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## Keeping the Dollar King: The Impact of Economic Sanctions on American National Security

*By Molly Byman*



# KEEPING THE DOLLAR KING: THE IMPACT OF ECONOMIC SANCTIONS ON AMERICAN NATIONAL SECURITY

*Molly Byman*\*

## INTRODUCTION

Digital money-gifts from the government, accessed through an e-wallet, via an App, sound too easy and too generous to be real, but China has done just that.<sup>1</sup> This past October, around 50,000 citizens in Shenzhen, China received a total of 10 million yuan (around \$1.5 million) in digital currency to spend around the city.<sup>2</sup> While generous, China is distributing these “digital-money gifts” to test its new system for digital currency, the Digital Currency Electronic Payment (“DCEP”) scheme, which it plans to soon launch fully.<sup>3</sup> China was the first country to issue paper money, and now it may be among the first to transition to a cashless economy.<sup>4</sup> A government-backed digital currency has many advantages (namely, more efficient transactions with the stability of a traditional national currency), but this transition raises serious questions regarding data security, privacy, government surveillance, and the impact on the current U.S.-led global financial system.<sup>5</sup> Although the coronavirus pandemic has propelled us closer to a cashless society, 82% of Americans still carry cash and 22% of Americans do not have a credit card, so cash remains essential.<sup>6</sup> A new Chinese currency could offer an alternative to the current system and threaten the U.S.’s current hold on international banking.<sup>7</sup>

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<sup>1</sup> Nicu Calcea, *What Will A Cashless China Mean For The World?*, NEW STATESMAN (Nov. 30, 2020), <https://www.newstatesman.com/world/asia/2020/11/what-will-cashless-china-mean-world>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* (explaining that central banks globally are developing Central Bank Digital Currencies (“CBDCs”), but none are closer than China).

<sup>5</sup> *Id.*

<sup>6</sup> Bill Hardekopf, *Is A Cashless Society Good For America*, FORBES (Feb. 24, 2020), <https://www.forbes.com/sites/billhardekopf/2020/02/24/is-a-cashless-society-good-for-america/?sh=8ca344b72830>.

<sup>7</sup> Nicu Calcea, *supra* note 1.

While China rapidly advances its banking systems, the United States has been unleashing its financial power to pursue foreign policy goals.<sup>8</sup> This paper argues that the United States' increased use of economic sanctions against international actors is short-sighted and making the United States, and the U.S. dollar, less powerful and less secure.<sup>9</sup> Sanctions best practices show that sanctions are most successful when issued as a short-term tool, in tandem with other strategies, and in pursuit of a clear and attainable goal (like the release of a prisoner), but U.S. presidents have strayed from these best practices, capitalizing on the U.S.'s financial hegemony and increasingly using sanctions for political gain.<sup>10</sup> By liberally wielding the U.S.'s financial force to promote American foreign policy goals, U.S. presidents are unintentionally invigorating international bankers to develop viable alternatives to the U.S.-led financial system, like the Chinese DCEP scheme.<sup>11</sup> A global shift away from the U.S. dollar would demote the United States, for the first time since World War II, from leader to follower in the global economy.<sup>12</sup>

This paper compiles research on sanctions generally and on recent American sanctions issuances in order to draw attention to this threat and to identify ways the United States could better execute financial warfare. Part II begins by briefly describing the global financial structure, with special attention to the United States' currently dominant role at the helm of this system. Part III goes on to define financial warfare and to focus this paper's discussion of financial weaponry around economic sanctions. Part III then describes how economic sanctions are particularly potent when imposed by the United States, providing the recent rounds of sanctions against Iran as an example. Part IV turns the discussion to the efficacy of sanctions, analyzing factors that make sanctions more or less likely to be effective and comparing examples of U.S. sanctions against Iran, South Africa, and North Korea. Part V then analyzes whether the current sanctions regimes are making the United States more or less secure. It contains three sub-parts: (1) discussing domestic and international public opinion regarding U.S.-imposed sanctions, (2) considering how current U.S. sanctions policies are triggering changes to the global financial system at a disadvantage to our security, and (3) presenting recommendations to use sanctions more effectively, or in ways that would enhance U.S. security and protect its position as financial hegemon. Part VI concludes by reiterating the importance of sanctions as a foreign policy tool

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<sup>8</sup> *Id.*; Enea Gjoza, *Counting the Cost of Financial Warfare*, DEFENSE PRIORITIES (Nov. 2019), <https://www.defensepriorities.org/explainers/counting-the-cost-of-financial-warfare>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

and emphasizing that the U.S. should be careful with this weapon, reserving sanctions as a multilateral tool to enforce collective norms. Through collaboration with allies, the U.S. can flex its social and financial leadership while simultaneously building more effective multilateral systems to punish bad actors, leverage political influence, and, most crucially, secure its financial dominance.

## I. AMERICAN DOMINANCE OF THE GLOBAL FINANCIAL SYSTEM

Dominance of the global financial system has benefitted our national security since World War II. Following World War II, at the Bretton Woods Conference, the United States and 43 other nations established the “‘twin pillars’ of the global economic and financial system: the International Bank for Reconstruction and Development (“IBRD”), later to become part of the World Bank; and the International Monetary Fund (“IMF”).”<sup>13</sup> The IBRD was formed to help rebuild nations destroyed by World War II and the IMF was designed to finance these projects and to maintain fixed exchange rates “centered on the U.S. dollar and gold.”<sup>14</sup> At the time, the U.S. controlled 75% of the world’s gold reserves and was the only nation with a currency tied to gold, so the United States emerged naturally as the head of this new financial system.<sup>15</sup> Moreover, it was agreed at Bretton Woods that there would always be an American head of the World Bank and European head of the IMF.<sup>16</sup> These foundations for the global financial system ensured U.S. preeminence for decades to come.<sup>17</sup> By 1973, floating exchange rates replaced the fixed rate system, so currencies were backed by each country’s wealth rather than by gold; the U.S. dollar (“USD”), however, replaced gold as the “world’s only reserve currency.”<sup>18</sup> This means that countries, companies and individuals can use dollars, or accounts in dollars, to secure the value of their own currency, as security against other currencies, and to carry out dollar-denominated business transactions.<sup>19</sup> This has the effect of ensuring that

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (citing the “Bretton Woods Conference” from Encyclopedia Britannica, <https://www.britannica.com/event/Bretton-Woods-Conference>).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *See id.* (describing the United States as the only “viable candidate to be the lynchpin of this system”).

<sup>18</sup> *Id.* (explaining “world’s reserve currency” to mean that other countries will hold U.S. dollars (USD) without demanding goods or their own currencies in exchange, so the USD can be used to secure another currency’s value).

<sup>19</sup> Juan C. Zarate, *TREASURY’S WAR: THE UNLEASHING OF A NEW ERA OF FINANCIAL WARFARE* (1 ed. 2013) (describing the United States as the “principal capital and banking market worldwide” and the USD as the “international benchmark for trade”).

every nation has, trusts, and uses the USD.<sup>20</sup> Now, in order to be a “serious international institution with the ability to work globally, you have to access New York and the American banking system.”<sup>21</sup>

Because the American banking system rules, the USD has become the main currency for global trade, giving the United States disproportionate influence over global financial systems, including the authority to set rules and norms for borrowing, deficit spending, and trade.<sup>22</sup> For example, in 1974, the United States made a deal with Saudi Arabia and other Middle Eastern oil producers where the U.S. provided political and military support in exchange for the oil producers’ agreement to accept only USD for oil and to reinvest profits into U.S. Treasury bonds.<sup>23</sup> This solidified the USD as the main currency for oil and has forced other countries to acquire USD in order to purchase oil.<sup>24</sup> By creating an international need and market for USD, which necessarily runs through American banks and the U.S. Federal Reserve, the U.S. has control over foreign banks that need to provide their clients with dollars, or need to exchange clients’ currency with USD only to then convert the USD to the desired currency.<sup>25</sup> As evidence of the power of the USD, in 2016, the dollar accounted for 87.6% of all global market turnover.<sup>26</sup>

This economic power translates to a political power, as the United States has the capacity to use, or to forbid others from using, the global financial system in pursuit of other foreign policy interests.<sup>27</sup> This weaponizing of economic assets is called financial warfare.<sup>28</sup>

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<sup>20</sup> *See id.*; *see* Enea Gjoza, *supra* note 8.

<sup>21</sup> Juan C. Zarate, *supra* note 19.

<sup>22</sup> Enea Gjoza, *supra* note 8 (describing the U.S. dollar as “essential” for global transactions and describing the general functions of currency, including currency as a medium of exchange, a reserve of value, a unit to determine pricing of goods and services, and a standard for deferred payment).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* (giving an example of a bank needing to convert Chinese yuan to USD before converting that amount to Pakistani rupees).

<sup>26</sup> *Id.* (citing a report on exchange turnover from the Bank of International Settlements).

<sup>27</sup> Bryan R. Early, *BUSTED SANCTIONS: EXPLAINING WHY ECONOMIC SANCTIONS FAIL* at 4 (2015); Tom C.W. Lin, *Financial Weapons of War*, 100 MINN. L. REV. 1377 at 1380 (2016) (discussing the various options for financial weapons, including “traditional weapons like economic sanctions, anti-money laundering regulations, and banking restrictions, as well as digital weapons like distributed denial-of-service attacks, data manipulation banks, and destructive intrusions”).

<sup>28</sup> *Id.*

## II. SANCTIONS: AN INCREASINGLY USED WEAPON IN FINANCIAL WARFARE

### *A. Overview*

Financial warfare is when a nation-state attempts to solve social or economic conflict not with guns but with regulatory instruments, or political interventions that use binding regulations to formally influence how certain target groups should act.<sup>29</sup> Financial warfare is fought with nonviolent tools like travel bans, asset freezes, trade embargoes, and sanctions, the last of which will be the focus of this paper.<sup>30</sup>

“Sanctions are a fascinating and important element in the national security toolbox,” said Adam Smith, former U.S. Treasury Senior Adviser, to a group of legal professionals at an event sponsored by the ABA Standing Committee on Law and National Security.<sup>31</sup> Economic sanctions are defined as the “withdrawal of customary trade and financial relations” for national or foreign security purposes.<sup>32</sup> They “work by inflicting salient enough costs on their targets that acquiescing to the sanctioner’s demands becomes a more attractive option for target leaders than resisting them.”<sup>33</sup> Sanctions may be comprehensive and issued against an entire country, like the U.S. embargo of Cuba, or they may be targeted against specific businesses, groups, or individuals, like the recent U.S. bans against Chinese companies Huawei and TikTok.<sup>34</sup> National governments or international bodies, like the United Nations and European Union, issue sanctions as a means to punish entities that are endangering security or violating international norms.<sup>35</sup> Sanctions are typically used as a middle-ground response to antisocial foreign behaviors that require more than diplomacy but less than military force.<sup>36</sup> The goal is that the economic and reputational harm from the sanctions will compel the sanctioned target to correct its behavior without requiring physical violence from either side.<sup>37</sup> Whereas military action has political, economic and human

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<sup>29</sup> Dordrecht Springer, *FOREST POLICY ANALYSIS, REGULATORY INSTRUMENTS* 219-20 (2005), [https://link.springer.com/chapter/10.1007%2F1-4020-3485-7\\_9](https://link.springer.com/chapter/10.1007%2F1-4020-3485-7_9).

<sup>30</sup> Tom C.W. Lin, *supra* note 27 at 1380.

<sup>31</sup> *Former Treasury Official Says Sanctions an Important Element in National Security Toolbox*, AMERICAN BAR ASSOCIATION (June 09, 2017), [https://www.americanbar.org/news/abanews/aba-news-archives/2017/06/former\\_treasury\\_offi/](https://www.americanbar.org/news/abanews/aba-news-archives/2017/06/former_treasury_offi/).

<sup>32</sup> Jonathan Masters, *What Are Economic Sanctions?*, COUNCIL ON FOREIGN RELATIONS (Aug. 12, 2019), <https://www.cfr.org/backgrounder/what-are-economic-sanctions>.

<sup>33</sup> Bryan R. Early, *supra* note 27 at 55.

<sup>34</sup> Jonathan Masters, *supra* note 32.

<sup>35</sup> *Id.*

<sup>36</sup> Bryan R. Early, *supra* note 27 at 5.

<sup>37</sup> Jonathan Masters, *supra* note 32.

costs, sanctions aim to affect change without the carnage of war.<sup>38</sup>

Because sanctions are easy to impose and “basically cost-free,” they offer an attractive alternative to traditional warfare and are becoming a tool of choice among geopolitical leaders.<sup>39</sup> There is “nothing else between words and military action if you want to bring pressure upon a government,” says Sir Jeremy Greenstock, former UK ambassador to the UN.<sup>40</sup> Sanctions provide leaders with a middle option to show strength and respond assertively to bad actors while avoiding the political costs of traditional warfare.<sup>41</sup> Historically targeted at “weak, rogue states” committing human rights violations, sanctions are now just as often used against powerful states and against allies.<sup>42</sup> As evidence of their proliferation, post-Cold War, the U.N. has imposed sanctions more than twenty times, the E.U. has imposed sanctions more than thirty times, and the U.S. uses them more than any other country.<sup>43</sup>

### *B. American Sanctions*

#### 1. The Super Power of U.S. Sanctions

The U.S. is well-positioned to carry out financial warfare and, accordingly, the U.S. has had an “unbroken record” of issuing economic sanctions as a foreign policy tool.<sup>44</sup> Because U.S. banks and markets lead the global economy, U.S. leaders are increasingly using sanctions to bolster diplomatic efforts abroad and to punish adversaries.<sup>45</sup> According to Smith,

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<sup>38</sup> *Id.*

<sup>39</sup> *Former Treasury Official Says Sanctions an Important Element in National Security Toolbox*, *supra* note 31 (quoting Adam Smith).

<sup>40</sup> *Do Economic Sanctions Actually Work?*, THE WEEK (June 24, 2019), <https://www.theweek.co.uk/88349/fact-check-do-economic-sanctions-actually-work>.

<sup>41</sup> *See id.*

<sup>42</sup> Enea Gjoza, *supra* note 8.

<sup>43</sup> *Do Economic Sanctions Actually Work?*, *supra* note 40.

<sup>44</sup> Rachel Barnes, *United States Sanctions: Delisting Applications, Judicial Review and Secret Evidence*, 62 ECONOMIC SANCTIONS AND INTERNATIONAL LAW: STUDIES IN INTERNATIONAL LAW at 197 (Mathew Happold & Paul Eden eds., 2016) (describing how the United States’ sanctions regimes have provided an example to other nations and international bodies for the development of sanctions as a key national security and foreign policy tool); Bryan R. Early, *supra* note 27 at 5 (saying the U.S. has used economic sanctions more than any other country in the world by a large margin).

<sup>45</sup> Rachel Barnes, *supra* note 44; *America’s Aggressive Use of Sanctions Endangers the Dollar’s Reign*, THE ECONOMIST (Jan. 18, 2020), <https://www.economist.com/briefing/2020/01/18/americas-aggressive-use-of-sanctions-endangers-the-dollars-reign>; Paul Bracken, *Financial Warfare*, FOREIGN POLICY RESEARCH INSTITUTE (Sept. 13, 2007), <https://www.fpri.org/article/2007/09/financial-warfare/>.

the use of sanctions has risen with each presidential administration, increasing by more than 300 percent since 2000.<sup>46</sup> In President Donald Trump's first 100 days in office, he issued twenty-six separate sanction actions and added 450 named to the "blacklist" (or the individuals and companies acting for the benefit of targeted sanctioned countries).<sup>47</sup> For contrast, in President Barack Obama's first 100 days, he imposed sanctions on nineteen separate entities and added more than 100 names to the blacklist.<sup>48</sup> "As of October [2020], President Trump has imposed over 3,700 sanctions on foreign governments, central banks, authoritarian governments and malign actors."<sup>49</sup> This first term data shows a marked jump as a part of an already steadily increasing trend: President George W. Bush issued 1,800 sanctions in his first term and President Barack Obama approved over 2,000 in his first term.<sup>50</sup>

As evinced by both Trump and Obama, American presidents have broad powers to issue sanctions. Sanctions are implemented and enforced by the U.S. Department of Treasury, but only pursuant to executive orders issued by the president of the United States.<sup>51</sup> This authorization comes from the International Emergency Economic Powers Act of 1977 ("IEEPA"), which grants the President special powers "to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat."<sup>52</sup> If the President declares a national emergency, the Act authorizes him to "(A) investigate, regulate or prohibit—(i) any transactions in foreign exchange, (ii) transfers of credit or payments, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof, (iii) the importing or exporting of currency or securities;" (B) block transactions and freeze assets with respect to transactions involving any foreign country or a national

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<sup>46</sup> *Former Treasury Official Says Sanctions an Important Element in National Security Toolbox*, *supra* note 31. *But see also*, Rachel Barnes, *supra* note 30 at 199 (describing instances of the U.S. using economic sanctions as a foreign policy tool prior to World War II, including trade embargoes during the Spanish-American War and the arms embargo on Bolivia and Paraguay during the Chaco War).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Pranshu Verma, *Trump's Sanctions on International Court May Do Little Beyond Alienating Allies*, THE NEW YORK TIMES (Oct. 18, 2020) <https://www.nytimes.com/2020/10/18/world/europe/trump-sanctions-international-criminal-court.html> (according to experts at law firm Gibson, Dunn & Crutcher).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> § 1701(a), 50 U.S.C.A. §§ 1701-1707 (1977).



thereof, and (C) confiscate property if the United States is “engaged in armed hostilities or has been attacked by a foreign country or foreign nationals.”<sup>53</sup> So, if the president first declares a national emergency, he is then able to impose financial controls on involved foreign entities; and, because this Act falls under national security powers, courts reviewing such issuances will give their traditional deference to the executive for national security matters.<sup>54</sup>

This vague and flexible language and opening of the national security umbrella effectively frees the president to impose sanctions at will, making economic sanctions one of the president’s most readily accessible tools.<sup>55</sup> The only limit to this power is IEEPA’s requirement that the President consult with Congress before exercising these emergency powers, report to Congress upon the execution specifying the circumstances, and provide regular six-month reports after the first issuance.<sup>56</sup> The U.S. Office of Foreign Assets Control (OFAC), an office within the Department of the Treasury, has been delegated the role of administering all U.S. sanctions programs and of sanctioning any violators with asset freezes and fines.<sup>57</sup> In 1986, OFAC expanded its power to sanction by sending its first list of “Specially Designated Nationals” to all Federal Reserve banks.<sup>58</sup> This list is a list of individuals or entities that American citizens and businesses are prohibited from engaging with, and banks must honor the list if they wish to continue business in the United States.<sup>59</sup>

OFAC’s economic powers, like the aforementioned list, are uniquely powerful coming from the United States. Because of the preeminence of the U.S. banking system, U.S. presidents wield international power even where they only have domestic authority.<sup>60</sup> When the U.S. issues sanctions, the sanctions do more than just financially cripple the sanctioned individual or

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<sup>53</sup> 50 U.S.C.A. § 1702(a)(1)(A)-(C).

<sup>54</sup> Rachel Barnes, *supra* note 44 at 201.

<sup>55</sup> *Id.*

<sup>56</sup> 50 U.S.C.A. § 1703(a)-(c); Rachel Barnes, *supra* note 44 at 201 (explaining that the courts have upheld this congressional oversight as sufficient control over the executive decisions to sanction but going on to call this executive power “draconian”).

<sup>57</sup> Juan C. Zarate, *supra* note 19 at 23. OFAC was originally called “The Control” during World War II when the U.S. government used sanctions and asset freezes to go after the assets of its enemies; The Control was renamed to OFAC during the Korean War in the 1950s when the office began targeting Chinese assets. *Id.* at 24.

<sup>58</sup> *Id.* at 25.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* (discussing the effect of OFAC’s first Specially Designated Nationals list). Although the first list was largely ignored, “it was a start to isolating” targets and proved to be a “multilateral tool by effect” since banks wanting to operate in the United States had to pay attention to the lists. *Id.* Zarate goes on to give an example of Latin American banks honoring “la lista Clinton” after OFAC blacklisted several entities with ties to drug cartels. *Id.*

entity; U.S.-imposed sanctions cut off a target group's access to the U.S. financial sector, blacklisting the target from the U.S. economy until the sanctions are lifted.<sup>61</sup> Because more than eighty percent of trade is done in the U.S. dollar, virtually all foreign transactions travel through the U.S. banking system, so blacklisted targets are effectively barred from participation in the global financial system (opposed to just being precluded from transactions with U.S.-based entities).<sup>62</sup> By “locking other nations out of its system until they submit to political demands,” the U.S. has a powerful weapon—one that other nations do not have—for political influence, and the U.S.'s increased use of sanctions indicates that U.S. presidents recognize this power.<sup>63</sup>

Following the September 11, 2001 terrorist attacks, U.S. presidents were given even broader authority to issue sanctions where a target's business is proven to contribute to “terror financing” (like by funding a weapons program).<sup>64</sup> These counterterrorism sanctions come with higher penalties for violation and an added reputation cost for institutions willing to deal with the blacklisted targets.<sup>65</sup> Sanctions designated under counterterrorism authorities, unlike typical economic sanctions, must be publicly justified prior to both their implementation and removal.<sup>66</sup> Because of this justification requirement, easing terror-designated sanctions requires a showing of additional evidence that the link to terrorism no longer exists, making it more difficult to reverse course.<sup>67</sup> According to Mark Dubowitz, head of the Foundation for the Defense of Democracies and a strong proponent of sanctions, terror designations build a “sanctions wall of political and market deterrence.”<sup>68</sup> In other words, working with a sanctioned target comes not only with financial disincentives, but also imposes the moral and risky choice about whether to do business with actors linked to terrorism.<sup>69</sup> By making public a target's links to terrorism, banks, investors and companies that choose to work with a target have an added liability risk and this risk can

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<sup>61</sup> *Former Treasury Official Says Sanctions an Important Element in National Security Toolbox*, *supra* note 31.

<sup>62</sup> *Id.*

<sup>63</sup> Enea Gjoza, *supra* note 8.

<sup>64</sup> Ian Talley, *Trump Administration Hopes to Make Iran Pressure Campaign Harder to Reverse*, WALL STREET JOURNAL (Oct. 23, 2020), <https://www.wsj.com/articles/using-terrorism-sanctions-trump-administration-hopes-to-tie-bidens-hands-on-iran-11603473828>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *See id.* (according to Kirsten Fontenrose, former senior director for Gulf Affairs in Mr. Trump's National Security Council).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

“create the same effect of a sanction even if [the sanctions] are repealed.”<sup>70</sup>

Since 9/11, the Trump administration has further expanded these counterterrorism sanctions to better deny financial, material, and logistical support to any entity that knowingly supports terrorist activity.<sup>71</sup> This newest executive order expanding the terror powers authorizes the Treasury to sanction, and freeze, the accounts of any foreign financial institutions that are believed to support terrorists.<sup>72</sup>

## 2. U.S. Sanctions Against Iran

Successive U.S. administrations have levied sanctions on Iran in an effort to halt Iran’s military and nuclear development and end the regime’s litany of human rights abuses.<sup>73</sup> The U.S. has mostly sanctioned companies that do business with Iran in order to hurt Iran’s economy, especially its oil sector.<sup>74</sup> From 2011-2015, sanctions from the U.S. and United Nations caused Iran’s crude oil exports to fall by over 50% and prevented Iran from accessing its foreign exchange assets abroad.<sup>75</sup> The crippling effects from these international sanctions brought Iran to the negotiating table for the 2015 Joint Comprehensive Plan of Action (“JCPOA,” or “Iran nuclear deal”).<sup>76</sup> In exchange for Iran’s agreement to limit its nuclear program, the U.S. lifted a number of sanctions, leaving in place the sanctions on “direct trade with Iran and on Iran’s support for regional armed factions, its human rights abuses, and on its efforts to acquire missile and advanced conventional weapons technology.”<sup>77</sup> The U.N. also waived many of the sanctions, leaving only the ban on weapons trade and a non-binding restriction on Iran’s nuclear development.<sup>78</sup> The respite from international sanctions allowed Iran to increase its oil exports and regain access to its foreign funds.<sup>79</sup>

Instead of improving U.S. relations with Iran following the JCPOA, tensions with Iran have re-escalated under the Trump administration with

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<sup>70</sup> *Id.*

<sup>71</sup> *President Donald J. Trump Is Protecting The Nation by Modernizing and Expanding Sanctions to Combat Terrorism*, THE WHITE HOUSE (Sept. 10, 2019), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-protecting-nation-modernizing-expanding-sanctions-combat-terrorism/>.

<sup>72</sup> *Id.*

<sup>73</sup> *Iran Sanctions*, CONGRESSIONAL RESEARCH SERVICE (CRS) REPORT (July 23, 2020), <https://crsreports.congress.gov/product/pdf/RS/RS20871/308>.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

sanctions as the cornerstone of the Trump administration’s “maximum pressure” campaign against Iran.<sup>80</sup> The Trump administration withdrew the U.S. from the JCPOA, reimposed all secondary sanctions that the JCPOA rescinded, and has announced several phases of new sanctions on Iran, including sanctions that “cut off Iranian oil exports completely.”<sup>81</sup> These new rounds of sanctions have not only been on firms that do transactions with Iran, but have also been imposed on Iranian political and military officials, as well as pro-Iranian officials in other Middle Eastern countries.<sup>82</sup> Recently, on September 3, 2020, U.S. Secretary of State Mike Pompeo imposed sanctions on five entities for “knowingly engaging in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran,” on three individuals who serve as principal executive officers of the sanctioned entities, and on six entities that support an already-sanctioned designated entity.<sup>83</sup> All newly-sanctioned entities were from Iran, the United Arab Emirates or China.<sup>84</sup> In the statement, Mr. Pompeo reiterated the United States’ goal of depriving Iran of the financial resources it needs to fund its “terrorism and other destabilizing activities.” Because Iran’s petroleum industry is one of its primary sources of revenue, the Trump administration is continuing to hammer any entities it discovers that violate the U.S. sanctions and facilitate any exportation of petroleum from Iran.<sup>85</sup>

The Trump administration’s policy reversal towards Iran has caused more companies to exit Iran’s market and has pushed Iran further into recession but has done little to advance the U.S.’s political goals. The Trump administration’s “stated purpose [is to compel] Iran to negotiate a revised JCPOA that takes into account U.S. concerns beyond Iran’s nuclear program,” but, as of 2020, the sanctions “arguably have not... altered Iran’s pursuit of core strategic objectives,” including its missile development and funding of armed groups within Iran.<sup>86</sup> In response to the Trump administration’s onslaught of sanctions, Iran has decreased its compliance

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*; *Do Economic Sanctions Actually Work?*, *supra* note 40.

<sup>82</sup> *Iran Sanctions*, *supra* note 73.

<sup>83</sup> Michael Pompeo, *Imposing Sanctions on Entities for Engaging in Transactions Related to Iran’s Petroleum and Petrochemical Industry*, U.S. DEPARTMENT OF STATE (Sept. 3, 2020), <https://www.state.gov/imposing-sanctions-on-entities-for-engaging-in-transactions-related-to-irans-petroleum-and-petrochemical-industry/>.

<sup>84</sup> *Id.* (sanctioning “Iran-based Abadan Refining Company; China based Zhihang Ship Management CO Ltd., New Far International Logistics LLC and Sino Energy Shipping Ltd.; and United Arab Emirates (UAE) based Chemtrans Petrochemicals Trading LLC... [and individuals], Min Shi, employee of New Far; Zuoyou Lin, employee of Sino Energy; and Alireza Amin, employee of Abadan”).

<sup>85</sup> *Id.*

<sup>86</sup> *Iran Sanctions*, *supra* note 73.

with the JCPOA, has refused to talk with the U.S. on a revised JCPOA, and has continued its nuclearization.<sup>87</sup> Instead, Iran has continued to develop its missiles and to fund and support armed groups operating throughout the Middle East.<sup>88</sup> Iran's recent "provocations" in the Persian Gulf and in Iraq are further evidence of this escalation and shift away from the JCPOA-imposed limits on nuclear development.<sup>89</sup>

### 3. U.S. Sanctions on Individuals

Along with sanctions on Iran, this September, Mr. Pompeo also issued sanctions against the chief prosecutor of the International Criminal Court (the "I.C.C."), Fatou Bensouda, and one of her colleagues.<sup>90</sup> In his announcement, Pompeo called the I.C.C., the international body responsible for investigating war crimes and international humanitarian crises, a "thoroughly broken and corrupted institution," and called Bensouda's actions an attack on American sovereignty.<sup>91</sup>

Bensouda was primarily investigating war crimes by Afghan forces and the Taliban, but her investigation also looked into potential war crimes committed by American troops and intelligence officials in Afghanistan.<sup>92</sup> The I.C.C. prosecutor has the authority to investigate alleged war crimes in any member country when no other authority is willing or able to investigate, but the Trump administration alleges Bensouda's investigation is outside the I.C.C.'s authority since the U.S. is not an I.C.C. member.<sup>93</sup> Afghanistan, however, is a member.<sup>94</sup> According to Bensouda, such sanctions are "unprecedented" and typically "reserve[d] to be used as a mechanism to target narcotic traffickers, notorious terrorists and the like. But not professional lawyers, not prosecutors, not investigators, nor judges or others who are working tirelessly to prevent atrocity crimes."<sup>95</sup> According to the New York Times, sanctions experts have labeled this as yet another example of a "troubling trend" where the U.S. is using economic sanctions in a way that alienates close allies.<sup>96</sup>

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<sup>87</sup> *Id.* (explaining how the European Union and other countries have made unsuccessful attempts to keep Iran in and compliant to the nuclear deal despite the U.S.'s exit from the deal).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Pranshu Verma, *supra* note 49.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

Because here the sanctions were issued against Bensouda, an individual, the impact of the U.S.'s issuance are quite clear. As discussed earlier, economic sanctions force financial institutions to block a target's assets in the U.S. and prohibit American companies or individuals in the U.S. from doing business with the target.<sup>97</sup> Accordingly, Bensouda's bank account at the United Nations Federal Credit Union was immediately frozen.<sup>98</sup> Her relatives, not targets of the sanctions, also had their assets temporarily blocked.<sup>99</sup> This latest example also highlights the ineffectiveness of such sanctions: Bensouda, when asked if the sanctions will stop the investigation, said, "Bluntly, no. This will not deter us... We will continue to do our work."<sup>100</sup> Bensouda's comment is likely truthful for this is not the first time she has been the target of U.S. sanctions.<sup>101</sup> In 2019, she was prohibited from traveling to the U.S. except on United Nations business, and in June 2020, President Trump more broadly authorized sanctions on individuals employed by the I.C.C.<sup>102</sup> Although sanctions on individuals are different from sanctions on business or nation-state targets, Bensouda's case highlights the prevalence with which sanctions are being issued in response to international disputes that cover a wide range of security threats.

### III. SO, DO SANCTIONS WORK?

#### A. *Yes: Economic Strain Eventually Compels Compliance*

Supporters of sanctions view sanctions as an essential and effective foreign policy tool and view lifting sanctions before all goals are achieved as an invitation for the target to resume its prior malign behavior.<sup>103</sup>

The weakened economies of sanctioned targets suggest that the

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Do Economic Sanctions Actually Work?*, *supra* note 40; Michael Pompeo, *The Importance of Sanctions on Iran*, U.S. DEPARTMENT OF STATE (Nov. 18, 2020), <https://www.state.gov/the-importance-of-sanctions-on-iran/#:~:text=As%20a%20direct%20result%20of,nearly%2025%20percent%20in%202019> (citing Iran's 30 percent increase in defense spending between 2016 and 2018 following the JCPOA as evidence for how Iran is likely to increase its terrorist funding if the sanctions are removed); *See*, Philip I. Levy, *Sanctions on South Africa: What Did They Do?*, YALE UNIVERSITY ECONOMIC GROWTH CENTER 9-10 (Feb. 1999), [http://www.econ.yale.edu/growth\\_pdf/cdp796.pdf](http://www.econ.yale.edu/growth_pdf/cdp796.pdf) (quoting Nelson Mandela after his 1990 prison release: "To lift sanctions now would be to run the risk of aborting the process toward ending apartheid").

economic strain from sanctions prevents our adversaries from acquiring the funds needed to pursue their political goals, which intuitively bolsters American national security.<sup>104</sup> Evidence from North Korea, a target of economic sanctions from both the United States and United Nations, suggests a grim state: factories closed, fishing boats deserted, inactive mines, and outdated military equipment, “even ox-driven carts for transport.”<sup>105</sup> The sanctions not only limited exports, but also limited North Korea’s imports of petroleum to only half a million barrels per year (a 90 percent decrease) and its crude oil to only 1.2 million barrels, which “[combined is] less than half the amount needed to run all of the 280,000 cars in North Korea, much less heat homes and meet other needs.”<sup>106</sup> A North Korean witness reported that resources like ore were being smuggled into China in exchange for essential goods like sugar, flour, and fertilizer “almost every night” and visitors to North Korea have described medicine shortages in addition to the food and fuel shortages.<sup>107</sup> Other visitors have expressed concern that the sanctions are repealing North Korea’s recent economic progress and improvements to living standards.<sup>108</sup> President Trump and South Korea’s president, Moon Jae-in, say, however, the tough sanctions are responsible for opening Kim Jong-un to nuclear negotiations with the United States.<sup>109</sup>

Since North Korea is largely isolated, the Iran sanctions offer a more clearly documented example of the long-term economic effects of sanctions. As discussed above, the U.S. has renewed its long-standing sanctions on Iran, sanctioning 18 more Iranian banks on October 8, 2020 even while ten days later the United Nations allowed the arms embargo against Iran to expire.<sup>110</sup>

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<sup>104</sup> See, Philip I. Levy, *supra* note 103 (calling sanctions the “final straw” that makes economic strain insufferable and thus forces political change).

<sup>105</sup> Choe Sang-Hun, *Sanctions Are Hurting North Korea. Can They Make Kim Give In?*, THE NEW YORK TIMES (April 20, 2018), <https://www.nytimes.com/2018/04/20/world/asia/north-korea-trump-sanctions-kim-jong-un.html> (describing the ‘Maximum Pressure’ sanctions from the United Nations that “banned all key North Korean exports, including coal, iron ore, seafood and textiles,” which is about 90 percent of North Korea’s total exports).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* President Trump later became the first sitting U.S. president to visit North Korea where he met with Kim Jong-un in June 2019. *Trump Meets North Korea’s Kim Jong Un And Says Nuclear Negotiations will Resume*, NATIONAL PUBLIC RADIO (June 30, 2019), <https://www.npr.org/2019/06/30/737365074/trump-to-meet-kim-jong-un-at-dmz>. *But see*, Choe Sang-Hun, *supra* note 105 (Sang-Hun also offers alternative opinions of the likelihood that the sanctions will compel Kim Jong-un to denuclearize, which will be discussed in the next section).

<sup>110</sup> Austin Bay, *On Point: Sanctions Have Slashed Ayatollah Iran’s War-Making Capacity*, STRATEGY PAGE (Oct. 20, 2020), [https://strategypage.com/on\\_point/20201020214731.aspx](https://strategypage.com/on_point/20201020214731.aspx).

Although Iran survived the U.N. arms embargo, Iran's economy is in a state of crisis: its GDP has shrunk about six percent for the past three years and its currency (the rial) has steadily depreciated since 2015.<sup>111</sup> According to Strategy Page, in 2015, one U.S. dollar was worth 32,000 Iranian rials.<sup>112</sup> In September 2020, one USD was worth 260,000 rials.<sup>113</sup> Now, as of October 20, 2020, a dollar is worth 315,000 rials.<sup>114</sup> Moreover, before the Trump administration's Maximum Pressure campaign, "Iran was exporting nearly 2.5 million barrels of oil per day" and now barely exports a quarter of that.<sup>115</sup> Years of this decreased export volume adds up and has deprived Iran of over \$70 billion in oil revenue and will continue to deprive them of about \$50 billion annually, according to Secretary of State, Michael Pompeo.<sup>116</sup>

Although China and Russia, and other allies of Iran, may choose to sell weapons to Iran, Iran cannot afford to buy weapons at the same scale as they would if their currency had not been so devalued, so "sanctions have [successfully] slashed the rial's war-making ability."<sup>117</sup> As evidence, in 2019, Iran cut its military budget by almost 25 percent and lacks the necessary funds to support its nuclear development and terrorist activity.<sup>118</sup> As sanctions drain the Iranian regime's resources, Iranian leaders are forced to weigh the political costs of ignoring the sanctions with the likelihood of finding other means to provide for their people and to develop their state infrastructure.<sup>119</sup> As such, cash-strapped Iranian leaders are arguing to the international community that the sanctions should be lifted because they either have failed

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<sup>111</sup> Michael Pompeo, *supra* note 103; Austin Bay, *supra* note 110.

<sup>112</sup> Austin Bay, *supra* note 110.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* (noting that the sanctions do not apply to Iranian companies that distribute food or medicine. Such companies get a subsidized rate of 42,000 rials to the dollar); Michael Pompeo, *supra* note 103 (summarizing the staggering statistic as a depreciation of one-fifth of its former value against the USD).

<sup>115</sup> Michael Pompeo, *supra* note 103.

<sup>116</sup> *Id.*

<sup>117</sup> Austin Bay, *supra* note 110.

<sup>118</sup> Michael Pompeo, *supra* note 103. A decrease in military spending or shift of funds from defense to other parts of the economy is indicative of a struggling economy. *See id.* Russia, another target of American sanctions, also had to cut its defense spending by five percent this year, making 2020 the first year since 2014 where Russia spent more on its economy than military. Jack Beyrer, *Wracked by American Sanctions, Russia Cuts Defense Spending*, THE WASHINGTON FREE BEACON (Sept. 22, 2020) <https://freebeacon.com/national-security/wracked-by-american-sanctions-russia-cuts-defense-spending/> (attributing this decrease to the dual impact of American sanctions and the coronavirus pandemic).

<sup>119</sup> *See*, Bryan Early, *supra* note 27 at 34 (saying as people in target states feel the economic costs, the political pressure for leaders to succumb to the sanctions builds, so the United States must consider exactly how much economic strain the sanctions are causing to determine their likelihood of success).



or, when effective, only hurt the Iranian people and not the regime.<sup>120</sup> These arguments come alongside reports that Iran is increasing its uranium supply (in breach of the agreed-upon uranium limits in the JCPOA).<sup>121</sup> Pompeo dispels these arguments as evidence of Iran's desperation and states forcefully that "the world must never reward nuclear threats with a cash appeasement—and must never fall victim to regime propaganda intended to save it from powerful sanctions."<sup>122</sup> Supporters of sanctions, like Pompeo, view sanctions as a critical national security tool that must continue to "impose painful consequences" for as long as the sanctionable activity persists.<sup>123</sup>

*B. No or Partially: It Depends on the Big Picture Situation, Goals and Strategy*

On the other hand, critics say sanctions may cripple an economy, but are rarely successful in changing a target's behavior and, in fact, often lead to the escalation of an existing conflict and bring unnecessary harm to civilians.<sup>124</sup>

Because of the economic hardship wrought by sanctions discussed above, many instances of American economic sanctions are touted as success stories, but in most of these cases, sanctions act in tandem with other strategies or other societal pressures, making it difficult to determine the efficacy of the sanctions alone.<sup>125</sup> For example, sanctions on Iran made Iran more willing to negotiate in 2015 and sanctions on South Africa contributed to ending the apartheid regime.<sup>126</sup> However, in both cases, the state economy was shrinking prior to any imposition of sanctions and, after multilateral sanctions were imposed, both states still found ways to circumvent the sanctions.<sup>127</sup> When a multitude of internal and external factors exacerbate a

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<sup>120</sup> Michael Pompeo, *supra* note 103.

<sup>121</sup> *See id.* (implying that the increased uranium supply may indicate that the sanctions are not deterring Iran from expanding its nuclear capabilities).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *See, Do Economic Sanctions Actually Work?*, *supra* note 40 (suggesting punitive measures could provoke Iran and then require U.S. military support).

<sup>125</sup> *See*, Pranshu Verma, *supra* note 49 (explaining the questionable efficacy of sanctions in Iran, which is discussed in greater detail in Part V, 2 below).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*; Philip I. Levy, *supra* note 103 at 4-7 (explaining how South Africa's GDP growth began slowing in the mid-1970s and through the early 1980s, prior to the international community's imposition of sanctions in 1985 and 1986, due to the worldwide oil crisis, internal economic changes in South Africa's labor market and increased reliance on external borrowing, and domestic anti-apartheid political movements in South Africa). After the sanctions were imposed, South Africa mitigated the damage by increasing domestic

target's need for economic support, the target is more likely to cave and it becomes difficult to discern whether the sanctions drove the change or merely had psychological impact.<sup>128</sup>

Even when paired with other strategies, sanctions are not always effective, and three factors make sanctions even less effective: (1) if the sanctions call for a regime overhaul, (2) if they are imposed for an extended period of time, or (3) if they are imposed on international foes.<sup>129</sup> An academic study on sanctions examined over 100 cases and found that sanctions were “partially successful only 34% of the time,” but that this success rate changed dramatically based on the goal of the sanctions.<sup>130</sup> Sanctions seeking release of a prisoner have a 50% success rate, whereas sanctions to stop military development or cause a regime change were less successful.<sup>131</sup> The report also “suggests that the longer sanctions last, the less likely they are to succeed” because countries, companies, or individuals may grow tired of the inconvenience and missed economic opportunities and, as a result, the target can find allies to help them circumvent the sanctions.<sup>132</sup> Moreover, while financial weapons can be powerful against illegal targets (like Al Qaeda), they are not necessarily effective against all foes.<sup>133</sup> For example, legitimate states that are committed to growing their nuclear capabilities (and adverse to the U.S.) are unlikely to relinquish nuclear power to escape even the most onerous economic pressure.<sup>134</sup>

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production through import substitution industrialization and shipping trade through non-participating countries, but still its GNP shrunk by about 0.5 percent following the sanctions. *Id.* at 7.

<sup>128</sup> Philip I. Levy, *supra* note 103, at 1 (concluding that, although economic sanctions preceded the end of apartheid, the ultimate role sanctions played in the regime change was “probably very small”).

<sup>129</sup> *Do Economic Sanctions Actually Work?*, *supra* note 40; Bryan Early, *supra* note 27 at 6 (saying U.S.-imposed sanctions have failed to achieve their goals almost 66 percent of the time and failed sanctions, on average, last almost nine years, but with some sanctions lasting for over fifty years).

<sup>130</sup> *Do Economic Sanctions Actually Work?*, *supra* note 40.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> Juan C. Zarate, *supra* note 19 at x.

<sup>134</sup> *Id.* at 351-52 (unprecedented financial pressure does not “appear to be slowing down [Iran’s] nuclear drive”; James Clapper, [former] Director of National Intelligence: “[U.S. sanctions] almost certainly have not altered Iran’s long-term foreign policy goals;” “An IAEA [International Atomic Energy Agency] report published in the summer of 2012 again confirmed that the Iranians are continuing to expand their nuclear capabilities, with increasing numbers of centrifuges and facilities that have opened and expanded to handle nuclear research”). Sang-Hun’s article discussed above included similar quotes supporting these concerns: “If you think the North Koreans would revolt or the regime would collapse because of sanctions, you don’t know anything about North Koreans... These are people who survived the famine by eating weeds and even talk proudly about it,” according to North

United Nations sanctions on North Korea highlight the issues with all three factors. Despite long-term sanctions that aim for the denuclearization of North Korea, North Korea still has options for trade and is still able to participate in the global economy, sustain its own economy, and fund its defense program.<sup>135</sup> “Despite shortages in North Korea, exchange rates and key consumer prices are stable, and there is no sign of an approaching famine” or an impending “breaking point.”<sup>136</sup> The U.S. Department of Defense’s 2020 Report on Military and Security Developments Involving the People’s Republic of China (“2020 China Military Report”) reveals a key to Kim Jong-un’s success with navigating around both the sanctions and his poor reputation: China.<sup>137</sup> Smuggling operations between North Korea and China have become common, with an estimate that they doubled in recent years.<sup>138</sup> A United Nations panel of experts reported that North Korea earned \$200 million last year (2017) through illegal trading, including cybertheft, smuggling, and weapons sales.<sup>139</sup> Since that panel and according to the 2020 China Military Report, China has also resumed its “loose implementation” of the international sanctions against North Korea, enforcing some restrictions, but ignoring others.<sup>140</sup> For example, Beijing has regularly failed to act against illegal ship-to-ship transfers in China’s seas, failed to take action against China-based North Korean banking and weapons trade representatives, and is still importing coal from North Korea.<sup>141</sup> China allows North Korean actions that lead to favorable trade and banking deals, which likely has contributed to China and North Korea’s improving relationship.<sup>142</sup> Further, a number of lower level government and military officials from the two

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Korean defector, Kang Mi-jin. Choe Sang-Hun, *supra* note 105.

<sup>135</sup> Juan C. Zarate, *supra* note 19 at 351-52; Choe Sang-Hun, *supra* note 105 (describing how North Korea “is finding ways to cope” through acts like smuggling goods across the border to trade with China).

<sup>136</sup> *Id.* (describing how the North Korean elite class and middle class have both grown and the standard of living has generally improved following market-oriented reforms).

<sup>137</sup> *Military and Security Developments Involving the People’s Republic of China*, OFFICE OF THE SECRETARY OF DEFENSE (2020) at 107, <https://media.defense.gov/2020/Sep/01/2002488689/-1/-1/1/2020-DOD-CHINA-MILITARY-POWER-REPORT-FINAL.PDF> (finding that China’s relationship with North Korea “warm[ed] somewhat” in 2019).; Byun Duk-kun, *U.S. Report Accuses China of Failure to Implement Sanctions on N. Korea*, YONHAP NEWS AGENCY (Sept. 02, 2020), <https://en.yna.co.kr/view/AEN20200902000351325?section=nk/nk>.

<sup>138</sup> Choe Sang-Hun, *supra* note 105.

<sup>139</sup> *Id.*

<sup>140</sup> *Military and Security Developments Involving the People’s Republic of China*, *supra* note 137 at 107; Byun Duk-kun, *supra* note 137.

<sup>141</sup> *Military and Security Developments Involving the People’s Republic of China*, *supra* note 137 at 107.

<sup>142</sup> *See id.* at 107-08.

countries met and President Xi Jinping of China personally met twice with Kim Jong-un.<sup>143</sup> In this case, the broad American and UN sanctions have not successfully impeded Kim Jong Un from military development, and now great powers, like China, are making the independent choice to break with the international community and forge a separate relationship with North Korea.<sup>144</sup>

Lastly, some critics argue that sanctions themselves can become a human rights atrocity in certain circumstances. For one, sanctions have less impact on the ruling elite and most of the economic impact falls on ordinary people, which can extend to ordinary American citizens and businesses, too.<sup>145</sup> Although sanctions generally cause proportionally greater harm to target economies than to the American economy, failed sanctions in the 1990s cost American businesses about \$12 to \$18 billion a year in lost exports and cost about 200,000 jobs in 1995 due to lost export opportunities.<sup>146</sup> On the target side, authoritarian leaders have been able to insulate themselves from economic impact and have instead passed the burden onto the already marginalized communities in their states.<sup>147</sup> This disparate impact further decreases the likelihood that authoritarian rulers, like Kim Jong Un, will bend to sanctions that call for any political changes that threaten their position, like regime change or demilitarization.<sup>148</sup>

Second, factors outside of a target's control may unjustly heighten the economic damage. Due to sanctions combined with internal issues and Covid-19, experts estimate that Iran's GDP will shrink by 8% this year.<sup>149</sup> Critics condemn the Trump administration for re-imposing sanctions during a pandemic, particularly since Iran has been "the hardest-hit country in the Middle East" (according to the New York Times).<sup>150</sup> However, corruption within Iran can also be to blame for its public health crisis stemming from the pandemic.<sup>151</sup> Iran has consistently prioritized militarization over public health: in 2018 and 2019, Iranian leaders moved \$4 billion from the Iranian National Development Fund to a military fund, and, even since the pandemic, regime leaders have increased military funding for the Islamic Revolutionary Guard Corps despite a virus mortality rate of almost 6%.<sup>152</sup> Moreover, despite

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<sup>143</sup> *Id.* (listing a few engagements and China's goals for stability, denuclearization, and the absence of U.S. forces in the Korean Peninsula and near China's border).

<sup>144</sup> *Id.*

<sup>145</sup> *Do Economic Sanctions Actually Work?*, *supra* note 40.

<sup>146</sup> Bryan Early, *supra* note 27 at 6, 34.

<sup>147</sup> *Id.* at 7.

<sup>148</sup> *Do Economic Sanctions Actually Work?*, *supra* note 40.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

the Trump administration's March 2020 revision to the sanctions program and its offer of humanitarian aid, Iran has refused any aid from the United States since the start of the pandemic, suggesting they are unmoved by mounting human costs.<sup>153</sup>

Regardless of whether the sanctions or corruption are at fault for tragic human costs, long-term sanctions that call for foes to implement a political change are shown not to work, and so nations imposing such sanctions must reconsider the best strategy to drive political change and promote human rights, while still prioritizing their own national security goals.

#### IV. ARE SANCTIONS MAKING THE UNITED STATES MORE OR LESS SECURE?

##### A. *Domestic and International Public Opinion on Sanctions and Security*

In the U.S. there are different opinions about the best way to leverage sanctions to achieve political goals and long-term national security—should sanctions be even harsher to strong-arm targets into agreement, or should they be unwound to bring the target to the negotiating table? Unsurprisingly, these differences split down political lines.

The Iran case highlights these differences as experts and politicians disagree on how to compel Iran to denuclearize. Since the Trump administration left the Iran nuclear deal, Iran has said it will no longer comply with the agreement's uranium limits and has built up its supply of enriched uranium, which brings Iran closer to nuclear weapon capabilities.<sup>154</sup> This, intuitively, makes the U.S. less secure. In response, the Trump administration has doubled down on sanctions and is considering another round of counterterrorism sanctions against Iran to make it more difficult for President-Elect Biden's administration to reverse course.<sup>155</sup> If the Trump administration finds legitimate evidence that a certain sector of Iran's economy has been funding any "terror-linked activities" then those targets could be subject to additional, or heightened, sanctions designated under the

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<sup>153</sup> *Iran Sanctions*, *supra* note 73 (reminding that U.S. sanctions do not apply to humanitarian transactions and also citing the March 2020 revision to the sanctions program that encouraged foreign companies to sell humanitarian items and medical supplies to Iran).

<sup>154</sup> *Id.*; *But see*, Michael Pompeo, *supra* note 103 (stating "This is indeed troubling, but even more disturbing is the notion that the United States should fall victim to this nuclear extortion and abandon our sanctions" with respect to Iran's increased uranium supply).

<sup>155</sup> *See*, Ian Talley, *supra* note 64.

terror powers.<sup>156</sup> Mr. Biden, on the other hand, likely plans to ease some sanctions “as a show of goodwill,” return to the 2015 Iran nuclear agreement, and re-open negotiations with Iran in exchange for Iran’s return to compliance.<sup>157</sup> It is unclear which negotiating strategy is more effective, but a sanctions policy that flip-flops with each administration or feeds political divisions likely weakens U.S. national security.

Internationally, there is also a split view of America’s use of sanctions and whether they make the world more or less secure. The United States historically works with allies to achieve humanitarian goals that align with its own foreign policy goals and further its national security.<sup>158</sup> Allies, and human rights scholars, celebrate the U.S.’s use of sanctions against human rights abusers, and recognize the U.S.’s unique power to sanction because of its financial leadership.<sup>159</sup> Recently, in response to China’s abuse and detainment of its Uyghur Muslim minority, the Trump administration issued a “robust and unprecedented set of sanctions” against one government entity, 50 Chinese firms, and four officials linked to the persecution.<sup>160</sup> Sanctions can be especially effective against China because of China’s focus on economic development.<sup>161</sup>

However, U.S. sanctions have increasingly been criticized as politically driven and unilaterally executed.<sup>162</sup> The Trump administration’s sanctions against China in the case of the Uyghurs were a late response, executed unilaterally rather than in coordination with allies, and “seem clearly colored by political considerations.”<sup>163</sup> The Trump administration “strongly warn[ed]” U.S. businesses to monitor its activities in the Xinjiang

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<sup>156</sup> *Id.*

<sup>157</sup> *See id.* (according to Fontenrose *infra* note 51).

<sup>158</sup> Pranshu Verma, *supra* note 35 (referencing President Trump’s 2017 expansion of the Global Magnitsky Act, which allows asset freezes and travel bans for human rights violations. Under this Act, the Trump administration has issued sanctions against 214 individuals or entities from 27 countries).

<sup>159</sup> *See id.*

<sup>160</sup> Beth Van Schaack, Policy Options in Response to Crimes Against Humanity and Potential Genocide in Xinjiang, JUST SECURITY (Aug. 25, 2020), <https://www.justsecurity.org/72168/policy-options-in-response-to-crimes-against-humanity-and-potential-genocide-in-xinjiang/>. Chinese persecution of the Uyghur people has persisted since the 1990s when Beijing began an assimilation movement, but has developed into a violent, “genocidal” system of persecution where Uyghurs have been detained in concentration, or re-education, camps and subjected to atrocities like forced labor, torture, sterilization, and means to enforce “‘family planning’ quotas” like late-term abortions or infanticide *Id.*

<sup>161</sup> *See id.* (alluding to this effectiveness by saying China’s “economic bottom line” is most susceptible to pressure).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

region and warned of “reputational, economic and legal risks” of doing business with entities that commit human rights abuses, but did not call on businesses to take any specific actions, launch any specific investigations to better inform businesses possibly dealing with the Xinjiang region, or detail any consequences for not heeding this warning.<sup>164</sup> Although the sanctions were issued, follow-up actions, like getting the World Bank to also sanction China or getting U.S. companies to cut ties with suppliers in Xinjiang, would make the sanctions far more effective.<sup>165</sup> Without other multilateral measures, the sanctions alone are more akin to a one-off public condemnation with few rippling economic effects that are far easier for a target nation, especially one with China’s power, to circumvent and for self-interested businesses to ignore.<sup>166</sup>

The sanctions issued against Bensouda, the I.C.C. prosecutor, further highlight allies’ ire from the U.S.’s unilateral issuance of sanctions. World leaders condemned the action: the German foreign minister said it was a “serious mistake,” the European Union’s top diplomat called them “unacceptable and unprecedented,” and retired four-star Army general and former NATO commander Wesley Clark said, “it’s very dangerous, and it weakens the United States to disrespect international institutions that are promoting law and order.”<sup>167</sup> A former sanctions official at the U.S. Treasury Department (who left in June) also criticized the sanctions because unilateral actions by the U.S. have the effect of alienating allies, who are impacted by the sanctions but not given any consideration in the decision.<sup>168</sup>

### *B. Alienation: A National Security Threat to the U.S. and an Opportunity for China*

When allies feel alienated by the U.S., they are likely to form new alliances and these new alliances could potentially exclude, and endanger, the United States, as nation-states find alternative viable trading or security partners.<sup>169</sup> Because of the importance of the U.S. dollar to international

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<sup>164</sup> *Trump Administration Strongly Warns U.S. Businesses Against Contributing to China’s Human Rights Abuses*, U.S. DEPARTMENT OF HOMELAND SECURITY (July 1, 2020), <https://www.dhs.gov/news/2020/07/01/trump-administration-strongly-warns-us-businesses-against-contributing-china-s-human>.

<sup>165</sup> Beth Van Schaack, *supra* note 160.

<sup>166</sup> *See id.* (suggesting other measures that the U.S. could have included along with the sanctions issuance and emphasizing the importance of getting private actors and corporations to work in concert with the U.S.).

<sup>167</sup> Pranshu Verma, *supra* note 49.

<sup>168</sup> *Id.*

<sup>169</sup> Bryan Early, *supra* note 27 at 21 (using the term “sanctions busters” for the third-party states that work with sanctioned states in ways that diminish the impact from the

transactions, nations impacted by sanctions (whether from being the target of the sanctions or a trading partner of a target) need to either bend to the will of the U.S. or find a way to “break free of American financial hegemony” and run their economies without reliance the United States.<sup>170</sup> The extent to which targeted states are able to “break free” and forge new alliances directly influences the target’s ability to resist sanctions.<sup>171</sup> Although the U.S. dollar currently rules, billions of economic value could be lost if an alternative financial system emerges.<sup>172</sup> Already, out of frustration over the continued Iran sanctions, European allies have created a financial system, Instex, to trade with Iranian companies without using the dollar.<sup>173</sup> In March 2020, a German exporter used Instex to ship over 500,000 euros worth of medical supplies to Iran.<sup>174</sup> Right now, Instex has limited use and does not cover oil sales, but it provides a structure for dollar-less commerce, and the success of this transaction shows just one way that states can defy U.S. sanctions and threaten the U.S.’s financial position.<sup>175</sup>

If entities or states find a way to work-around the U.S. dollar in international transactions, China will likely be the main beneficiary of these new partnerships. Since both the U.S. and China control nuclear weapons, they cannot directly engage in war, so fight through “proxy competition,” or by forcing other nation-states to answer: “Are you with us or against us?”<sup>176</sup> Several nations are already caught in the hard spot between the U.S. and China, but the United States’ unilateral execution of sanctions could push allies more quickly and more excusably away from the U.S. and into China’s open, and wealthy, arms.<sup>177</sup>

For example, South Korea relies on both the U.S. and China: the U.S. provides military protection against North Korea but China offers more trade opportunities.<sup>178</sup> In April 2019, Moon Hee-sang, the speaker of South Korea’s legislature, said “Asking whether South Korea will ‘choose either China or the United States’ is like ‘asking a child whether you like your dad or your

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sanctions).

<sup>170</sup> *America’s Aggressive Use of Sanctions Endangers the Dollar’s Reign*, *supra* note 45.

<sup>171</sup> Bryan Early, *supra* note 27 at 18.

<sup>172</sup> Pranshu Verma, *supra* note 49 (according to Richard Nephew, senior research scholar at Columbia University).

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *America’s Aggressive Use of Sanctions Endangers the Dollar’s Reign*, *supra* note 45.

<sup>176</sup> Uri Friedman, *How to Choose Between the U.S. and China? It’s Not That Easy*, THE ATLANTIC (July 26, 2019), <https://www.theatlantic.com/politics/archive/2019/07/south-korea-china-united-states-dilemma/594850/>.

<sup>177</sup> *See id.*

<sup>178</sup> *Id.*



mom.”<sup>179</sup> This is already a delicate balance, and only becomes more delicate when either “parent” requests an action that will knowingly anger the other. South Korea faced this issue head-on in a 2017 disagreement over the U.S. deployment of the THAAD missile.<sup>180</sup> China responded swiftly and ruthlessly by stopping Chinese tourism to South Korea and punishing South Korean businesses working in China, the United States did nothing, and, in turn, South Korea promised not to carry out additional THAAD deployments or to enter into a military alliance with the U.S. and Japan.<sup>181</sup> Here, the U.S. triggered the conflict but then failed to protect its ally against China’s response, pushing South Korea to pacify China.

South Korea was again, and more recently, forced to remain neutral when the Trump administration banned U.S. sales to Huawei and urged its allies to do the same.<sup>182</sup> South Korean businesses are unwilling to follow the U.S.’s sanctions when it counters their business interests, and Huawei takes about one-sixth of South Korea’s electronics-parts exports to China.<sup>183</sup> When asked if he would partner with Huawei in the future, Peter Ha, an executive at SK Telecom, South Korea’s leading wireless provider, responded: “Business will be business.”<sup>184</sup> By avoiding choosing a side, South Korea is able to derive benefits from both the U.S. and China and while the U.S. and China compete, South Korea can quietly gain independence through its New Southern Policy and a potential relationship with North Korea.<sup>185</sup>

It is even more concerning when “financial rogues,” or those targeted by U.S. sanctions, form alliances and invent new ways to avoid the main global financial system.<sup>186</sup> Al Qaeda has found alternative financing sources from sympathizers in other Arab states, foreign recruits, and from collaboration with other groups in the “criminal underworld” like drug traffickers.<sup>187</sup> Iran, too has found other options. Iran has worked with Venezuela to avoid sanctions and to move “suspect individuals and goods,” and the two have unified around “support for anti-American initiatives.”<sup>188</sup>

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<sup>179</sup> *Id.*

<sup>180</sup> *Id.* This conflict came after the Trump administration pressured South Korea to permit the deployment of the missile, which China considers a security threat. *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *See id.* Speaker Moon’s New Southern Policy is his plan to forge economic partnerships with India and other Southeast Asian nations in an effort to move away from dependence on China. This goal to “strengthen our new partners” extends to Moon’s efforts to reconcile with North Korea in order to limit South Korea’s dependence on the U.S. military. *Id.*

<sup>186</sup> Juan C. Zarate, *supra* note 19 at 374.

<sup>187</sup> *Id.* at 364-65.

<sup>188</sup> *Id.* at 375.

Iran has also grown closer with China after the U.S. renewed sanctions on Iran and this closeness is an even greater cause for concern.<sup>189</sup> The two nations, both hostile to the U.S., have recently formed “an economic and military partnership that would... expand China’s telecommunications, banking and infrastructure presence in [Iran... in exchange for] a regular and discounted oil supply for the next 25 years.”<sup>190</sup> Given the U.S.’s refusal to work with Iran, it is logical for China to defy the sanctions and take advantage of this market opportunity.

Russia, too, has moved away from reliance on the dollar by expanding trade in its own currency and capitalizing on its critical oil and natural gas supplies.<sup>191</sup> Since 2013, the Russian “central bank has cut the dollar share of its foreign-exchange reserves from over 40% to 24% [and] since 2018 the bank’s holdings of American Treasury debt have fallen from nearly \$100 billion to under \$10 billion.”<sup>192</sup> This “de-dollarization,” partly motivated by U.S. sanctions, is a general representation of the evolution of a multi-currency international monetary system.<sup>193</sup> Russia has also built separate banks to run transactions with entities the U.S. has blacklisted, so that it can engage in direct trade but still protect its larger banks from U.S. sanctions.<sup>194</sup> Because of this, much of Russia’s trade is no longer settled in dollars: in 2019, only 62% of Russia’s exports were in dollars compared to 80% in 2013.<sup>195</sup> Russia’s trade with China went from being almost all in dollars to being less than half in dollars, and its trade with India shifted from almost all dollars to almost all rubles.<sup>196</sup> Russian officials have found that trading is more efficient without the dollar because dollar payments get delayed while banks run sanctions checks.<sup>197</sup>

According to Juan Zarate, these new alliances are a direct result of the U.S.’s “intensified financial warfare” and are only likely to grow.<sup>198</sup> Such shift in power away from the U.S. dollar and in favor of Chinese and Russian currencies would be detrimental to the national security and financial

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<sup>189</sup> Pranshu Verma, *supra* note 49.

<sup>190</sup> Farnaz Fassihi & Steven Lee Myers, *Defying U.S., China and Iran Near Trade and Military Partnership*, THE NEW YORK TIMES (July 11, 2020), <https://www.nytimes.com/2020/07/11/world/asia/china-iran-trade-military-deal.html> (last updated July 22, 2020).

<sup>191</sup> *America’s Aggressive Use of Sanctions Endangers the Dollar’s Reign*, *supra* note 45; Juan C. Zarate, *supra* note 19 at 387.

<sup>192</sup> *America’s Aggressive Use of Sanctions Endangers the Dollar’s Reign*, *supra* note 45.

<sup>193</sup> *Id.* (according to Elvira Nabiullina, Russia’s central-bank governor).

<sup>194</sup> *Id.* (explaining how the state-backed Promsvyazbank PJSC is used for arms trading instead of using larger banks like Sberbank and VTB).

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> Juan C. Zarate, *supra* note 19 at 375.

hegemony that the U.S. currently enjoys.

*C. Solution on Sanctions: Multilateral Efforts and Renewed Humanitarian Leadership*

Experts say sanctions work and there is much evidence of sanctions helping resolve international conflicts without using armed forces.<sup>199</sup> However, sanctions need to be better, and more carefully, executed in order to affect change and improve relationships rather than just to punish adversaries: “Just as a missile has to be aimed, the financial measures used in the twenty-first century to isolate rogues need to be tailored to the strategic end state desired.”<sup>200</sup>

Admiral Philip Davidson, who oversees U.S. military forces in Asia, called China “the greatest long-term strategic threat to the United States and the rules-based international order.”<sup>201</sup> Juan Zarate agreed, calling China “the direct challenger to American economic and political hegemony.”<sup>202</sup> China has been investing in itself and has developed rapidly: it has built up every aspect of its military, become a key player in international development and infrastructure projects, and has amassed its economic power.<sup>203</sup> In 2015, the Chinese renminbi joined the U.S. dollar, Japanese yen, British pound, and the euro as an International Monetary Fund-designated elite currency.<sup>204</sup> This means the renminbi can be more broadly used in trade, finance and for international bailouts. Although the dollar still dominates, the renminbi has been steadily overtaking the euro. As another feature of China’s economic and financial growth, China independently formed a new international development bank, the Asian Infrastructure Investment Bank, to promote infrastructure across Asia, which 57 countries joined, including many of the

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<sup>199</sup> David Povey & International Compliance Association, *Four Ways to Make Sanctions More Effective*, COMPLIANCE WEEK (Mar. 3, 2020), <https://www.complianceweek.com/sanctions/four-ways-to-make-sanctions-more-effective/28538.article>.

<sup>200</sup> Juan C. Zarate, *supra* note 19 at 352.

<sup>201</sup> Kathy Gilsinan, *How the U.S. Could Lose a War With China*, THE ATLANTIC (July 25, 2019), <https://www.theatlantic.com/politics/archive/2019/07/china-us-war/594793/>.

<sup>202</sup> Juan C. Zarate, *supra* note 19 at 386 (explaining how China’s model of authoritarian capitalism has proven an attractive alternative to the American financial system and its hold on major natural resources only further strengthens its market position).

<sup>203</sup> Kathy Gilsinan, *supra* note 201.

<sup>204</sup> Keith Bradsher, *China’s Renminbi Is Approved by I.M.F. as a Main World Currency*, THE NEW YORK TIMES (Nov. 30, 2015), <https://www.nytimes.com/2015/12/01/business/international/china-renminbi-reserve-currency.html>.

United States' closest allies.<sup>205</sup> This bank presents a direct alternative to the U.S.-led financial system developed after World War II, even though the U.S. has yet to join it.

In response to China's growing strength, the U.S. has raised tariffs and issued sanctions in condemnation of China's human rights abuses and violations of democracy, like China's treatment of the Uighur Muslims and Hong Kong protesters.<sup>206</sup> The U.S. has encouraged its allies to follow suit with sanctions; however, the U.S. could be a lot more effective in re-solidifying its role as both peacemaker and financial hegemon if it were to work *with* its allies for common goals.<sup>207</sup> The U.S. executive has the authority to issue sanctions on its own, but sanctions are perceived as antagonistic, political, and often unproductive when not paired with other strategies and other partners.<sup>208</sup> In order to combat the growing threat from China and to ensure American sanctions are issued to maximum effectiveness, the U.S. needs to reinstate a multilateral approach to sanctions issuances and monitoring.<sup>209</sup>

First, the U.S. needs to form coalitions with allies to execute sanctions.<sup>210</sup> When sanctions are implemented "swiftly and effectively," they can have a positive impact, and this impact is more magnified when the entire U.N. Security Council "[speaks] with one voice."<sup>211</sup> Sanctions must be a "part of a bigger strategy" that includes coordination with allies, especially Canada, the United Kingdom and the European Union.<sup>212</sup> The U.S. should also invite non-western nations to the coordination efforts to show that sanctions are not just a punitive western tool.<sup>213</sup> This is particularly important when the sanctions are for a popular cause that neighboring countries have an interest

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<sup>205</sup> Jane Perlez, *China Creates a World Bank of Its Own, and the U.S. Balks*, THE NEW YORK TIMES (Dec. 4, 2015), <https://www.nytimes.com/2015/12/05/business/international/china-creates-an-asian-bank-as-the-us-stands-aloof.html>. After Britain joined the bank, President Xi Jinping of China visited Britain and signed commercial agreements worth about \$60 billion. *Id.* Mr. Jin, the Bank's president, read two lines from Shakespeare's *Cymbeline*: "Britain's a world by itself. We will nothing pay for wearing our own noses," recognizing Britain's act of defiance to the U.S. in joining the Chinese bank. *Id.*

<sup>206</sup> Kathy Gilsinan, *supra* note 201.

<sup>207</sup> *See*, Juan C. Zarate, *supra* note 19 at 353-54 (discussing how the U.S. has emphasized the Assad regime's human rights abuses against its own people in Syria as a way to garner support from other Arab states and the rest of the international community).

<sup>208</sup> *See*, Beth Van Schaack, *supra* note 160.

<sup>209</sup> David Povey, *supra* note 199.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.* (citing examples of successful UN sanctions against Al-Qaeda and ISIS).

<sup>212</sup> Beth Van Schaack, *supra* note 160.

<sup>213</sup> *See id.* (referencing the perception of sanctions as a "western" tool and suggesting the rest of the world views sanctions less favorably as a result).

in, like preventing religious persecution or genocide.<sup>214</sup> Japan is a democratic Asian nation and a close ally to the U.S. and similarly condemns acts like the ethnic-religious persecution of the Uyghurs, so would likely join the U.S. in its condemnation.<sup>215</sup> The U.S. could also invite Muslim-majority nations to work with them, and against China, to combat this persecution. Since China has made it clear that it wishes to lead development of Asia and the East, including Middle Eastern and other Asian countries in a coordinated sanctions effort will have a much stronger economic impact than sanctions from the U.S. alone.<sup>216</sup> By building a coalition to respond to human rights crises, the U.S. can more effectively stigmatize human rights violations and discourage other nation-states from cooperating with China.

Second, sanctions must be specific to the situation and must be reviewed regularly.<sup>217</sup> Without regular review and updates, “sanctions become stale and ineffective.”<sup>218</sup> To better ensure sanctions are narrowly tailored to the conflict at hand and to better review sanctions, the U.S. could initiate, support, or fund investigations into any alleged human rights atrocities as a follow-up to initial sanctioning.<sup>219</sup> There are several existing international bodies that support such work. The U.S. withdrew from the Human Rights Council in 2018 but can still encourage its allies to bring certain issues to the Council, call for investigations, or launch fact-finding missions.<sup>220</sup> They can also present human rights concerns to the United Nations General Assembly and request a “Uniting for Peace” resolution, which allows the General Assembly to consider and make recommendations on a matter even when a permanent member of the Security Council, like China, disagrees with the resolution.<sup>221</sup> The U.S. can also wield its influence with the World Bank and other financial institutions to encourage them to support sanctions against the target and prevent the target from securing additional funding or loans.<sup>222</sup> The U.S. also is a member of the Inter-Parliamentary Alliance on China (IPAC), a group that formed this year to challenge China’s growing power and to uphold trade fairness and human

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<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> David Povey, *supra* note 199.

<sup>218</sup> *Id.*

<sup>219</sup> Beth Van Schaack, *supra* note 160.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* The World Bank has contributed to efforts to end the persecution of the Uyghurs: it ended funding for “vocational schools” in Xinjiang after the U.S. Congressional-Executive Commission on China (CECC) found that the funds were used to purchase facial recognition technology and night cameras. *Id.*

rights.<sup>223</sup> This group consists of politicians from member nations and works to implement solutions at the national level, rather than just through the United Nations.<sup>224</sup>

Third, the U.S. should look inward and consider how U.S. systems could contribute to more effective sanctioning of malicious acts, like Congress or American businesses. The example of the Uyghurs in Xinjiang is illustrative of the interconnectedness of Chinese supply chains and how American businesses end up “tainted by forced labor.”<sup>225</sup> China supplies over a third of the apparel entering the United States, and Xinjiang supplies 22% of the world’s cotton, so much of this cotton ends up in U.S. markets through brands including Adidas, Coca-Cola, Nike, Patagonia, and more.<sup>226</sup> The U.S. has long-criminalized forced labor and human trafficking, and it is equally important that products of such labor do not move through U.S. markets.<sup>227</sup> Although conducting due diligence on all labor markets in Xinjiang is not possible, the U.S. can take steps at home to avoid complicity in illegal labor practices.<sup>228</sup> Strengthening import bans at the border through the U.S. Customs and Border Protection is one way to prevent such goods from entering the U.S. market.<sup>229</sup> Working directly with businesses is another. As discussed earlier, the Trump administration has issued a non-binding warning for businesses who get apparel or supplies from China, but more can be done to show that the U.S. is backing up its sanctions issuances with means to make the sanctions effective.<sup>230</sup> Public pressure campaigns calling for apparel companies to cut all ties with their Xinjiang suppliers is a start, but the Executive could also identify which firms do most business in Xinjiang, call the largest of these firms to meet and agree on systems to ensure that goods produced through forced labor do not end up in the United States.<sup>231</sup>

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<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Global Supply Chains, Forced Labor, and the Xinjiang Uyghur Autonomous Region*, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA at 4 (March 2020), <https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/CECC%20Staff%20Report%20March%202020%20-%20Global%20Supply%20Chains%2C%20Forced%20Labor%2C%20and%20the%20Xinjiang%20Uyghur%20Autonomous%20Region.pdf>.

<sup>226</sup> *Id.* at 6; Beth Van Schaack, *supra* note 160 (citing the full list of 180+ clothing companies that had connections to Uyghurs’ forced labor, found at: <https://enduyghurforcedlabour.org/news/402-2/>).

<sup>227</sup> *Global Supply Chains, Forced Labor, and the Xinjiang Uyghur Autonomous Region*, *supra* note 225 at 6.

<sup>228</sup> *Id.* at 7.

<sup>229</sup> Beth Van Schaack, *supra* note 160.

<sup>230</sup> *See, Trump Administration Strongly Warns U.S. Businesses Against Contributing to China’s Human Rights Abuses*, *supra* note 164.

<sup>231</sup> Beth Van Schaack, *supra* note 160.

Informing consumers about American connections to target's under sanctions for human rights abuses would further enhance the pressure on a sanctioned nation to change its practices.<sup>232</sup> Additionally, Congress could contribute by passing legislation to expand the Administration's authority to address forced labor in China, or by imposing financial disclosure requirements or a duty of care on corporations doing business in a sanctioned region or with a sanctioned target.<sup>233</sup>

Last, the U.S. should reward compliance with sanctions.<sup>234</sup> Sanctions impose financial, commercial and reputational penalties on target entities as a means to shape their behavior and compel the target to comport with collective norms.<sup>235</sup> The ultimate goal for sanctions is to end the malicious, antisocial behavior and restore positive international relations. As such, sanctioning bodies should respond to a target's compliance with positive reinforcement and should loosen sanctions to allow a target to begin rebuilding its economy, while still being under close surveillance.<sup>236</sup> A gradual removal of sanctions and reopening of trade with a target will encourage positive behavior, and, if a target resumes its former ways, sanctions may always be reinstated.<sup>237</sup>

Combined efforts from governments, businesses, and individuals will help ensure that sanctions are being implemented effectively and in a way that conveys true intent to change behavior and improve security, rather than simply a punitive measure against rival nations.

## CONCLUSION

The United States has historically been at its best when it is in the role of peacemaker and advocate for social justice and democratic values.<sup>238</sup> It has

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<sup>232</sup> *Id.*

<sup>233</sup> *Id.*; *Global Supply Chains, Forced Labor, and the Xinjiang Uyghur Autonomous Region*, *supra* note 225 at 12 (citing the Uyghur Human Rights Policy Act (S. 178) and suggesting legislation that would increase import controls, designate more entities for sanctions, and create due diligence and financial disclosure requirements for companies working in the Xinjiang region).

<sup>234</sup> David Povey, *supra* note 199.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.* (citing the example of sanctions against Myanmar that paved the way for Myanmar's transition to democracy. Sanctions crippled Myanmar's economy but were relaxed and then removed when Myanmar changed its behavior, and in 2015, Myanmar had its first democratic election in 25 years. Since 2013, trade has increased which has created 2,500 jobs in Myanmar).

<sup>238</sup> See, David Gray, *The Military as Peacemakers and Enforcers: Military Operations Other Than War in the 1990s*, FOREIGN POLICY RESEARCH INSTITUTE (April 23, 2018), <https://www.fpri.org/article/2018/04/the-military-as-peacemakers-and-enforcers-military->

the democracy, economy, military, intelligence, and money to be involved in the international community in a meaningful way that both helps other nations and enhances its own national security.<sup>239</sup> But, right now, careless sanctions issuances threaten that stability and security and open doors for other nations' economies to usurp the U.S. dollar as king of the global economy.

Sanctions are an important weapon in the United States' arsenal, but they need to be executed with the same care and forethought as other weapons to avoid being diminished by political irreverence. In his September 2020 press statement, Secretary of State, Mike Pompeo, sent "another reminder that the United States will not waver in its commitment to sanctions enforcement."<sup>240</sup> This is important. However, rather than issuing more sanctions, the U.S. needs to focus on issuing focused multilateral sanctions that support collective norms, and not U.S. political goals, and then following sanctions issuances with subsequent investigations and collaborations of all impacted or sympathetic entities. Just as "the financial battlespace is constantly evolving," American sanctions policy must evolve to meet the challenges of our increasingly complex global financial system.<sup>241</sup> Otherwise, our enemies will find new ways, tools, and allies to secure illicit capital to fund illicit behavior, which will pose a formidable threat to America's financial power.<sup>242</sup> The United States' "commitment to sanctions enforcement" requires more than just continued outcries against specific entities who violate a U.S. sanction or maintain a different system of government. By responding to human rights abuses and terrorism with focused leadership and in collaboration with allies, the U.S. can use its financial strength to curb China's influence and reposition itself as both a moral leader and financial hegemon.

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operations-other-than-war-in-the-1990s/ (describing the U.S. military's adaptations to the post-Cold War climate that included a series of operations other than war that "required restraint rather than power, diplomacy rather than fighting" with success measured by "lack of violence and no casualties" and resulted in improved stability and standards of living in war-torn areas).

<sup>239</sup> *Id.*

<sup>240</sup> Michael Pompeo, *supra* note 83.

<sup>241</sup> Juan C. Zarate, *supra* note 19 at 357.

<sup>242</sup> *Id.*