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The Exorbitant Privilege of US Extraterritorial Sanctions

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Abstract: US extraterritorial sanctions, also called secondary sanctions, are inherently controversial due to the use of the exorbitant privilege of encroaching not only on the target state but also on third states' jurisdictions and national interests. After surveying the state of the art in the debate on extraterritorial sanctions with a particular focus on the financial industry, this article refers to the major balancing powers' policies for dealing with the US use of an exorbitant privilege and concludes that, even though the effectiveness of unilateral secondary sanctions has been apparent as demonstrated in the case of the Iran sanctions, the US practices stand out as being increasingly incongruent in the international system, especially in the slow process of distancing from the US-led unipolarity and its manifestations. Thus, the future of secondary sanctions depends on one hand on the US preserving its diminishing credibility and coordination and on the other hand on third countries' collective actions for voicing to protect their national interests.

Keywords: exraterritoriality, secondary sanctions, financial industry, blocking statutes, payment systems

Öz: ABD'nin sınırötesi/ikincil yaptırımları, sadece yaptırım uygulanan hedef ülkenin değil, aynı zamanda üçüncü ülkelerin yargı alanlarına ve ulusal çıkarlarına da müdahale niteliği taşıması nedeniyle meşruiyeti kendinden menkul bir imtiyaz kullanımı olup yasallığı tartışmalıdır. Vatandaş olmayanlara yönelik sınırötesinde (ikincil) kural empoze edilmesi tartışmasında gelinen noktayı, finans endüstrisi uygulamalarıyla inceleyen bu makale, ABD'nin aşırı imtiyaz kullanımına karşı Çin, Rusya ve Avrupa ülkelerince oluşturulan politikaları da analiz etmektedir. Son olarak, ikincil yaptırımların etkinliği, İran yaptırımları örneğinde olduğu gibi açıkça görünmesine rağmen, ABD liderliğindeki tek kutupluluktan ve bunun yansımalarından uzaklaşma sürecinde, ABD'nin sınırötesi yaptırım uygulamalarının uluslararası sistem içinde giderek daha uyumsuz bir durum arz ettiği sonucuna varmaktadır. Bu durumda, bu tür yaptırımların değişen jeopolitik ortamdaki geleceği, hem ABD'nin gittikçe azalan koordinasyon kapasitesini koruyup koruyamayacağına, hem de ABD'nin tek taraflı uygulamalarından etkilenen üçüncü ülkelerin ortak eylem yeteneklerine büyük ölçüde bağlı görünmektedir.

Anahtar Kelimeler: sınırötesinde kural icrası, ikincil yaptırımlar, finans endüstrisi, engelleme yasaları, ödeme sistemleri

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Introduction

Economic statecraft has become a popular option in the great powers' foreign policy toolbox (Ruys & Ryngaert, 2020; Scholvin & Wigell, 2020, p. 1). Some scholars have defined the 2010s as the second sanctions wave, bigger than the first wave of the 1990s, which had respective increases of 73% and 59% (van Bergejik, 2022). The US in particular has a comparative advantage in designing effective sanction regimes because it is able to control international financial transactions as having an "undisputed financial hegemon[y]" (Drezner, 2015, 758). However, the USA's unilateral imposition of extraterritorial sanctions causes tensions and counter-policies, prompting a recurring debate over their congruity in the international politico-economic space.

In this article, I will try to elaborate on the (in)congruity of US extraterritorial sanctions in the transitioning international system. By congruence, I mean the conformity these sanctions have within the global international system based on the principles of international law as well as on the consent of major actors. Globalized supply chains include multinational companies, states, and natural persons. By means of extraterritorial sanctions, the US employs these actors as its power resource without their prior consent in the form of agreements or multilateral institutional decisions, such as United Nations Security Council (UNSC) resolutions. Therefore, unilaterally extraterritorially sanctioning and thereby coercively influencing third country citizens for US foreign policy objectives is an "exorbitant privilege,"[1] creating clashes of national interests and jurisdictions. On the other hand, the transnational characteristics of the current state of capitalism justifies adjudication of certain overseas acts, such as for taxation purposes (Raustiala, 2006, p. 219; Verdier, 2018). Therefore, stretching territoriality principle to some extent has been promoted as a "rationaliz[ation of] the transnational legal system" (Clopton, 2014).

This paper attempts to evaluate the conflicts arising from the secondary sanctions due to the clash of jurisdictions and national interests. In doing this, I will briefly take Iran sanctions as a typical example. The obvious issue arises from the fact that US sanctions laws are adopted by the US national institutions as a corollary of the US national interests which is inclusive of its commercial interests (*Economist*, 2019), even though the forms of "American imperium [is often] packaged as 'security' and retailed as a public good" (Anderson, 2023). If the principle of sovereign equality

1 Exorbitant privilege is the phrase de Gaulle's finance minister Valery Giscard d'Estaing used to qualify the privileges the US uses that arise from the dollar's reserve currency status. Regarding these privileges, due to the "two to three percentage points" difference between the interest rates the US pays for its "foreign liabilities…(and) foreign investments… [the US] can run an external deficit in the amount of this difference, importing more than it exports and consuming more than it produces…" (Eichengreen, 2011, p. 4).

and thus every state's right to adjudicate within its own territory is recognized, US extraterritorial rules cause clashes between jurisdictions (Gallant, 2022, p. 30) and raise "deep legitimacy questions" (Ruys & Ryngaert, 2020, p. 4). This problem becomes particularly evident in an international system where, unlike in the immediate aftermath of the Cold War, the single hegemon no longer has sufficient legitimacy and coordinating power.

The remaining sections proceed as follows. The second section summarizes the concept of extraterritoriality with regard to the main principles of international law. The two sub-sections are first devoted to US financial hegemony and extraterritorial sanctions implementations and then to multinationals' agency in executing US foreign policy through sanctions. The third section reviews other major powers' positions with regard to US extraterritorial sanctions policy. The fourth section exemplifies US extraterritorial sanctions regarding the Iran sanctions and their effects, with the last section then concluding the article.

Extraterritoriality

In the wake of the Cold War, Luttwak (1990, p. 18) argued that the world was transitioning from geopolitics to geoeconomics, even though the "logic" and "grammar" of geoeconomics was also based on "conflict" and "zero-sum". Sanctions are a typical practice of geoeconomics (Blackwill & Harris, 2016). Taylor (2010) attributed the United States' increasing use of sanctions to several factors: the failures of US military statecraft in Afghanistan and Iraq; the emergence of new nuclear states such as Iran and North Korea; the increased multipolarity of the international system with new power centers such as China, the European Union (EU), India, Japan, and Russia; and the "often cumbersome diplomatic solutions to offer" to the political challenges (p. 9). I should also add a supply-side factor: the inherently available power resources (e.g., financial and technological supremacy) as instruments for the US to resort to sanctions with its own capacity and without much voice and cost. In this sense, even though geoeconomics is defined as "accommodating and covert use of economic power" compared to "confrontational, overt and military-based" geopolitics (Möttölä, 2019, p. 90), US extraterritorial sanctions based on the preeminence of the US cause one of the most problematic subjects in international politics today. As a term, extraterritorial refers to the locus outside the recognized borders of a state (Lubell, 2010, p. 13). The territorial sovereignty of states has been recognized since the Peace of Westphalia in 1648. Equal sovereignty was defined as *jus cogens*, or compelling law, in the Vienna Convention on the Law of Treaties (1969), and as a corollary of this consensus, territoriality of jurisprudence is the rule (Tekin, 2021; Yurtsever & Öğün, 2020; Öztürk, 2017).

By definition, unilateral sanctions are when a state adopts sanctions outside a multilateral organizational setting. Within the UN's responsibility of "maintain[ing] or restor[ing] international peace and security," the UNSC has the authority to impose multilateral sanctions under the UN Charter that are legally binding for all states (see Arts. 23 & 39-41). Because UNSC sanctions rely on unanimity or a majority vote and thus represent all UN member states, they are legitimate, even though their low ethical standards and catastrophic humanitarian and destabilizing effects have been disputable in the recent past (e.g., the blanket embargo towards Iraq) and led to the deaths of more than 1.5 million people due to this politically-constructed famine and calamity. Libya is another example where the UNSC sanctions in 2011 merely justified ensuing military interventions that started only within 48 hours after the adoption of UNSC Resolution 1973 (Zurbrigg, 2007; Karaoğlu, 2019). Individual states can also unilaterally adopt primary sanctions, which bind their own citizens in their dealings with the targets of the sanctions, and these are justified under the principles of international public law. Different from these categories, unilateral extraterritorial sanctions intend to bind foreign citizens and entities in their dealings with the targets. In doing so, the US feels no obligation to sit at the negotiation table with these passive receivers for concessions or compensations, while the latter bears crucial burdens due to the sanctions. Therefore, the legitimacy of these sanctions is unfounded and their legality is challenged (Beaucillon, 2021; Terry, 2020; see also: Schmidt, 2022 & Emmenegger, 2016). One scholar succinctly defined secondary sanctions as "a form of legal neo-colonialism" (Becker, 2023).

As Maier (1983) stated, "Jurisdictional rules are fundamental because they describe community expectations about the reach of sobering power… [They] must reflect community interests. If they do not, [they] become instruments of anarchy, not of order, and lose their utility as organizing principles for transnational conduct." Toll et al. (2020, p. 53) also argued that extraterritorial US sanctions necessarily violate third country sovereignty due to how they encroach on these countries' territories. According to Maier (1983), subjecting an act happening within another country's territory to the US judicial process risks harming credibility of "an international system reflecting divisions of authority appropriate to long-term community interests." On the other hand, due to the increased interconnectivity and the changes in the actors' reach in the globalized space as well as changes in the concept of space and territory, claiming the illegality of extraterritoriality *per se* have become increasingly obsolete (Zagaris, 2010, p. 218). Today, transnational policy domains exist such as human rights, where extraterritoriality is implemented with greater consensus. In this sense, a strict implementation of sovereignty becomes anachronistic (Reisman, 1990).

While the US accepts the five generally accepted principles of international law on jurisdiction (i.e., territoriality, nationality, passive personality, protective principle, and universality), it stretches them through interpretation to justify its extraterritorial sanctions (Larsson, 2011, pp. 25–26). These principles are briefly summarized as follows. The territoriality principle mainly confines a state's conduct to its borders. However, two extensions are generally accepted: Subjective territoriality implies that if a subject commences an act in state A and a substantial part of that act occurs within A's territory, A has jurisdiction over that act, even if the act is completed in state B (Emmenegger, 2016, pp. 646, 655; Alexander, 2009, pp. 66–74). The second extension is objective territoriality, which can be exemplified by state A having jurisdiction over a case of somebody who fires a gun from state B and wounds a person in state A (Alexander, 2009, pp. 66–74). This principle is also known as the effects doctrine and assumes that the "*direct, substantial, and foreseeable* effects" occurring in a state give it jurisdiction (Emmenegger, 2016, pp. 646, 656, emphasis in original). The nationality principle means that a state exercises jurisdiction over the acts of its citizens wherever they are, which is also termed the active nationality principle. As an extension to this principle, passive nationality means a state has jurisdiction over an alien for acts committed outside of the state but that cause injury or damage to a citizen or citizens of that state (Emmenegger, 2016, p. 649; Alexander, 2009, pp.75–77; Lohmann, 2019). As another extension regarding the nationality principle, corporate nationality poses specific challenges, because a multinational corporation (MNC) has activities in multiple jurisdictions. This challenge was resolved to a large extent by the International Court of Justice (ICJ), which recognized in the case of *Barcelona Traction, Light, and Power Company* (1970) that the nationality of an MNC is decided according to either the place of incorporation or the principle place of business "rather than the nationality of its shareholders" (Ruys & Ryngaert, 2020, p. 18; Alexander, 2009, p.76). However, the US interprets the corporate nationality principle more broadly and regards a business that is controlled by US persons to be a US national. On the other hand, US political interpretations change according to context. For example, in the infamous Bhopal chemical accident case, the victims have been struggling to obtain a judicial remedy since 1984. The accident occurred at the Union Carbide chemical factory in Bhopal, India. The factory belonged to Dow, a US company, and the accident caused the deaths of 25,000 people, with 150,000 surviving with such disorders as respiratory diseases, kidney and liver disorders, cancers, and gynecological issues. Since then, justice has yet to be served (Passow & Edwards, 2023). Moreover, international politics also affects US implementations. For example, in the case of the Siberian gas pipeline construction in 1981, the US attempted to impose extraterritorial sanctions against European companies.

However, it withdrew upon Europe's harsh opposition supported by the argument of international law. Later, the US imposed territorial sanctions in 1996 against Cuba, Iran, and Libya once again. Although the European countries and Canada opposed the US extraterritorial policy and adopted blocking statutes, the US this time didn't step back from its regulations but ensured that Europeans would be exempt from the implementation of secondary sanctions (Ruys & Ryngaert, 2020, p. 111; Terry, 2020). This strategy change can be explained by comparing two different contexts. First, in the Siberian pipeline case, the Cold War was still ongoing, and the US needed the unity of the Western Bloc. With the end of the Cold War, however, the US enjoyed the unipolar moment with a hierarchically superior self-perception in the 1990s. Of the remaining two principles, the protective principle aims to provide states with jurisdiction over substantial threats to their national security overseas. However, the ICJ in *Nicaragua v. United States* opinioned that "a mere claim that this is the case is insufficient" (Terry, 2020, p. 13). Finally, the principle of universal jurisdiction gives all states jurisdiction over certain crimes, such as piracy and crimes against humanity (Alexander, 2009, pp. 65–79; Terry, 2020). This principle was applied in the Nuremberg Trials (Emmenegger, 2016, p. 653).

Scholars find the United States' expansive sanction laws to be incompatible with public international law (Terry, 2020). For example, US law defines a US person as "any US citizen, permanent resident alien, juridical person organized under the laws of the United States, or any person in the United States" (22 U.S. Code § 6010; Lohmann, 2019). Therefore, even being in the US makes one subject to US jurisdiction for their conduct outside the US. With the wider interpretation of a "US person," the US regards subsidiaries and the companies managed by US persons as US nationals. The case of the Sheraton exemplifies this: 16 Cuban people conducted negotiations in energy sector with some US energy executives at a Sheraton hotel in Mexico, Sheraton being headquartered in New York. The Office of Foreign Assets Control (OFAC) got information about this event and informed the hotel that it was violating US sanction laws by providing services to Cuban nationals. The hotel evicted the Cubans. However, by applying the US law, Sheraton had violated Mexican law and was sanctioned by the Mexican government (Larsson, 2011, pp. 30–31; Zagaris, 2010, p. 197). As in this example, multinational companies find themselves having to decide whether to comply with the legitimate domestic law (e.g., Mexican law) or align themselves within the *de facto*-created jurisdictional hierarchy headed by US law. As such, extraterritoriality to this extent creates a hierarchy based on capital ownership and enforced by a mighty polity. This arrests international politico-economic development, especially in the geographies bordering the countries subject to these sanctions (e.g., in Iran, Cuba, Russia; see Rinna, 2019).

For instance, Türkiye's Halkbank was indicted due to its financial intermediary in Iran trade (US Department of Justice, 2019b), and the Turkish Defense Industry Agency was subject to sanctions for having purchased S-400 defense systems from Russia contrary to the Countering America's Adversaries Through Sanctions Act (CAATSA), a US Law (National Defense Authorization Act for Fiscal Year 2020, Section 1245; *Anadolu Ajansı*, 2020). The US also sanctioned various Turkish small-to medium enterprises (SMEs) for trading with these two neighboring states (*Euronews*, 2023), thus constricting their commercial options.

US Financial Hegemony and the New Balancing Technologies

By the end of June 2023 in the global official foreign exchange reserves, US dollar (USD) claims stood at $6.6 trillion, Euro at the equivalent of $2.2 trillion, Japanese Yen at $610 billion, and the UK's Sterling at $541 billion. The Chinese Yuan was just $288 billion, ahead of the Canadian dollar at $271 billion (International Monetary Fund, 2023). As such, the USD is still well ahead of other currencies, even though as Eichengreen (2011, p. 7) has argued "the challenge may come sooner rather than later." As Drezner (2015) stated, transnational financial transactions are cleared through the US capital markets and currency. For extraterritorial US sanctions, the financial industry offers one of the best infrastructures for several factors, including its interconnectedness, USD's position as the world reserve currency, and the US being the polity able to exploit this framework as a privilege. The cost of being prosecuted for violating sanctions is significant for banks. The US is the (Drezner, 2015, p. 758) "undisputed financial hegemon", and this creates a force for international financial institutions to obey US sanctions. Moreover, toward re-emerging bloc politics, the United States' closest rivals are still its friends rather than its declared foes (i.e., China or Russia). As such, the US currently has the option of coordinating, albeit through coercion to some extent, a relatively wider coalition among the seigneurs of the leading reserve currencies to implement effective sanctions regimes.

US courts have brought many charges against foreign banks for alleged violations of US law that occurred primarily outside US territory. The charges include tax evasion, benchmark manipulation, money laundering, sanctions violations, and corrupt payments. Most were resolved without trial through non-prosecution agreements (NPAs), deferred prosecution agreements (DPAs), or plea agreements. Fourteen cases between 2008-2016 saw large foreign banks fined $32 billion (Verdier, 2018). Most strikingly, the French bank BNP Paribas was fined $8.9 billion USD in violation of US secondary sanctions in 3,897 financial and trade transactions regarding Iran, Sudan, and Cuba (Ruys & Ryngaert, 2020). Moreover, the banks agreed to make important

changes in how they conduct business. For example, HSBC Bank paid $1.26 billion USD and agreed to replace its management team, to implement a compliance program in order to prevent sanctions evasion, to exit risky countries and business segments, and to screen its clients against the US sanctions list. Similarly, UBS Group AG agreed to stop working with US customers in Switzerland (Verdier, 2018).

Hegemonic stability theory argues that a hegemon is needed for the stability of the international economy (Cohen, 2008, p. 72; Kindleberger, 1979, p. 305) and must serve three stabilizing functions: "maintaining an open market for distress goods, providing countercyclical long-term lending (and serving as a lender of last resort), and providing liquidity to the system" (Spiro, 1999, p. 9). However, Gilpin (1981) warned about the hegemon`s exploitations. According to a commentator, "extraterritorial U.S. sanctions increasingly target persons, property, and acts without any nexus to U.S. jurisdiction whatsoever" (Lohmann, 2019; see Roberts, 2019, p. 146). For Gilpin (1981, pp. 9, 198), any international system depicts a distribution of power and sets the rules of game for who will govern the system and benefit most from it. Also, any changes in the distribution of power will lead to readjustments of the demands in the system. Hence, in an increasingly balanced distribution of power (i.e., the US-Chinese parity) and in the emergence of other powers (e.g., EU, Russia, India) asserting their positions, extraterritorial sanctions cause increased distress. The United States' unilateral secondary sanctions affect both the target country as well as third states' citizens and entities and thus seeks a multilateral commitment to sanctions through coercion (Ray & Siddiqui, 2023; Han, 2018). However, this exorbitant demand is not justified by a multilateral decision-making process nor by a Gramscian hegemony based on consent; instead, it depends on a non-negotiated, top-down unilateralism.

Drezner (2015), referring to Bremmer & Kupchan (2015) contended that the weaponization of finance would be able to trigger a politically motivated diversification away from US capital markets and the USD. For example, Russian President Putin after being sanctioned voiced the need for "alternative financial and payments systems and reserve currencies" (Roberts, 2019, p. 152). Thus, even though the US governance of the international finance system empowers the US, the use of its hegemonic position has crucial ramifications over other states' policy inquiries, despite the lack of evidence that they can shake the USD's position in the foreseeable future (Stokes, 2014). Moreover, new technologies promise to circumvent the present financial system. To a large extent, the stable currencies and crypto-currencies offer transactions and depositing outside the US financial authorities' reach. Currently, Alipay and WeChat in China dominate 90% of payment transactions. In other words, new technologies allow decoupling from the US-led financial system and concomitantly decrease the reach of US financial sanctions (Goldman & Lindblom, 2021).

Multinationals' Agency in Secondary Sanctions

In an integrated global economy, multinationals are both subject to sanctions as well as operate infrastructurally as an effective sanction regime. A typical MNC operates within multiple jurisdictions. US extraterritorial sanctions force them to choose between doing business either in the US market or the target country. Although polities occasionally respond with counter-measures (discussed below), the United States' long arm matters, and companies often chose to divest from the target countries, acting within the principle-agent rationality. The financial industry offers a striking example of companies' agency in the sanctioning process. According to Jaeger (2021), financial institutions operate autonomously with their own perceptions of self-regulation and operational risk. In this process, the US economic-political power *de facto* forces third-state companies and individuals to distance themselves from their existing nationalities and sign US regulations (Terry, 2020), thus constituting a judicial capture.

As mentioned above, the customary jurisdiction in international law offers two criteria for deciding on the nationality of a company: the place of incorporation, and the place where the company has its principal place of business (Ruys & Ryngaert, 2020, p. 18; Alexander, 2009, p. 76). However, the US extends its domestic law extraterritorially into third-country jurisdictions through its broad interpretation of the nationality principle. In this way, the US imposes extraterritorial sanctions to businesses "majority-owned or controlled by a US person" (Ruys & Ryngaert, 2020, p. 18). Furthermore, the instrumental role of the US financial infrastructure and the lack of clarity regarding the rules often prompt actors to over-comply with sanctions (Meagher, 2020, pp. 1006, 1015). Moreover, it has been claimed that the US tactically tends to impose higher amounts on high-profile companies to exploit firms' sensitivity to negative publicity (Preble & Early, 2023). Thus, US extraterritorial sanctions send significant signals to the international business environment, including MNCs and other trade actors, and unilaterally coerce these entities to forego economic activity in line with US foreign policy objectives (Clark, 1999; Terry, 2020).

Multipolarization and US Extraterritoriality

The distribution of material and soft power matters with regard to the fate of US unilateralism. So far, the names given to the shape of the emerging world order have varied (Walt & Rodrik, 2021). Unipolarity (Ikenberry et al., 2009), multipolarity, bipolarity, and bi-multipolarity (reminiscent of Krauthammer's pseudo-multilateralism and Huntington's uni-multipolar system) have been mentioned (Kirkova, 2015; Krauthammer, 1990; Huntington, 1999). However, much clarity is found regarding

the erosion of the credibility of the US-led liberal world order. A few of the symptoms include the global financial crisis that originated at the heart of the unipolar world, the inactivity of the Group of Seven (i.e., Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States; or the G7) during the COVID-19 pandemic with regard to China's active health diplomacy, and the ineffectiveness of the World Trade Organization (WTO) dispute resolution mechanism (Nölke, 2022, p. 170). In this context, the US enjoyment of similar privileges, including its imposition of extraterritorial rule since the mid-1990s in particular, is increasingly at odds with international politics, as signaled by the practices of China, Russia, and occasionally the EU (see below).

China, Russia, BRICS and SCO

China has been subject to Western economic and technological measures since the Communist Revolution in 1949. As a result, it has developed a stance against Western unilateral sanctions among the international community. China took leadership in voicing the Global South's concerns on the issue of sanctions. Moreover, China launched its China International Payment System (CIPS) in 2015 for trade with the Chinese Renminbi (RMB; Lohmann, 2019).

Within the context of the great power rivalry with the US and as a counter-measure to the USA's sanctions against Chinese companies and Chinese natural citizens, China's Ministry of Commerce (MOFCOM) issued its Provisions of Unreliable Entity List on September 20, 2020 to target foreign entities on grounds of national security (Toll et al., 2020). Article 2 of this regulation describes sanctionable foreign entities as those:

1. endangering the national sovereignty, security, or development interests of China; and
2. suspending normal transactions with Chinese enterprises, organizations, or individuals, in violation of market-based principles, thereby seriously harming the legitimate rights and interests of Chinese enterprises, organizations, or individuals" (MOFCOM, 2020).

Likewise, Article 10 of the regulation provides a portfolio of sanctions that can be imposed, including "(1) restricting or prohibiting the foreign entity from engaging in China-related import or export activities;" and "(5) imposing a fine of the corresponding amount according to the severity of the circumstances" (MOFCOM, 2020).

As Toll et al. (2020, p. 22) stated, however, China lacks a "a coherent legal framework for extraterritorial application," with its domestic deliberations largely

focused on how to counter US sanctions. The fact that China's RMB inter-bank payment system (CIPS) is no close rival to the USD system constrains China's norm-imposing power beyond its territorial reach. On the other hand, even though China has presented itself as steadfastly opposed to the unilateral sanctions practiced by Western states, it has increasingly employed this tool for its foreign policy purposes (Gloria, 2021). As Cai (2021) stated, China's economic rise was an important factor in its behavioral change. China's huge market, economic force and technological progress allow it to deploy these sanctions in its influence operations. China can use its economic power as carrots and sticks to create a China-friendly sphere of influence primarily in its region but also overseas, such as in Africa and the Middle East. In this context, China's normative stance as a principled defender of sovereign equality and territoriality is contested due to the need on one hand to respond to US sanctions while shaping the geopolitical environment to its favor on the other.

Like China, Russia was also subject to US sanctions during the Cold War. Therefore, it also is principally opposed to unilateral sanctions. In 2014 when Russia was sanctioned by the USA and the EU due to the annexation of Crimea and threatened with being cut off from the Society for Worldwide Interbank Financial Telecommunication (SWIFT) system, Russia launched the System for the Transfer of Financial Messages (SPFS) as a substitute for SWIFT (Bank of Russia, 2022; Becker, 2023; Bansal & Singh, 2021, p. 19). Moreover, upon the enactment of the Countering America's Adversaries Through Sanctions Act (CAATSA) in 2017, Russia promulgated its blocking statute as a countermeasure and criminalized obedience to foreign sanction laws affecting its jurisdiction (Lechtman & Volfson, 2018; Rulaws, 2018). However, Russia is not an extraterritorial sanctions imposer, similar to other competitors of the US (i.e., China and the EU), due to the fact that Russia also lacks a global political, financial, and technological infrastructure for implementing extraterritorial sanctions. The Russian Ruble's status as an alternative global currency is meagre, and the third-state persons' exposure to Russian banks is only limited to those doing business in Russia or who are in partnership with Russian businesses.

So far, currency swap agreements have primarily been used for de-dollarization. In a dramatic move, Russia and China effectively eliminated the use of the US dollar in their bilateral trade in 2023, which had been only 20% in 2020 and 90% in 2015 (Wion, 2023). They push the use of local currencies through intergovernmental organizations (IGOs), namely BRICS and the Shanghai Cooperation Organisation (SCO). SCO is an organization whose members actively debate alternative reserve and payment methods (Vinokurov et al., 2022). After China, Kazakhstan, Kyrgyzstan, Russia and Tajikistan gathered as the Shanghai Five in 1996, SCO was founded in

2001 by six states with the addition of Uzbekistan (Genel, 2014). SCO members now also include Pakistan, India, and Iran. Moreover, Belarus, Mongolia, and Afghanistan share an observer status in SCO, with dialogue partners including Türkiye, Azerbaijan, Bahrain, the Maldives, Nepal, Sri Lanka, the United Arab Emirates, Kuwait, Myanmar, Armenia, Egypt, Qatar, and Saudi Arabia (SCO, 2024). Likewise originally founded among Brazil, Russia, India, and China in 2009 and joined by South Africa a year later, BRICS had accounted for 32% of the global economy by 2023, beating the G7 and its 30% share. BRICS has also been expanding, with Egypt, Ethiopia, Iran, and the United Arab Emirates having become new members in 2024 (Gooshchin, 2024). As such, alternatives are emerging. The excesses of US unipolarity has been an important factor in the search for alternative payment platforms and methods (Gooshchin, 2024; Liu, 2022). Led by the nations of the former second and third world, whether these alternatives will better reflect the ethics of sovereign equality or merely be instrumentalized to assert their influence over the Global South will define their normative power and legitimacy.

The European Union

The EU has been an important unilateral sanctions imposer among the great powers. However, even though its own unilateral sanctions also contain extraterritoriality in some cases (e.g., Russia sanctions; Becker, 2023), the EU generally opposes US unilateral extraterritorial measures (Beaucillon, 2021; Schmidt, 2022). As Schmidt (2022, p. 68) stated, the EU considers the extraterritoriality of US sanctions as a breach of international law. Even prior to Chinese and Russian practices, the EU had developed policies for dealing with the adverse effects of US unilateral measures on EU citizens. In 1996, the EU issued a blocking statute[2] "to nullify the effects of US extraterritorial sanctions" towards Cuba, Iran, and Libya (Toll et al. 2020, p. 64) and attempted "to challenge the legality of extra-territorial sanctions contained in the US sanctions regime against Cuba" (Schmidt, 2022, p. 71). By issuing blocking statutes, the EU forbade its citizens from complying with US extraterritorial sanctions with respect to the targeted Iran, Cuba, and Libya, thus aiming to defend its territoriality and nationals' freedom to do business against the US courts (p. 65). The EU issued a revision[3] to its blocking statute when the Trump administration re-imposed Iran sanctions, despite the P5+1 (i.e., UNSC's five permanent members of US, UK, France, China, and Russia plus Germany) and Iran having agreed on the 2015 Joint

2 European Union Council Regulation (EC) No. 2271/96.

3 European Union Commission Delegated Regulation (EU) No. 2018/1100.

Comprehensive Plan of Action (JCPOA) during the Obama period. However, the EU's blocking statute was largely ineffective, and EU businesses preferred to comply with US extraterritorial sanctions (Lohmann, 2019; Janeba, 2023). Strikingly, even though SWIFT was a Belgian company established under Belgian law, it continued to serve as the essential part of the US extraterritorial sanctioning process instead of obeying the EU's blocking statute (Ruys & Ryngaert, 2020, p. 110).

In this context, to continue trading with Iran, nine EU countries and the UK also built an alternative transaction mechanism (i.e., the Instrument in Support of Trade Exchanges [INSTEX]) in 2019 as a counter-response to the Trump administration's withdrawal from JCPOA. However, INSTEX was short-lived, as German and French foreign ministries declared the arrangement in early 2023 to be useless, also due to Iran's actions contrary to the 2015 Agreement (*Associated Press*, 2023).

In addition to the EU, Art. 271 of the Swiss Penal Code protects the Swiss territory from foreign power exercises, according to which, implementing a foreign state authority without Swiss consent is a crime. Therefore, a foreign-initiated action can only be implemented if justified under Swiss law (Jaeger, 2021).

In summary, as the practices of the three major power centers (i.e., China, Russia, and Europe) demonstrate, the US security argument has been challenged not only by its historical archenemies of China and Russia but also by such US allies as the EU (Roberts, 2019, pp. 146–147) through counter-sanctions and alternative financial infrastructures (e.g., China's CIPS, Russia's SPFS, and the EU's INSTEX). This has also exposed how US does not necessarily act for the advocacy of global public interest, hence decreasing its self-fulfilling credibility. As Raustiala (2006, p. 222) stated, US extraterritoriality "derive(s) from configurations of power and interest, not from any overarching normative theory of legal geography… [despite being] packaged as 'security' and retailed as a public good" (Anderson, 2023). One famous disillusioned commentator argued extraterritorial sanctions to have distanced the world from the vision of the 21st century based on a rules-based order more toward the 20th century of competing great powers (Rachman, 2020). In the liberal euphoria after the Cold War, which Fukuyama characterized as "the end of history" (Fukuyama, 1992; Fakiolas & Fakiolas, 2007, p. 66), such privileges would be acquiesced as *fait accompli*. However, the vagaries of US unipolarity, well-known to Eastern Europeans in the form of the Shock Therapy, which in the 1990s had led to poverty, alcoholism and women trafficking at epidemic proportions from Eastern Europe to the West (Pickup, 1997), for the sake of a free market, as well as to Middle Easterners such as in Iraq's so-called liberation including through the Abu Ghraib prison in the pursuit of remaking the world according to its own image, caused the collapse of US self-image and credibility. In the current transition toward multipolarity or the reemergence of

a great power rivalry, US unilateral extraterritorial sanctioning privileges will not go uncontested. However, the backlash from the international community against the negative outcomes of the Iraq embargo set a precedent for policy change. Prior to the Gulf War, trade sanctions had already diminished Iraq's GDP by half (Drezner, 2015). In 1995, the Food and Agriculture Organization (FAO) reported that, according to the Iraqi government, the UNSC embargos from just 1990-1995 had caused 500,000 children to die of hunger, as well as other deprivations (Karaalp & Okuduci, 2021). After these embargo experiments, sanctions became more targeted to reduce collateral damage (Drezner, 2015). This demonstrates that collective action can tame some excesses of sanctions reflecting the character of unipolarity.

Extraterritorial Sanctions Example: Iran Sanctions

The Iran sanctions represented 68% of US secondary sanction designations before the Russian invasion of Ukraine and the sanctions it subsequently received (Bartlett & Ophel, 2021). The US has used economic statecraft to achieve its policy objectives toward Iran since the 1979 hostage crisis. Between 1979 and the 2015 Joint Comprehensive Plan of Action (JCPOA, hereafter the 2015 Agreement), the objectives and instruments changed. The objective of the 1979 sanctions against Iran had been the release of hostages. The US imposed a second round of sanctions in 1984 after it listed Iran as a state sponsor of terrorism (Thomas, 2024, p. 9). However, the start of secondary sanction regulations began with the 1996 Iran and Cuba Sanctions Act (later renamed the Iran Sanctions Act [ISA]), while its extraterritorial implementations were waived until the 2010 Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), which marked the effective implementation of secondary sanctions. From 2010 to the present, CAATSA's extraterritorial implementation against Iran during the Trump period symbolizes a dramatic increase from a few designations to around 80 (Bartlett & Ophel, 2021; Katzman, 2018).

The US sanctions against Iran are principally based on threat as defined in the International Economic Emergency Powers Act (IEEPA) of 1977, which is an act under the heading of "War and National Defense" in the US Code. The act grants the US President authority "to deal with any unusual and extraordinary threat which has its source in whole or substantial part outside the United States… if the President declares a national emergency with respect to such threat." The IEEPA grants the US President the authority to:

> investigate, regulate, or prohibit (i) any transactions in foreign exchange, (ii) transfers of credit or payments between, 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, by any person, or with respect to any property, subject to the jurisdiction of the United States.[4]

On November 14, 1979, just 10 days from the beginning of the hostage crisis, US President Jimmy Carter issued Executive Order (E.O.) 12170, in which he decided that "the situation in Iran constitutes an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and declare[d] a national emergency to deal with that threat." With this E.O., Carter declared "blocking all property and interests in property of the Government of Iran and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States." On January 19, 1981, the Algiers Accords were signed, with the hostages being released on the day of Reagan's election victory.

Since then, US sanctions against Iran have become more sophisticated, comprehensive, and extraterritorial. US regulations explicitly mention the applicability of US law to non-US persons. For example, the Iranian Transactions and Sanctions Regulations (31 Code of Federal Regulations [CFR] Part 560) include rules specifically binding non-US persons regarding the "reexportation of goods, technology, or services to Iran or the Government of Iran."[5] CAATSA constitutes the last comprehensive codified set of sanctions regarding Russia, Iran, and North Korea. As practitioners expected, even though CAATSA would not affect US businesses as they had already been prohibited from trading with Iran, President Trump's extraterritorial reach would particularly interfere with non-US nationals' businesses (Torres, 2018). As one example, the Chinese national champion Huawei's CFO Meng Wanzhou was arrested in Vancouver, Canada on allegations of violating the Iran sanctions (United States Department of Justice [USDoJ], 2019a). OFAC's Economic Sanctions Enforcement Guidelines explicitly demonstrates the coverage of US extraterritorial jurisdiction. Under the heading "Compliance With Foreign Law," the agency states that "OFAC does not agree that the permissibility of conduct under the applicable laws of another jurisdiction should be a factor in assessing an apparent violation of

4 See United States Federal Law IEEPA, §1702. Presidential authorities.

5 *Iranian Transactions and Sanctions Regulations*, 31 CFR § 560.205: "…the reexportation from a third country, directly or indirectly, by a person other than a United States person, of any goods, technology, or services that have been exported from the United States is prohibited, if: (1) Undertaken with knowledge or reason to know that the reexportation is intended specifically for Iran or the Government of Iran…"

U.S. laws" (OFAC, 2009). On August 6, 2018, US President Trump signed E.O. 13846 titled Reimposing Certain Sanctions With Respect to Iran, which explicitly states that "foreign financial institutions" are among the entities subject to Iran sanctions. Section 2 of the E.O. states that a foreign financial institution is sanctioned for such significant transactions as:

> (i) … the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran [and] (v) … the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran (E.O. 13846, Section 2).

Upon violation of any of these prohibitions:

> The Secretary of the Treasury may prohibit the the *opening*, and *prohibit* or impose strict conditions on the *maintaining*, in the United States of a *correspondent account* or a *payable-through account* by such foreign financial institution (E.O. 13846, Section 2).

In various court cases against financial institutions in violation of the Iran sanctions, the court has identified US territory as a place for such crimes as bank fraud just because the sentenced banks maintained a corresponding account with US banks, through which the US claimed said banks had misdirected the US banks to conduct sanctioned transactions. Claims against foreign financial institutions included conspiracy to use the US financial system to conduct transactions on behalf of the Government of Iran and other Iranian entities, to violate the International Emergency Economic Powers Act (IEEPA), and to commit bank fraud and money laundering (for an example, see USDoJ, 2018). Emmenegger (2016) defined this as correspondent account jurisdiction and argued this justification to not meet the requirements of the subjective territoriality principle due to this principle requiring a majority of the conduct to take place within the territory. Emmenegger (p. 656) continued, "There is no basis in international law for such a far-reaching assumption." Moreover, Terry (2020, p. 11) argued, "It remains controversial whether the effects doctrine in fact has developed into a valid basis for claiming jurisdiction under customary international law."

Thus, extraterritoriality with regard to prescription, enforcement, and adjudication is well-founded in US sanction law and practice. Because the motivation behind US sanctions are geopolitical and target not just Iran's nuclear but also its domestic and regional policies (Lohmann, 2019), the US shift of policies from administration to administration will be accompanied by broader or narrower interpretations.

Effects of the Iran Sanctions

Prior to the 2015 deal between the P5+1 and Iran in the 2012-2015 period when Iran was exposed to collective pressure from the UNSC, US, and EU, the Iranian economy was shrinking 9% annually. Its oil exports fell from 2.5 million barrels per day (mbd) to 1.1 mbd, and its access to $120 billion USD reserves in international banks was blocked. After the 2015 agreement, however, UN and EU nuclear-related sanctions were lifted, and the US waived some of the sanctions. Following this relief, Iran's economy began growing 7% annually (Katzman, 2018).

After Donald Trump withdrew from the Nuclear Deal in 2017, he reimposed sanctions on Iran in 2018. US sanctions include the purchasing of Iranian petroleum, among other provisions. A *Reuters* article wrote that the sanctions aim to "cripple Iran's oil-dependent economy and force Tehran to quash not only its nuclear ambitions and ballistic missile programme but also support for militant proxies in Syria, Yemen, Lebanon and other parts of the Middle East." To make the effects of sanctions smoother over third countries, US gave a 6-month waiver to six Iranian crude oil purchasing countries (i.e., Türkiye, China, India, Japan, South Korea, Greece, and Taiwan; Pamuk & Gardner, 2018). After the end of the waiver period on April 23, 2019, US declared it was lifting all waivers and demanded all countries to obey its secondary sanctions. In April 2018, US designated Iran's Revolutionary Guard Corps (IRGC) as a foreign terrorist organization, which was the first time a country's military had been designated as a terrorist organization (British Broadcasting Company, 2019). Iran's dependency on oil is higher than Russia's dependence on gas, and its economy is weaker. Therefore, Iranian currency lost 60% in value between 2018-2019, and its inflation climbed from single digits to as high as 50% after US withdrawal, with food prices increasing nearly 85% (Bozorgmehr, 2019). Iranian streets saw demonstrations. Some Iranian bureaucrats who were responsible for managing Iran's economy, including the Minister of Economy and Finance, were fired, and more than 100 companies (mostly European) declared their exit from the Iranian market. All of these serve as indicators of the tense economic situation the sanctions had primarily created (*Radio Free Europe*, 2018; Katzman 2018). Iranian President Rouhani described the US sanctions as economic terrorism (*Reuters*, 2018), a sign that they had severely affected Iran's economy.

While Iran's GDP had been $486 billion USD in 2017, it slumped to $329 billion in 2018, further down to $283 billion in 2019, and then to $239 billion in 2020, before recovering in the following years (World Bank, 2023). In May 2018, "under intense domestic political pressure to produce some kind of counter-measure following the US withdrawal," Iran announced its partial withdrawal from the agreement (Wintour,

2019). Thus, Iran's vulnerability and sensitivity to the US unilateral secondary sanctions has been significant.

Concluding Remarks

Disregarding the clash of jurisdictions, US unilateral secondary sanctions based on US national interests appear increasingly incongruent in a multipolar world, especially when confronted by balancing powers including China, Russia, and occasionally the EU. When confronted with US unilateralism in geoeconomics, these powers designed alternative payment systems, such as China's CIPS, Russia's SPFS, and the EU's INSTEX. Moreover, China and Russia have resorted to currency swaps as a method for decreasing their vulnerability to exposure to the USD, having effectively eliminated the use of foreign currencies in their bilateral trade in 2023 (Wion, 2023). These experimentations are new contestations with US unilateralism and US unipolarism. Therefore, the United States' coalition-building capacity among major powers will define the fate of US extraterritorial sanctions. A "Western unity" could help the US in this, as observed in the recent Russia sanctions supported by the G7 and the EU (Becker, 2023). Western countries may find opposing US secondary sanctions difficult in the context of a friends-and-foes style of geopolitical divergence, especially when they and the USA have similar threat perceptions. Moreover, the international political economy of extraterritorial sanctions requires countries to consider the potential losses of third parties subject to sanctions. Therefore, recent Western sanctions against Russia have included a $60/ barrel price cap on Russian oil. This aimed not only to reduce Russia's revenue but also to lower energy prices and tame inflation for global consumers, hence bolstering sanction legitimacy (G7, 2023; Becker, 2023).

The burden of conforming to US secondary sanctions is a major outstanding issue. As the destructive consequences of US unipolarism in other fields, whether from the Shock Therapy to US policies in the Middle East (e.g., Iraq invasions), US unilateral extraterritorial sanctions are similarly ill-designed, being top-down and non-negotiated in style, and impose crucial negative externalities on third countries. For states, sovereignty is key to protecting their citizens' freedom of doing business in a predictable developmental framework. Especially in the regions surrounding sanctioned countries, these externally-imposed restrictions have negatively affected economic cooperation, and no burden-sharing mechanism can compensate for the losses of a damaged regional development environment. Therefore, a common political, economic, and technological approach toward secondary sanctions is necessary among the affected countries in order to tame US coerciveness. As observed

in the case of the modification from countrywide embargos to targeted sanctions, especially after the Iraq experiment, international pressure can help trim some of the excesses of coercive policies. In this regard, developing countries can also actively seek to establish and participate in frameworks of collective action and take part in the prudential supervision of financial and technological infrastructures such as payment systems in order to voice their interests and bargain effectively.

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