 2023), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=China-EU_-_international_trade_in_goods_statistics#EU_and_China_in_world_trade_in_goods [<https://perma.cc/2UD3-8FWW>]; see also Kinling Lo, *China is now EU's biggest trading partner, an exchange complicated by labour rights and transatlantic tactics*, S. CHINA MORNING POST (Feb. 16, 2021), <https://www.scmp.com/news/china/diplomacy/article/3121929/china-now-eus-biggest-trading-partner-exchange-complicated> [<https://perma.cc/QN8G-5HEF>].

504. James Kynge, 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-9e34-4e3d-ae53-17fa34c16009> [<https://perma.cc/9T3D-XXFH>].

505. HOMI KHARAS & MEAGAN DOOLEY, GLOBAL CHINA, CHINA'S INFLUENCE ON THE GLOBAL MIDDLE CLASS (2020), https://www.brookings.edu/wp-content/uploads/2020/10/fp_20201012_china_middle_class_kharas_dooley.pdf [<https://perma.cc/R7UV-58U7>].

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*, PEW 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 Huifeng, *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-AB8A>].

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,⁵⁰⁸ household consumption is still low relative to Western States⁵⁰⁹ and insufficient to drive its own economy.⁵¹⁰ China relies on external investment and consumerism to sustain its economic growth.⁵¹¹

Low domestic consumption is exacerbated by rising household debt occasioned by property investment, which has further reduced consumption abilities.⁵¹² In 2021, the Chinese household debt as a percentage of disposable income had reached a record high of 130.9 per cent.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.⁵¹⁴ This means that China is heavily reliant on income from foreign trade for its economic survival.⁵¹⁵

income. See *Income distribution*, GOV.UK (May. 26, 2023), <https://www.ethnicity-facts-figures.service.gov.uk/work-pay-and-benefits/pay-and-income/income-distribution/latest> [<https://perma.cc/7CRF-CDAE>].

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>].

509. Orange Wang, *China wants its middle class to spend big ... but they have bills to pay*, S. CHINA MORNING POST (Oct. 13, 2018), <https://www.scmp.com/economy/china-economy/article/2168184/china-wants-its-middle-class-spend-big-they-have-bills-pay> [<https://perma.cc/FUA2-PG5B>]; see also Orange Wang, *Why China cannot rely on consumers to spend their way out of the trade war*, S. CHINA MORNING POST (Aug. 13, 2018), https://www.scmp.com/news/china/economy/article/2159225/why-china-cannot-rely-consumers-spend-their-way-out-trade-war?module=hard_link&pgtype=article [<https://perma.cc/3UNH-N9FB>].

510. Frank Tang, *China's post-coronavirus consumer spending 'not enough' to drive growth, says prominent economist*, S. CHINA MORNING POST (Apr. 12, 2021), <https://www.scmp.com/economy/china-economy/article/3129184/chinas-post-coronavirus-consumer-spending-not-enough-drive> [<https://perma.cc/5FB9-NWCR>].

511. *China's consumers shake the (retail) world*, OXFORD ECON., <https://blog.oxfordeconomics.com/chinas-consumers-shake-the-retail-world> (last visited May 1, 2023).

512. Frank Tang, *China to overtake US to become world's top consumer goods market 'very soon'*, S. CHINA MORNING POST (Nov. 30, 2020), <https://www.scmp.com/economy/china-economy/article/3111954/china-overtake-us-become-worlds-top-consumer-goods-market> [<https://perma.cc/KU5G-6GGQ>].

513. He Huifeng, *Could China's rising household debt threaten Beijing's consumer-led growth vision?*, S. CHINA MORNING POST (Aug. 7, 2021), <https://www.scmp.com/economy/china-economy/article/3144125/could-chinas-rising-household-debt-threaten-beijings-consumer?module=inline&pgtype=article> [<https://perma.cc/N7F4-9RR4>].

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>].

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>].

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.⁵¹⁶ For instance, in Kenya, pundits refer to a Chinese-funded railway as the 'Railroad to Nowhere' as it is incomplete and unviable.⁵¹⁷ There are fears that most of China's debtor states will default on their loans.⁵¹⁸ For instance, China repossessed a seaport in Sri Lanka over the country's inability to service the port's construction loan.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.⁵²⁰

China lent Pakistan \$23.3 billion making it the highest of Beijing's borrowers.⁵²¹ Currently, Pakistan's falling currency rate and a current-account deficit are pushing Islamabad closer to default.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.⁵²³ In 2020 and 2021, China had to renegotiate loans worth \$52 billion, which was

516. *Faced with an overseas debt crisis, will China change its ways?*, THE ECONOMIST (Aug. 24, 2022), <https://www.economist.com/china/2022/08/24/faced-with-an-overseas-debt-crisis-still-china-change-its-ways> [https://perma.cc/43QU-BYUB].

517. Al Dahir, *Jewel in the Crown of Corruption': The Troubles of Kenya's China-Funded Train*, THE N.Y. TIMES (Aug. 7, 2022), <https://www.nytimes.com/2022/08/07/world/africa/kenya-election-train.html> [https://perma.cc/8P8F-4MJ4].

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].

519. Maria Abi-Habib, *How China Got Sri Lanka to Cough up a Port*, THE N.Y. TIMES (Jun. 25, 2018), <https://www.nytimes.com/2018/06/25/world/asia/china-sri-lanka-port.html> [https://perma.cc/CN6P-VGQB].

520. ALICIA GARCIA-HERRERO, THE H.K. UNIV. OF SCI. & TECH., INST. FOR EMERGING MKTG. STUD. THOUGHT LEADERSHIP BRIEF NO. 17, CHINA CANNOT FINANCE THE BELT AND ROAD ALONE, <https://iems.ust.hk/publications/thought-leadership-briefs/alicia-china-cannot-finance-the-belt-and-road-alone> [https://perma.cc/HR3Q-CGUR].

521. Shin Watanabe & Ryosuke Hanada, *China slows foreign lending as Belt and Road problem loans triple*, NIKKEI (Sept. 20, 2022), <https://asia.nikkei.com/Spotlight/Belt-and-Road/China-slows-foreign-lending-as-Belt-and-Road-problem-loans-triple> [https://perma.cc/4NUW-V3LF].

522. *Id.*

523. See Marcello Estevão, *Are we ready for the coming spate of debt crises?*, VOICES (Mar. 28, 2022), <https://blogs.worldbank.org/voices/are-we-ready-coming-spate-debt-crises> [https://perma.cc/R44H-4LVJ].

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), <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, PETERSON INST. FOR INT'L ECON., POL'Y BRIEF 21-10, IMPROVING CHINA'S PARTICIPATION IN RESOLVING DEVELOPING-COUNTRY DEBT PROBLEMS 3 (2021), <https://www.piie.com/sites/default/files/documents/pb21-10.pdf> [<https://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-implications-belt-and-road-initiative-policy-perspective.pdf> [<https://perma.cc/69M6-FLQR>].

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, https://www.ecb.europa.eu/pub/economic-bulletin/articles/2022/html/ecb.ebart202202_01~48041a563f.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.⁵³³ These leases accounted for about 41.6% of local governments' revenues in 2021.⁵³⁴ When coupled with taxes generated from the land, this forms a sizeable chunk of the government's revenue.⁵³⁵ State-owned companies use land value as collateral for loans,⁵³⁶ which provide revenue to fund, *inter alia*, public welfare projects.⁵³⁷ In the first six months of 2022, the government sold land worth only \$211.8 billion, a 55% drop from the land sold in 2021.⁵³⁸ The slump on land prices followed a crackdown by the government, beginning in 2020, on developers' high reliance on debt⁵³⁹ despite the sector accounting for 25% of China's GDP.⁵⁴⁰ Consequently, residential floor space prices fell by 27% in 2022 and investments in the sector fell by 10%.⁵⁴¹ This situation negatively affects the Chinese economy.⁵⁴²

Since the real estate market is tied to debt,⁵⁴³ the market's volatility places the banking industry at risk.⁵⁴⁴ Concerns related to the Evergrande Group and

533. Major Tian, *The Role of Land Sales in Local Government Financing in China*, CKGSB KNOWLEDGE (Sep. 3, 2014), <https://english.ckgsb.edu.cn/knowledges/the-role-of-land-sales-in-local-government-financing-in-china/> [<https://perma.cc/R3DJ-KX94>]; see also Rebecca Feng & Cao Li, *To Boost Land Sales, Local Chinese Governments Set Up New Companies to Buy Plots*, THE WALL ST. J. (Nov. 17, 2022), <https://www.wsj.com/articles/to-boost-land-sales-local-chinese-governments-set-up-new-companies-to-buy-plots-11668681002> [<https://perma.cc/V9RH-X2DV>].

534. Liu Jing, *China's Real Estate Problem: Land Finance and Local Government Revenue Structures*, CKGSB KNOWLEDGE (Jul 05, 2022), <https://english.ckgsb.edu.cn/blog/land-finance-and-local-government-revenue-structures/> [<https://perma.cc/M6VY-NHYN>].

535. Frank Tang, *China property: tax authorities' enhanced oversight of land-sale revenue seen as 'mixed bag', and runaway prices may drop*, S. CHINA MORNING POST (Jun. 8, 2021), <https://www.scmp.com/economy/china-economy/article/3136504/china-property-tax-authorities-enhanced-oversight-land-sale> [<https://perma.cc/9QHF-QLKS>].

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-aca2-492c6561ebbf> [<https://perma.cc/ZAJ3-VLH3>].

537. *China's Ponzi-like property market is eroding faith in the government*, THE ECONOMIST (Sep. 12, 2022), <https://www.economist.com/finance-and-economics/2022/09/12/chinas-ponzi-like-property-market-is-eroding-faith-in-the-government> [<https://perma.cc/W9GV-PPW6>].

538. Guo Yingzhe, *China's plunging land sales threaten local governments*, NIKKEI ASIA (Jul. 7, 2022), <https://asia.nikkei.com/Spotlight/Caixin/China-s-plunging-land-sales-threaten-local-governments> [<https://perma.cc/5EYW-CJGN>].

539. Evelyn Cheng, *Why China won't bail out its real estate sector*, CNBC (Oct. 24, 2022), <https://www.cnbc.com/2022/10/25/china-property-why-beijing-wont-bail-out-its-real-estate-sector.html> [<https://perma.cc/HG89-9WP6>].

540. Evelyn Cheng, *China's real estate crisis isn't over yet, IMF says*, CNBC (Feb. 3, 2023), <https://www.cnbc.com/2023/02/03/chinas-real-estate-crisis-isnt-over-yet-imf-says.html> [<https://perma.cc/L2DU-2B6U>].

541. *Id.*

542. Daisuke Wakabayashi, *As China's Economy Stumbles, Homeowners Boycott Mortgage Payments*, THE N.Y. TIMES (Aug. 17, 2022), <https://www.nytimes.com/2022/08/17/business/china-economy-real-estate-crisis.html> [<https://perma.cc/S6UX-F8HT>].

543. Yingzhe, *supra* note 538.

544. See generally Chee Seng Cheong, Anna Olshansky & Ralf Zurbrugg, *The influence of real estate risk on market volatility*, 29 J. PROP. INV. & FIN. 145 (2011).

other Chinese real estate companies' default on loans in 2022⁵⁴⁵ have had an impact on the housing sector, leading to a fall in home prices.⁵⁴⁶ This has had a domino effect on real estate companies and a knock-on effect on the entire economy.⁵⁴⁷ Additionally, in China, home buyers often purchase homes and begin paying mortgages even prior to the home's construction.⁵⁴⁸ In many large developments where builders have failed to begin construction even after a long delay,⁵⁴⁹ home buyers are refusing to pay mortgages,⁵⁵⁰ impacting both the construction and lending sectors.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.⁵⁵² In August 2022, the United States passed the Chips and Science Act.⁵⁵³ The law offers a significant subsidy for semiconductor manufacturers to establish and expand operations in the United States.⁵⁵⁴ At the same time, the law bans the export of advanced chips and chip-

545. Martin Farrer, *A Ponzi scheme by any other name: the bursting of China's property bubble*, THE GUARDIAN (Sep. 25, 2022), <https://www.theguardian.com/business/2022/sep/25/china-property-bubble-evergrande-group> [<https://perma.cc/Y2UB-BMMV>].

546. David Ren, *China home prices fall for 11th straight month as suspended construction, mortgage boycott and weak economy hit sales*, S. CHINA MORNING POST (Aug. 15, 2022), <https://www.scmp.com/business/article/3188925/china-home-prices-fall-11th-straight-month-suspended-construction-mortgage> [<https://perma.cc/V3DM-XTWR>].

547. Arendse Huld, *Explainer: What is going on in China's Property Market?* CHINA BRIEFING (Jan. 14, 2022), <https://www.china-briefing.com/news/explainer-whats-going-on-in-chinas-property-market/> [<https://perma.cc/77J6-LEMT>].

548. Laura He, *Chinese homebuyers refuse to pay mortgages on unfinished apartments*, CNN BUSINESS (Jul. 14, 2022), <https://edition.cnn.com/2022/07/14/economy/china-property-crisis-homebuyers-bad-debt-intl-hnk/index.html> [<https://perma.cc/MY4N-3648>].

549. *Mortgage Boycott Shows How Deep China's Property Crisis Goes*, BLOOMBERG (Jul. 19, 2022), <https://www.bloomberg.com/news/articles/2022-07-19/china-mortgage-boycott-reveals-housing-uncertainty#xj4y7vzkg> [<https://perma.cc/B564-S44W>].

550. *Id.*

551. Simon Leplâtre, *Thousands join mortgage payment strike in China amid abandoned construction*, LE MONDE (Jul. 28, 2022), https://www.lemonde.fr/en/economy/article/2022/07/28/in-china-the-boycott-of-real-estate-loan-repayments-worries-authorities_5991689_19.html [<https://perma.cc/2CWM-KFES>].

552. Agathe Demarais, *How the U.S.-Chinese Technology War Is Changing the World*, FOREIGN POL'Y (Nov. 19, 2022), <https://foreignpolicy.com/2022/11/19/demarais-backfire-sanctions-us-china-technology-war-semiconductors-export-controls-biden/> [<https://perma.cc/G4ZZ-UDTB>].

553. Lamar Johnson, *Biden ends slog on semiconductor bill with signature*, POLITICO (Aug. 9, 2022), <https://www.politico.com/news/2022/08/09/biden-ends-slog-on-semiconductor-bill-with-signature-00050530> [<https://perma.cc/DM3N-8Z9R>].

554. Ana Swanson, *Biden Administration Releases Plan for \$50 Billion Investment in Chips*, THE N.Y. TIMES (Sept. 6, 2022), <https://www.nytimes.com/2022/09/06/business/economy/biden-tech-chips.html> [<https://perma.cc/2TPL-KY8K>].

making equipment to China.⁵⁵⁵ The Netherlands followed the American ban and restricted the overseas sale of semiconductor technology to China in order to protect its national security.⁵⁵⁶ The Netherlands is the home base of ASML Holdings (ASML),⁵⁵⁷ Europe's biggest tech firm,⁵⁵⁸ which produces the most advanced chip making machines in the world,⁵⁵⁹ including those used in China.⁵⁶⁰ Taiwan is the largest manufacturer of the most advanced microchips⁵⁶¹ and they zealously guard their intellectual property attempting to keep mainland China out of the market.⁵⁶²

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.⁵⁶³ 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

555. Milton Ezrati, *The Chip War with China Escalates*, FORBES (Mar. 6, 2023), <https://www.forbes.com/sites/miltonezrati/2023/03/06/the-chip-war-with-china-escalates/?sh=48c681e91eea> [<https://perma.cc/7S2D-GYAP>].

556. Toby Sterling, Karen Freifeld & Alexandra Alper, *Dutch to restrict semiconductor tech exports to China, joining US effort*, REUTERS (Mar. 9, 2023), <https://www.reuters.com/technology/dutch-responds-us-china-policy-with-plan-curb-semiconductor-tech-exports-2023-03-08/> [<https://perma.cc/UM5C-5F7M>].

557. Sam Shead, *Investors are going wild over a Dutch chip firm. And you've probably never heard of it*, CNBC (Nov. 24, 2021), <https://www.cnbc.com/2021/11/24/asml-the-biggest-company-in-europe-youve-probably-never-heard-of.html> [<https://perma.cc/Z8XE-H38S>].

558. Cagan Koc, Ian King & Jillian Deutsch, *ASML, Europe's Most Valuable Tech Firm, Is at the Heart of the US-China Chip War*, BLOOMBERG (Apr. 27, 2023), <https://www.bloomberg.com/news/articles/2023-04-26/asml-europe-s-most-valuable-tech-firm-to-define-us-china-chip-war#xj4y7vzkg> [<https://perma.cc/MU6X-U7X4>].

559. Shead, *supra* note 557.

560. Juliana Liu & Wayne Chang, *Europe joins the US in its chip war with China*, CNN (Mar. 9, 2023), <https://edition.cnn.com/2023/03/09/tech/china-us-netherlands-chips-curbs-response-hnk-intl/index.html> [<https://perma.cc/34HC-AJK9>]; *see also* Don Clark, *The Tech Cold War's 'Most Complicated Machine' That's Out of China's Reach*, THE N.Y. TIMES (Jul. 4, 2021), <https://www.nytimes.com/2021/07/04/technology/tech-cold-war-chips.html> [<https://perma.cc/NVD6-3UEZ>].

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.

563. Yimou Lee & Ben Blanchard, *'Provocative' China pressures Taiwan with fighters, fake news amid virus outbreak*, REUTERS (Mar. 3, 2020) <https://www.reuters.com/article/health-coronavirus-taiwan-china-idINKBN20Q08Q> [<https://perma.cc/LX95-3MNE>]; *see also* THE TAIWAN AFFS. OFF. OF THE STATE COUNCIL & THE STATE COUNCIL INFO. OFF. OF THE PEOPLE'S REPUBLIC OF CHINA, *THE TAIWAN QUESTION AND CHINA'S REUNIFICATION IN THE NEW ERA* (2022), http://pl.china-embassy.gov.cn/pol/zglc/202208/t20220810_10739290.htm [<https://perma.cc/P25B-HYUX>].

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

564. Min-Hua Chiang, *Taiwan's Economy is Breaking Away From China's*, THE HERITAGE FOUND. (Mar. 22, 2023), <https://www.heritage.org/asia/commentary/taiwans-economy-breaking-away-chinas> [<https://perma.cc/GPT8-WERG>].

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>].

567. Cf. Laura He, *China's economy is growing again. So why are investors getting out?*, CNN BUSINESS (May 19, 2023) (citing several reasons for China's slow recovery coming out of the zero-covid policy era) <https://edition.cnn.com/2023/05/19/investing/china-stock-market-decline-intl-hnk/index.html> [<https://perma.cc/HV8R-877K>].

568. Evelyn Cheng, *China takes a cautious approach to its economy in 2023*, CNBC (Mar. 6, 2023) <https://www.cnbc.com/2023/03/06/china-takes-a-cautious-approach-to-its-economy-in-2023.html> [<https://perma.cc/429D-39R9>].

569. Laura He, *China sets lowest GDP growth target in decades as Beijing tightens its belt*, CNN BUSINESS (Mar. 6, 2023) <https://edition.cnn.com/2023/03/06/economy/china-two-sessions-lowest-gdp-target-analysis-intl-hnk/index.html> [<https://perma.cc/H7E6-XFTY>].

570. Dake Kang, *Ignoring experts, China's sudden zero-COVID exit cost lives*, ASSOCIATED PRESS (Mar. 24, 2023) <https://apnews.com/article/zero-covid-exit-china-reopening-investigation-abridged-d7e7cf42b8f4b97e2744b640f431a7df> [<https://perma.cc/YL5H-LJUY>]. Indeed, when looked at from another perspective, the reopening was influenced by unprecedented anti-government protests over China's draconian pandemic control measures in December 2022. The Chinese government's willingness to give in to protestors' demands indicates the tenuous position China is now, both at home and abroad. See Li Yuan, *China's Protest Prophet*, THE N.Y. TIMES (Dec. 7, 2022), <https://www.nytimes.com/2022/12/07/briefing/china-protest-peng-lifa.html> [<https://perma.cc/3CJW-TNJZ>].

571. Meaghan Tobin, *China's economic recovery hinges on consumers. They're not spending*, THE WASH. POST (Feb. 20, 2023), <https://www.washingtonpost.com/world/2023/02/20/china-economy-recovery-spending/> [<https://perma.cc/AL4F-79Z8>].

debt in China.⁵⁷² In 2020, for instance, household debt as a percentage of GDP was 62% at the end of the year's second quarter.⁵⁷³ This was a reduction of 0.1% at the end of 2019.⁵⁷⁴ By the end of 2020, household debts as a percentage of disposable income had reached a record level of 130.9 percent.⁵⁷⁵ This has led to a cash crunch that reduces spending and thus impedes consumer-led growth from consumption of goods and services within China.⁵⁷⁶ While Chinese authorities recognize that consumption is key in driving the economy in the face of external shocks,⁵⁷⁷ the behavioral responses of households and businesses pose a risk to the long-term stabilization of economic growth through domestic consumption.⁵⁷⁸

8. Demographic Crisis

Perhaps the most challenging and long-term issue bedeviling the Chinese economy is its demographic crisis.⁵⁷⁹ In 2022, China's population declined for the first time in 60 years.⁵⁸⁰ The government announced that 9.56 million people were born in China in 2022,⁵⁸¹ while 10.41 million people died.⁵⁸² This was the first time that deaths outnumbered births in China since the "Great Leap Forward."⁵⁸³ In addition, the birth rate fell to a record low while the number of

572. He Huifeng, *Could China's rising household debt threaten Beijing's consumer-led growth vision?*, S. CHINA MORNING POST (Aug. 7, 2021), <https://www.scmp.com/economy/china-economy/article/3144125/could-chinas-rising-household-debt-threaten-beijings-consumer> [<https://perma.cc/R36P-G5HP>].

573. *Id.*

574. *Id.*

575. *Id.*

576. Sarah Chan, *China's Rising Household Debt: A New Debt Trap?*, ECON. ALTS. 567 (2020).

577. Fan Feifei, *Consumption upgrade promises growth momentum*, CHINA DAILY (Feb. 20, 2023), <https://www.chinadaily.com.cn/a/202302/20/WS63f2a7c3a31057c47ebaf9d4.html> [<https://perma.cc/6455-ZKDL>].

578. *China: Domestic and External Conditions are leading to a Weakened Economic Outlook*, THE WORLD BANK (Dec. 20, 2022), <https://www.worldbank.org/en/news/press-release/2022/12/20/china-domestic-and-external-conditions-are-leading-to-a-weakened-economic-outlook> [<https://perma.cc/9JDF-CZEA>].

579. Helen Davidson, *China's first population fall since 1961 creates 'bleaker' outlook for country*, THE GUARDIAN (Jan. 17, 2023), <https://www.theguardian.com/world/2023/jan/17/chinas-population-falls-for-first-time-in-more-than-60-years> [<https://perma.cc/A7SK-FD5Q>].

580. Alexandra Stevenson & Zixu Wang, *China's Population Falls, Heralding a Demographic Crisis*, THE N.Y. TIMES (Jan. 16, 2023), <https://www.nytimes.com/2023/01/16/business/china-birth-rate.html> [<https://perma.cc/7PG4-BJAX>].

581. *Id.*

582. *Id.*

583. Christian Shepherd, *China's first population decline in 60 years sounds demographic alarm*, THE WASH. POST (Jan. 17, 2023), <https://www.washingtonpost.com/world/2023/01/17/china-population-shrinking-decline-crisis/> [<https://perma.cc/VH7Q-Q28V>].

the elderly continues to rise.⁵⁸⁴ This situation has the potential of overburdening healthcare infrastructure and destabilizing the pension system.⁵⁸⁵ The state pension pool amounts to less than 10 percent of the country's gross domestic product,⁵⁸⁶ a rate that is below the 50 to 100 per cent of GDP in "most countries".⁵⁸⁷ In the past, Chinese economic development relied on the high proportion of working age citizens for its growth.⁵⁸⁸ The aging population slows growth because of structural constraints of a shrinking workforce,⁵⁸⁹ increased government spending⁵⁹⁰ and a strained pension system.⁵⁹¹ It also fuels shortages in labor supply driving increases in labor costs.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.⁵⁹³ There are also fears that an aging population will lead to a path, similar to that of Japan,⁵⁹⁴ where the economy will enter decades of economic stagnation.⁵⁹⁵

584. Zhou Xin, *China's deepening demographic crisis calls for stronger, more coherent course of action from Beijing*, S. CHINA MORNING POST (Feb. 27, 2023), <https://www.scmp.com/news/china/article/3211712/chinas-deepening-demographic-crisis-calls-stronger-more-coherent-course-action-beijing> [https://perma.cc/5RUW-R56T].

585. Luna Sun, *China's ageing population a 'long-term reality', and its silver economy needs to catch up, State Council says*, S. CHINA MORNING POST (Nov. 26, 2021), <https://www.scmp.com/economy/china-economy/article/3157385/chinas-ageing-population-long-term-reality-and-its-silver> [https://perma.cc/6NFZ-9HYB].

586. Cyril Ip, *China population: former central bank chief sounds alarm over pension dangers*, S. CHINA MORNING POST (Feb. 26, 2023), <https://www.scmp.com/economy/china-economy/article/3211590/chinas-former-central-bank-chief-sounds-alarm-over-pension-dangers> [https://perma.cc/P9B7-G7YN].

587. *Id.*

588. Mitali Das & Papa N'Diaye, *The End of Cheap Labor: China's working-age population is poised to decline, with big implications for China and the rest of the world*, FIN. & DEV., June 2013, at 34 (2013) <https://www.elibrary.imf.org/view/journals/022/0050/002/article-A013-en.xml> [https://perma.cc/5XD3-RMKD].

589. Ronald Lee & Andrew Mason, *Cost of Aging*, 54 FIN. & DEV., no. 1, at 7 (2017).

590. *Id.*

591. *Id.*

592. *Id.*

593. Business Insider, *Chinese companies are moving supply chains out of China to manage risks, with India, Malaysia and Indonesia benefiting*, S. CHINA MORNING POST (Apr. 23, 2023), <https://www.scmp.com/news/asia/south-asia/article/3218025/chinese-companies-are-moving-supply-chains-out-china-manage-risks-india-malaysia-and-indonesia> [https://perma.cc/DVL3-35K6].

594. See Cheryl Arcibal, *Is China heading for stagnation as property slump goes Japan's way in a deja vu crisis*, S. CHINA MORNING POST (Sep. 7, 2022), <https://www.scmp.com/business/article/3191423/china-heading-stagnation-property-slump-goes-japans-way-deja-vu-crisis> [https://perma.cc/MF9B-XK6L].

595. Jessie Yeung, *China's population is shrinking. The impact will be felt around the world*, CNN BUSINESS (Jan. 19, 2023), <https://edition.cnn.com/2023/01/18/china/china-population-drop-explainer-intl-hnk/index.html> [https://perma.cc/XWL6-NV4H].

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

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.

602. See ETHAN KESSLER, CHI. COUNCIL ON GLOB. AFFS., WORKING PAPER: HOW ECONOMIC SANCTIONS ARE USED IN U.S. FOREIGN POLICY 2 (2022).

603. *Id.* at 20.

604. See Drew Christiansen & Gerard F. Powers, *Economic Sanctions and Just War Doctrine*, in ECONOMIC SANCTIONS: PANACEA OR PEACEBUILDING? 107 (David Cortright & George Lopez eds., 1995).

605. See Özdamar & Shahin, *supra* note 23 at 1649-52.

606. See T. Clifton Morgan, Constantinos Syropoulos & Yoto V. Yotov, *Economic Sanctions: Evolution, Consequences, and Challenges*, 37 J. ECON. PERSP. 3, 13-14 (2023).

607. See Julia Schmidt, *The Legality of Unilateral Extra-territorial Sanctions under International Law*, 27 J. CONFLICT & SEC. L. 53, 75 (2022).

Bosnian Genocide case.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.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.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 China⁶¹¹ 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 *jus cogens* norm, such legislation would eventually lead to collective sanctions, which would greatly magnify the consequences for China.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 *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 Law⁶¹³ effectively ended the “one country, two systems” principles previously set out.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.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.⁶¹⁶ Its economy is heavily dependent upon foreign trade and foreign investment⁶¹⁷ with lagging domestic earning and spending.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.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

608. See Bosnian Genocide case (2007), *supra* note 11.

609. *Id.*

610. See Dupuy, *supra* note 211.

611. See HL Deb (7 Nov. 2022) (825) col. 451, *supra* note 375.

612. See MARTIN, *supra* note 220.

613. Justine Yu, *The United States’ Ineffective Response Towards Hong Kong’s National Security Law*, 73 HASTINGS L.J. 161, 179-80 (2022).

614. *Id.* at 171.

615. See Rana Siu Inboden & Titus C. Chen, *China’s Response to International Normative Pressure: The Case of Human Rights*, 47 INT’L SPECTATOR 45, 51-53 (2012).

616. See Huang & Lardy, *supra* note 263.

617. See XINHUA, *supra* note 267.

618. Tobin, *supra* note 571.

619. See generally Hong Bo, *Implications of the Ukraine war for China: can China survive secondary sanctions?*, 21 J. CHINESE ECON. & BUS. STUD. 311 (2023).

publicly available but include structural vulnerability,⁶²⁰ poor financial management,⁶²¹ endangered real estate markets and lending institutions,⁶²² failed foreign policy initiatives with the debacle of ill-advised massive foreign loans,⁶²³ the arguably failed Belt and Road Initiative,⁶²⁴ lagging access to technology,⁶²⁵ 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.⁶²⁶

Considering the relatively low bar for effective influence as an obligation of conduct and not result⁶²⁷ and viewed under the lens of the UK's continued economic significance to China,⁶²⁸ China's economic vulnerability,⁶²⁹ the likelihood the trade bill would lead to collective sanctions,⁶³⁰ 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."⁶³¹

620. See generally Tamim Bayoumi & Yunhui Zhao, *Incomplete Financial Markets and the Booming Housing Sector in China* (Int'l Monetary Fund Working Paper No. 2020/265, 2020).

621. *Id.*

622. See Edward White & Cheng Leng, 'Financial monsters': China's bad banks complicate property crisis, *FIN. TIMES* (Aug. 5, 2022), <https://www.ft.com/content/261b87c3-2eba-42d5-ac7a-f7c3f8bbd7d8> [<https://perma.cc/PD3B-6W52>].

623. See Hal Brands & Michael Beckley, *China Is a Declining Power—and That's the Problem*, *FOREIGN POL'Y* (Sept. 24, 2021), <https://foreignpolicy.com/2021/09/24/china-great-power-united-states/> [<https://perma.cc/LAS9-JD4L>]; see also, Chi Wang, *China's failing foreign policy needs a reboot to avert a US Cold War*, *S. CHINA MORNING POST* (Jun. 18, 2020), <https://www.scmp.com/comment/opinion/article/3089399/chinas-failing-foreign-policy-needs-reboot-avert-us-cold-war> [<https://perma.cc/2YA9-X9HM>].

624. See Christina Lu, *China's Belt and Road to Nowhere*, *FOREIGN POL'Y* (Feb. 13, 2023), <https://foreignpolicy.com/2023/02/13/china-belt-and-road-initiative-infrastructure-development-geopolitics/> [<https://perma.cc/R2S6-KB37>].

625. Longmei Zhang & Sally Chen, *China's Digital Economy: Opportunities and Risks 4* (Int'l Monetary Fund Working Paper, WP/19/16, 2019), <https://www.imf.org/-/media/Files/Publications/WP/2019/wp1916.ashx>.

626. See generally Junsen Zhang, *The Evolution of China's One-Child Policy and Its Effects on Family Outcomes*, 31 *J. ECON. PERSP.* 141-59 (2017); see also Bryan Walsh, *How China came to regret its one-child policy*, *VOX* (Jan. 18, 2023), <https://www.vox.com/future-perfect/23558772/china-population-overpopulation-one-child-policy-demographics-aging-beijing-xi-jinping> [<https://perma.cc/75UU-9RXY>].

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 Özdamar & Shahin, *supra* note 23.

631. See *Bosnian Genocide case* (2007), *supra* note 11.