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Patrick C.R. Terry

University of Public Administration (Kehl, Germany)

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ENFORCING U.S. FOREIGN POLICY BY IMPOSING UNILATERAL SECONDARY SANCTIONS: IS MIGHT RIGHT IN PUBLIC INTERNATIONAL LAW?

Patrick C. R. Terry[†]

Abstract: Following the United States' unilateral withdrawal from the agreement between the five permanent UN Security Council members, the European Union, Germany, and Iran, that intends to stop Iran from acquiring nuclear weapons, the United States has re-imposed and tightened its sanctions against Iran. The United States' renunciation of the agreement, despite the agreement's UN Security Council approval and verified Iranian compliance, arguably violated international law. Nevertheless, the United States is attempting to compel the other state parties (and others) to follow its policy on Iran by threatening those states' companies and business executives with economic or even criminal sanctions to force them to cut commercial ties with Iran.

Based on an in-depth discussion of the lawfulness of such secondary sanctions under public international law, this article concludes that secondary sanctions, as imposed by the United States more recently, are unlawful. The United States' assertion of extraterritorial jurisdiction is not justified under any principle of jurisdiction recognized in customary international law. In fact, the international community explicitly rejects the United States' claims to extraterritorial jurisdiction. Furthermore, the United States seeks to undermine third states' foreign and trade policies by targeting their citizens and businesses. United States' sanctions policy is thus an attempt to assert control over other states' foreign policies. This coercion amounts to an unlawful intervention into those states' internal affairs. Lastly, the use of the United States' superior economic power to strong-arm other states into abandoning their own foreign policy is a violation of the sovereign equality principle.

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*The Act has been widely seen by foreign governments...as an unwelcome and objectionable attempt to substitute the foreign and trade policies of the United States' Congress for those of foreign sovereign governments.*¹

INTRODUCTION

Unilaterally imposing economic sanctions against other states has become an increasingly popular policy tool worldwide. There are two reasons for this trend. First, the imposition of multilateral sanctions mandated by the United Nations' (UN) Security Council under Article 41 UN Charter is rare due to severe disagreements between the five permanent members when assessing whether a particular situation poses a threat to

[†] Patrick C. R. Terry is the Dean of the Faculty of Law and a Professor of Law at the University of Public Administration in Kehl (Germany). I would like to thank the editorial staff at the *Washington International Law Journal* for their helpful suggestions.

¹ Nicholas Davidson, First Secretary (Trade Policy), British Embassy, Washington D.C., *U.S. Secondary Sanctions: the U.K. and EU Response*, 27 STETSON L. REV. 1425, 1432 (1998) (referring to the Helms-Burton Act of 1996, targeting Cuba).

peace.² Second, many argue that resorting to economic sanctions is a preferable course of action to using force, which in some cases appears to be the only viable alternative to economic sanctions.³ Whether the frequent imposition of sanctions was or is effective in achieving the desired change of behavior of target states is contentious.⁴ Nevertheless, the United States is especially inclined to pursue this strategy and frequently reverts to unilateral economic sanctions to force target states to change their policies.⁵

As globalization has progressed, the world has witnessed the rise of several major economic powers besides the United States, such as China, the European Union, and—to some extent—India.⁶ This emergence of an economically multipolar world has occurred against the backdrop of mounting and increasingly frequent policy disagreements even between allied states during the Cold War.⁷ Accordingly, the United States' ability to influence the conduct of target states by imposing unilateral sanctions has diminished. Rather, third states often do not follow the United States' lead in imposing such sanctions,⁸ but instead, attempt to exploit the

² See generally Sebastian von Einsiedel et al., *The UN Security Council in an Age of Great Power Rivalry*, (United Nations Univ. Working Paper No. 04, 2015), <https://collections.unu.edu/eserv/UNU:6112/UNSCAgeofPowerRivalry.pdf>; see, e.g., Patrick Wintour, *UN Security Council Rejects US Attempt to Extend Iran Sanctions*, THE GUARDIAN (Aug. 25, 2020), <https://www.theguardian.com/world/2020/aug/25/iran-sanctions-trump-administration-un-security-council>.

³ Farshad Ghodoosi, *The Trump Effect: Assertive Foreign Policy through Extraterritorial Application of Laws*, 51 GEO. WASH. INT'L L. REV. 101, 102 (2019); Jacob L. Lew & Richard Nephew, *The Use and Misuse of Economic Statecraft*, FOREIGN AFF., Nov.–Dec. 2018, at 139; Deborah Senz & Hilary Charlesworth, *Building Blocks: Australia's Response to Foreign Extraterritorial Legislation*, 2 MELB. J. INT'L L. 1, 6 (2001).

⁴ Timothy S. Dunning, *D'Amato in a China Shop: Problems of Extraterritoriality with the Iran and Libya Sanctions Act of 1996*, 19 U. PA. J. INT'L ECON. L. 169, 191–94, 195–97 (1998); Oliver C. Dziggel, *The Reagan Pipeline Sanctions: Implications for U.S. Domestic Policy and the Future of International Law*, 50 TOWSON U. J. INT'L AFF. 129, 129–30, 137 (2016); Jeffrey A. Meyer, *Second Thoughts on Secondary Sanctions*, 30 U. PA. J. INT'L L. 905, 915–16 (2009).

⁵ LAURENT HOFF, *TRANSAKTIONEN IN US-DOLLAR UND SEKUNDÄRE SANKTIONEN, IST DIE US-AMERIKANISCHE PRAXIS MIT DEM VÖLKERRECHT VEREINBAR?* 33–34 (Nomos Verlagsgesellschaft: Baden-Baden 2019); Michael P. Malloy, *Où est votre chapeau? Economic Sanctions and Trade Regulation*, 4 CHI. J. INT'L L. 371, 371 (2003); Meyer, *supra* note 4, at 912–15; Currently, the United States is implementing 34 “active sanctions programs”; *Sanctions Programs and Country Information*, DEP'T OF THE TREAS., <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> (last visited Aug. 31, 2020).

⁶ *Globalisation and the EU economy*, EUR. COMM'N, https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/international-economic-relations/globalisation-and-eu-economy_en (last visited Dec. 2, 2020); Peter S. Goodman, *Globalization is Moving Past the U.S. and Its Vision of World Order*, N.Y. TIMES (June 19, 2019), <https://www.nytimes.com/2019/06/19/business/globalization-us-world-order.html>.

⁷ Peter L. Fitzgerald, *Pierre Goes Online: Blacklisting and Secondary Boycotts in U.S. Trade Policy*, 31 VAND. J. TRANSNAT'L L. 1, 6 (1998). As for sanctions targeting Iran, see, e.g., Robin Emmott et al., *China and India Seen as Europe's Last Hope to Save Iran Deal*, REUTERS (May 9, 2019), <https://jp.reuters.com/article/instant-article/idUSKCN1SF1RB>.

⁸ Dziggel, *supra* note 4, at 150; Meyer, *supra* note 4, at 917–24.

business opportunities created by the United States' withdrawal.⁹ Therefore, not only does the United States risk failure in achieving its policy objectives, but United States' businesses are losing out to foreign competitors whose governments do not prohibit or restrict trade with states targeted by the United States.¹⁰

As a result, the United States has increasingly reverted to imposing secondary sanctions against actors in third states that continue to trade with target states.¹¹ The United States had always taken an expansive view of its right to regulate foreign persons' conduct in another state, especially by targeting permanent (foreign) residents even when they were acting abroad.¹² But it was only in the 1980s that United States' sanctions policies became unacceptably intrusive.¹³ In 1982, President Ronald Reagan extended United States' sanctions against the Soviet Union to include foreign subsidiaries of United States' companies and all companies operating under a United States' export license.¹⁴ Massive pressure by other states led the United States' government to abandon these

⁹ Charles Tait Graves, *Extraterritoriality and Its Limits: The Iran and Libya Sanctions Act of 1996*, 21 HASTINGS INT'L & COMPAR. L. REV. 715, 718 (1998); Meyer, *supra* note 4, at 906.

¹⁰ Graves, *supra* note 9, at 716, 718, 741; Meyer, *supra* note 4, at 906; Susan Emmenegger, *Extraterritorial Economic Sanctions and Their Foundation in International Law*, 33 ARIZ. J. INT'L & COMPAR. L. 631, 657 (2016).

¹¹ HOFF, *supra* note 5, at 99; Dunning, *supra* note 4, at 184; Fitzgerald, *supra* note 7, at 28; ELLIE GERANMAYEH & MANUEL LAFONT RAPNOUIL, EUR. COUNCIL ON FOREIGN REL., MEETING THE CHALLENGE OF SECONDARY SANCTIONS 2 (June 2019); Kristina Larsson, *United States Extraterritorial Application of Economic Sanctions and the New International Sanctions on Iran* 51 (2011) (Master thesis, Lund University) (Semantic Scholar); Meyer, *supra* note 4, at 924–25; JEAN DE RUYT, EGMONT ROYAL INST. FOR INT'L REL., EUR. POL'Y BRIEF NO. 54, AMERICAN SANCTIONS AND EUROPEAN SOVEREIGNTY 4 (Feb. 2019); Senz & Charlesworth, *supra* note 3, at 3; SASCHA LOHMANN, BERLIN: STIFTUNG WISSENSCHAFT UND POLITIK (SWP) DEUTSCHES INSTITUT FÜR INTERNATIONALE POLITIK UND SICHERHEIT [GERMAN INST. FOR INT'L AND SEC. AFF.], SWP COMMENT NO. 5, EXTRATERRITORIAL U.S. SANCTIONS: ONLY DOMESTIC COURTS COULD EFFECTIVELY CURB THE ENFORCEMENT OF U.S. LAW ABROAD 4 (Feb. 2019); Seyed Yaser Ziaee, *Jurisdictional Countermeasures Versus Extraterritoriality in International Law*, 4 RUSS. L. J. 27, 28 (2016).

¹² See Cuban Democracy Act of 1992, Pub. L. 102-484, 106 Stat. 2575 (codified at 22 U.S.C. § 6010); Exec. Order No. 13,382, 70 Fed. Reg. 38,567 (June 28, 2005); Cuban Assets Control Regulations, 31 C.F.R. § 515.329(a) (2020). Both Hoff and Davidson view this practice as unlawful. See HOFF, *supra* note 5, at 141; Davidson, *supra* note 1, 1426; *contra* Werner Meng, *Völkerrechtliche Zulässigkeit und Grenzen wirtschaftsverwaltungsrechtlicher Hoheitsakte mit Auslandswirkung*, 44 MAX-PLANCK-INSTITUT ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 675, at 753 (1984) (Ger.) (arguing that such an extension of jurisdiction is justified).

¹³ Jeffrey A. Meyer, *Dual Illegality and Geoambiguous Law: A New Rule for Extraterritorial Application of U.S. Law*, 95 MINN. L. REV. 110, 111 (2010); Austen Parrish, *The Interplay Between Extraterritoriality, Sovereignty, and the Foundations of International Law*, in STANDARDS AND SOVEREIGNS: LEGAL HISTORIES OF EXTRATERRITORIALITY (Umut Özsu, Dan Margolies, Maïa Pal, and Ntina Tzouvala, eds., forthcoming 2017).

¹⁴ Vaughan Lowe, *US Extraterritorial Jurisdiction: The Helms-Burton and D'Amato Acts*, 46 INT'L & COMP. L. Q. 378, 378 (1997); HOFF, *supra* note 5, at 108–09; Dunning, *supra* note 4, at 184–85; Graves, *supra* note 9, at 730–31; Malloy, *supra* note 5, at 376; Meng, *supra* note 12, at 678–82; Meyer, *supra* note 4, at 927; RICHARD NEPHEW, TRANSATLANTIC SANCTIONS POLICY: FROM THE 1982 SOVIET GAS PIPELINE EPISODE TO TODAY 8–13 (Columbia Sch. Int'l and Pub. Affairs Ctr on Glob. Energy Policy, 2019).

sanctions.¹⁵ Nonetheless, in 1996, the Cuban Liberty and Democratic Solidarity Act (LIBERTAD), more commonly known as the Helms-Burton Act,¹⁶ and the Iran and Libya Sanctions Act (ILSA), sometimes referred to as the D'Amato Act, came into effect.¹⁷ These Acts aimed to prevent foreign investments in Cuba, Iran, and Libya by targeting business and individuals in third states.¹⁸ Following World Trade Organization (WTO) proceedings by Canada and European states, among others, the United States compromised again.¹⁹

Under President Donald Trump, the United States was once more aggressively pursuing sanctions that equate its purported right to unilaterally impose sanctions on other states with a right to compel third states to act similarly.²⁰ The United States unilaterally withdrew from the Joint Comprehensive Plan of Action (JCPOA), which is the agreement between the five permanent members of the UN Security Council, the European Union, Germany, and Iran that intended to stop Iran from acquiring nuclear weapons.²¹ Instead, the United States has re-imposed and tightened its sanctions against Iran.²² The United States' renunciation of JCPOA, despite the agreement's UN Security Council approval and verified Iranian compliance,²³ arguably violated international law.²⁴ Nevertheless, the United States is attempting to compel other states to

¹⁵ HOFF, *supra* note 5, at 109; Dunning, *supra* note 4, at 184–85; Malloy, *supra* note 5, at 376; Meng, *supra* note 12, at 678–82; Meyer, *supra* note 4, at 927; NEPHEW, *supra* note 14, at 8–13.

¹⁶ Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, 22 U.S.C. § 602.

¹⁷ Iran and Libya Sanctions Act of 1996, 50 U.S.C. § 1701.

¹⁸ Lowe, *supra* note 14, at 379–83, 385–86; Dunning, *supra* note 4, at 169, 173, 188.

¹⁹ HOFF, *supra* note 5, at 110; Harry L. Clark, *Dealing with US Extraterritorial Sanctions and Foreign Countermeasures*, 20 U. PA. J. INT'L ECON. L. 61, 87–92, (1999); Fitzgerald, *supra* note 7, at 14; Graves, *supra* note 9, at 721–25, 731–32; Meyer, *supra* note 4, at 928–29; NEPHEW, *supra* note 14, at 22; Cedric Ryngaert, *Extraterritorial Export Controls (Secondary Boycotts)*, 7 CHINESE J. INT'L L. 625, 645–48 (2008).

²⁰ Lew & Nephew, *supra* note 3, at 146–47; HOFF, *supra* note 5, at 99; GERANMAYEH & RAPNOUIL, *supra* note 11, at 2; DE RUYT, *supra* note 11, at 4; C. Joy Gordon, *The U.S. Embargo Against Cuba and the Diplomatic Challenges to Extraterritoriality*, 36 FLETCHER F. WORLD AFF. 63, 69 (2012) (referring to the embargo on trade with Cuba that was first imposed in 1961).

²¹ Memorandum on Ceasing U.S. Participation in the JCPOA and Taking Additional Action to Counter Iran's Malign Influence and Deny Iran All Paths to a Nuclear Weapon, DAILY COMP. PRES. DOCS. No. 201800310 (May 8, 2018).

²² For the re-imposition of sanctions, see Statement from the President on the Reimposition of United States Sanctions with Respect to Iran, DAILY COMP. PRES. DOCS. No. 201800523 (Aug. 6, 2018); for new sanctions, see, e.g., Statement from President Donald J. Trump Regarding Imposing Sanctions with Respect to the Iron, Steel, Aluminum, and Copper Sectors of Iran, DAILY COMP. PRES. DOCS., No. 201900282 (May 8, 2019); Edward Wong, *Trump Imposes New Sanctions on Iran, Adding to Tensions*, N.Y. TIMES (June 24, 2019), <https://www.nytimes.com/2019/06/24/us/politics/iran-sanctions.html>; Lew & Nephew, *supra* note 3, at 146–47.

²³ S.C. Res. 2231, ¶ 15 (July 20, 2015); Press Release, Aabha Dixit, Int'l Atomic Energy Agency (IAEA), Iran is Implementing Nuclear-Related JCPOA Commitments, Director General Amano Tells IAEA Board, INT'L ATOMIC ENERGY AGENCY (Mar. 5, 2018), <https://www.iaea.org/newscenter/news/iran-is-implementing-nuclear-related-jcpoa-commitments-director-general-amano-tells-iaea-board>.

²⁴ Marcin J. Menkes, *The Legality of US Investment Sanctions Against Iran Before the ICJ: A Watershed Moment for the Essential Security and Necessity Exceptions*, 56 CAN. Y.B. INT'L L. 328, 328–29, 331, 339–43, 358 (2018).

follow its sanctions and foreign policy.²⁵ For example, the United States has threatened European, Chinese, and other states' companies to force them to cut their commercial ties with Iran.²⁶ President Donald Trump has also threatened France, Germany, and the United Kingdom with the imposition of onerous tariffs on certain exports to the United States, should they not toe the United States' line on Iran.²⁷

This article examines the lawfulness of such secondary sanctions under public international law. Unilateral secondary sanctions differ from unilateral primary sanctions in that secondary sanctions are not directed against the target state but rather against individuals and businesses in third states (and possibly now also third states themselves) that continue to trade with the primary target state.²⁸ Thus, the imposition of secondary sanctions aims to compel third state nationals to follow United States rather than their own state's policies.²⁹

Although controversial,³⁰ many view the unilateral imposition of primary sanctions against a target state as a lawful exercise of state sovereignty.³¹ Every state has the right to decide whether it wants to initiate or continue economic relations with another state.³² Secondary sanctions, however, raise a different legal issue. By imposing secondary sanctions against individuals and businesses in third states, the sanctioning state asserts a right to regulate conduct that does not take place within its

²⁵ Krishnadev Calamur, *Trump Goes from Threatening Iran to Threatening the World*, THE ATLANTIC (Aug. 7, 2018), <https://www.theatlantic.com/international/archive/2018/08/trump-iran-tweet/566948/>; *US-Botschafter Grenell droht Europäern*, DEUTSCHE WELLE (Feb. 1, 2019), <https://www.dw.com/de/us-botschafter-grenell-droht-europ%C3%A4ern/a-47444986>.

²⁶ Michael Peel, *US Warns European Companies Not to Defy Iran Sanctions*, FINANCIAL TIMES (Sept. 7, 2018), <https://www.ft.com/content/f6edbf8c-b1ec-11e8-8d14-6f049d06439c>; Benedict Neff, *US-Botschafter in Berlin schreibt Drohbriefe an deutsche Firmen*, NEUE ZÜRCHER ZEITUNG (Ger.) (Jan. 13, 2019), <https://www.nzz.ch/international/us-botschafter-in-berlin-schreibt-drohbriefe-an-deutsche-firmen-ld.1451130>; Lew & Nephew, *supra* note 3, at 146–47.

²⁷ David Charter, *Punish Iran or Face US Tariffs, Trump Told European Nations*, TIMES (Jan. 16, 2020), <https://www.thetimes.co.uk/article/punish-iran-or-face-us-tariffs-trump-told-european-nations-v3r5tdbrl>; Josh Barrie, *Donald Trump Threatened UK, France and Germany With Tariffs to Secure Support on Iran*, INEWS (Jan. 16, 2020), <https://inews.co.uk/news/world/donald-trump-uk-france-germany-tariffs-cars-iran-support-nuclear-agreement-1367645>.

²⁸ HOFF, *supra* note 5, at 31, 105–07; Annamaria Viterbo, *Extraterritorial Sanctions and International Economic Law*, in BUILDING BRIDGES: CENTRAL BANKING LAW IN AN INTERCONNECTED WORLD, ECB LEGAL CONFERENCE DECEMBER 2019 157, 161 (Eur. Cent. Bank, 2019); Cécile Fabre, *Secondary Economic Sanctions*, CURRENT LEGAL PROBLEMS, 2016, at 1, 3; Malloy, *supra* note 5, at 375–76; Meyer, *supra* note 4, at 905, 926; Aarshi Tirkey, *US Secondary Sanctions: Framing an Appropriate Response for India*, ORF ISSUE BRIEF 1 (Jan. 2019); Senz & Charlesworth, *supra* note 3, at 9.

²⁹ Viterbo, *supra* note 28, at 161; Graves, *supra* note 9, at 715; Meyer, *supra* note 4, at 926; Tirkey, *supra* note 28, at 2.

³⁰ Viterbo, *supra* note 28, at 157; Larsson, *supra* note 11, at 23–24.

³¹ Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgement, 1986 I.C.J. 14, ¶ 245, 276 (June 27); HOFF, *supra* note 5, at 126; Cristian DeFrancia, *Enforcing the Nuclear Nonproliferation Regime: The Legality of Preventive Measures*, 45 VAND. J. TRANSNAT'L L., 705, 749 (2012); Dunning, *supra* note 4, at 173, 183; Fitzgerald, *supra* note 7, at 88; Ryngaert, *supra* note 19, at 625; Senz & Charlesworth, *supra* note 3, at 7.

³² Nicaragua v. United States, 1986 I.C.J. 14 (June 27).

territory.³³ This raises the issue of whether this claim to extraterritorial jurisdiction is compatible with international law or rather a violation of the third state's sovereignty.³⁴ Furthermore, the sanctioning state seeks to impose its foreign policy on a third state by forcing third state nationals and businesses to respect the sanctioning state's policies instead of the third state's.³⁵ As such, secondary sanctions may well violate the principle of sovereign equality and constitute an unlawful intervention in the third state's internal affairs.³⁶

The United States' secondary sanctions are indeed unlawful under public international law.³⁷ The United States' assertion of extraterritorial jurisdiction is not justified under any principle of jurisdiction recognized in customary international law. In fact, the international community explicitly rejects the United States' claims to extraterritorial jurisdiction. Furthermore, the United States seeks to undermine third states' foreign and trade policies by targeting their citizens and businesses. United States' sanctions policy is thus an attempt to assert control over other states' foreign policies. Such coercion, however, amounts to an unlawful intervention in those states' internal affairs. Lastly, the use of the United States' vast economic power to force other states to abandon their own foreign policy is a violation of the sovereign equality principle.³⁸

I. UNITED STATES UNDERSTANDING OF EXTRATERRITORIAL JURISDICTION IS A VIOLATION OF THIRD STATES' SOVEREIGNTY

The way the United States utilizes secondary sanctions in order to target the conduct of non-residents who are lawfully engaged in business transactions taking place outside of the United States, violates other states' sovereignty. The United States is thereby overruling those states' sovereign decisions to permit certain transactions on their territory. To demonstrate the full implications of the United States' current understanding of the extraterritorial application of its sanctions laws, it is useful to briefly summarize two recent cases involving non-U.S. citizens who were indicted by United States' authorities mainly based on their conduct abroad.

The first case concerns a Turkish executive named Reza Zarrab. In 2016, United States' authorities arrested him while on holiday in Florida

³³ DeFrancia, *supra* note 31, at 751; Larsson, *supra* note 11, at 24.

³⁴ HOFF, *supra* note 5, at 129; *Developments in the Law – Extraterritoriality*, 124 HARV. L. REV., 1226, 1228 (2011); Meyer, *supra* note 13, at 145.

³⁵ See Calamur, *supra* note 25.

³⁶ HOFF, *supra* note 5, at 132–36 (discussing the possibility), 170, 172; Fitzgerald, *supra* note 7, at 15, 35; Meng, *supra* note 12, at 747–50; Tirkey, *supra* note 28, at 2, 9.

³⁷ For a different view, see generally Dunning, *supra* note 4, at 184 (arguing secondary sanctions do not violate customary international law while disputing their effectiveness); Fabre, *supra* note 28.

³⁸ This article does not consider the lawfulness of unilateral primary sanctions against a target state or international economic, investment, or trade law.

for violating United States' sanctions laws.³⁹ A resident and citizen of Turkey, Reza Zarrab, had been involved in Turkish efforts to purchase Iranian gas in exchange for Turkish lira paid into an account held at a Turkish bank.⁴⁰ Due to United States' sanctions, it was difficult for the Iranian government to access the money deposited in Turkey.⁴¹ Reza Zarrab participated in a scheme, which enabled the conversion of this money into gold via the United Arab Emirates (U.A.E.), thereby enabling the Iranian government to access the Turkish payments for gas.⁴² In doing so, Reza Zarrab did not violate Turkish, U.A.E. or Iranian laws.⁴³ Nevertheless, a United States court held that the arrest of Reza Zarrab was justified.⁴⁴ *Inter alia*, Reza Zarrab was accused of violating United States' sanctions laws because on various occasions, money transferred between some of the foreign actors had been cleared in the United States, even though the money was to benefit the Iranian government. U.S. banks, where the involved foreign banks held correspondent accounts, had therefore unwittingly violated United States' sanctions laws.⁴⁵ Furthermore, Reza Zarrab had circumvented the United States' prohibition on payments to the Iranian government and the export of precious metals to Iran by actively participating in the scheme just outlined.⁴⁶

The second, more recent case, involves a Chinese citizen. In December 2018, Meng Wanzhou, Huawei's Chief Financial Officer, was arrested in Canada based on a United States arrest warrant.⁴⁷ *Inter alia*, United States' authorities are accusing Meng Wanzhou of providing incorrect information to banks with U.S. subsidiaries on the China-based Huawei's links to a Hong Kong-based company called Skycom.⁴⁸ Skycom allegedly attempted to sell U.S. origin goods to Iranian mobile phone

³⁹ Dexter Filkins, *A Mysterious Case Involving Turkey, Iran, and Rudy Giuliani*, THE NEW YORKER (Apr. 14, 2017), <https://www.newyorker.com/news/news-desk/a-mysterious-case-involving-turkey-iran-and-rudy-giuliani>; LOHMANN, *supra* note 11, at 6.

⁴⁰ Susan Emmenegger & Thirza Döbeli, *The Extraterritorial Application of U.S. Sanctions Law*, in US LITIGATION TODAY: STILL A THREAT FOR EUROPEAN BUSINESSES OR JUST A PAPER TIGER? 231, 232 (Andrea Bonomi & Krista N. Schefer eds., 2018).

⁴¹ Superseding Indictment at 1–2, United States v. Zarrab, No. 15 Cr 867 (RMB) (S.D.N.Y. June 16, 2016) [hereinafter Superseding Indictment Against Zarrab].

⁴² *Id.* at 16–22.

⁴³ Emmenegger & Döbeli, *supra* note 40, at 240.

⁴⁴ *Id.* at 241–44.

⁴⁵ Superseding Indictment Against Zarrab, *supra* note 41, at 29–40; Emmenegger & Döbeli, *supra* note 40, at 235, 236–37, 240–41.

⁴⁶ Superseding Indictment Against Zarrab, *supra* note 41, at 6–9, 29–40.

⁴⁷ Julie Gordon & Steve Stecklow, *U.S. Accuses Huawei CFO of Iran Sanctions Cover-up; Hearing Adjourned*, REUTERS (Dec. 7, 2018), <https://www.reuters.com/article/us-usa-china-huawei/u-s-accuses-huawei-cfo-of-iran-sanctions-cover-up-hearing-adjourned-idUSKBN1O60FY>; Superseding Indictment at 1–2, United States v. Huawei Techs. Co., No. 18 Cr 457 (AMD) (E.D.N.Y. Jan. 24, 2019) [hereinafter Superseding Indictment against Meng].

⁴⁸ Superseding Indictment Against Meng, *supra* note 47, at 3–4, 6–8, 10–14; Gordon & Stecklow, *supra* note 47.

companies in violation of U.S. sanctions.⁴⁹ According to United States' authorities, Skycom was actually a subsidiary of Huawei, created in order to conduct business with Iran.⁵⁰ By not being truthful about Huawei's connections to Skycom, Meng Wanzhou allegedly induced a number of banks to enter into transactions with Huawei, despite the latter's violation of United States' sanctions laws.⁵¹ China has denounced the arrest, strongly indicating that Meng Wanzhou did not violate Chinese laws during the contentious transactions.⁵² The United States, nevertheless, is demanding Meng Wanzhou's extradition from Canada, a demand she is contesting. The case is currently before the Canadian courts.⁵³

These two examples illustrate United States' sanctions laws' far-reaching application. In both cases, non-United States citizens were indicted based on alleged offenses committed abroad where their conduct was legal. In both cases, the connection to the United States is at best tenuous. Nevertheless, the United States claims a right to extraterritorial jurisdiction in both instances. This is in part based on Executive Order 13608 of May 2012 which banned "certain transactions with" and the "entry" of "foreign sanction evaders with respect to Iran and Syria."⁵⁴ The United States' Department of the Treasury argued that this Executive Order enables it to respond to the "behavior of foreign persons" even "where the foreign person had no physical, financial, or other presence in the United States and did not submit to U.S. administrative proceedings."⁵⁵ Consequently, "the sanctioned individual or entity" would "be cut off from the U.S. commercial and financial systems."⁵⁶

Thus, the United States is claiming the right to prohibit specific behavior of third state citizens, which occurs on the territory of those third states where, moreover, such behavior may not only be lawful, but possibly even encouraged.⁵⁷ The question that arises in this context is whether the

⁴⁹ Superseding Indictment Against Meng, *supra* note 47, at 5; Gordon & Stecklow, *supra* note 47.

⁵⁰ Superseding Indictment Against Meng, *supra* note 47, at 2.

⁵¹ Gordon & Stecklow, *supra* note 47.

⁵² Jo Kim, *The Meng Wanzhou Case Speaks to China's Diplomatic Paranoia*, THE DIPLOMAT (June 2, 2020), <https://thediplomat.com/2020/06/the-meng-wanzhou-case-speaks-to-chinas-diplomatic-paranoia/>; 'Pathetic Clown': Chinese State-Backed Media Attacks Canada After Meng Wanzhou Ruling, NAT'L POST (May 28, 2020), <https://nationalpost.com/news/world/pathetic-clown-chinese-state-backed-media-attacks-canada-after-meng-wanzhou-verdict>.

⁵³ Moira Warburton, *Timeline: Key Events in Huawei CFO Meng Wanzhou's Extradition Case*, REUTERS (Oct. 28, 2020), <https://www.reuters.com/article/us-huawei-tech-usa-events-timeline/key-events-in-huawei-cfo-meng-wanzhou-extradition-case-idUSKBN27C3C9?il=0>.

⁵⁴ Exec. Order No. 13,608, 3 C.F.R. § 13608 (2012).

⁵⁵ *FAQ 192: Iran Sanctions, Executive Order 13608*, U.S. DEP'T OF THE TREAS., <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/192>.

⁵⁶ *Id.*

⁵⁷ Michael Nesbitt, *Canada's 'Unilateral' Sanctions Regime Under Review: Extraterritoriality, Human Rights, Due Process, and Enforcement in Canada's Special Economic Measures Act*, 48 OTTAWA L. R., 513, 539, 546 (2016); HOFF, *supra* note 5, at 129, 165; Fitzgerald, *supra* note 7, at 9.

United States' attitude to its jurisdiction to prescribe violates those third states' sovereignty.⁵⁸

Although it is difficult to provide an exact definition of “sovereignty” as understood in public international law,⁵⁹ there is general agreement that sovereignty includes a state's right to demand respect for its territorial integrity and political independence.⁶⁰ As early as 1949, the International Court of Justice (ICJ) stressed the importance of the concept of sovereignty: “between independent states, respect for territorial sovereignty is an essential foundation of international relations.”⁶¹ Territorial sovereignty includes a state's right to govern effectively to exclude other states on its territory.⁶² Consequently, no state has the right to exercise governmental functions on another state's territory without that state's permission.⁶³ In the *Las Palmas Case*, a dispute between the Netherlands and the United States concerning sovereignty over an island, the arbitrator at the Permanent Court of Arbitration explained that sovereignty “signifies independence.⁶⁴ Independence, with regards to a portion of the globe, is the right to exercise therein, to the exclusion of any other State, the functions of a State.”⁶⁵

In 1927, the Permanent Court of International Justice (PCIJ) underlined the importance of respecting another state's sovereignty specifically in the context of jurisdiction when it declared that “the first and foremost restriction imposed by international law upon a state is that—failing a permissive rule to the contrary—it may not exercise its power in

⁵⁸ William S. Dodge, *Jurisdictional Reasonableness Under Customary International Law: The Approach of the Restatement (Fourth) of US Foreign Relations Law*, 62 QUESTIONS INT'L L. 5, 7, 12; Graves, *supra* note 9, at 733; Meyer, *supra* note 13, at 145; Dunning, *supra* note 4, at 908; Meng, *supra* note 12, at 727–28; Emmenegger, *supra* note 10, at 638; HOFF, *supra* note 5, at 129; *Developments in the Law, Extraterritoriality*, *supra* note 34, at 1228.

⁵⁹ See MATTHEW CRAVEN, *THE DECOLONIZATION OF INTERNATIONAL LAW: STATE SUCCESSION AND THE LAW OF TREATIES* 7–92 (2007); see also Karen Knop, Cambridge: CUP, *Diversity and Self-Determination in International Law*, 109–211 (2002); Antony Anghie, Cambridge: CUP, *Imperialism, Sovereignty and the Making of International Law*, (2005).

⁶⁰ U.N. Charter art. 2, ¶ 4; League of Nations Covenant art. 10.

⁶¹ See *Corfu Channel (U.K. v. Alb.)*, Merits, 1949 I.C.J. 4, at 35 (Apr. 4).

⁶² See S. S. “*Lotus*” (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 18 (Sept. 7).

⁶³ See *France v. Turkey*, 1927 P.C.I.J. at 18–19; see also Hans Morgenthau, *The Problem of Sovereignty Reconsidered*, 48 COLUM. L. REV. 341, 344 (1948); Wolff Heintschel von Heinegg, *Legal Implications of Territorial Sovereignty in Cyberspace*, in 4TH INT'L CONF. ON CYBER CONFLICT 7, 8 (Christian Czosseck et al. eds., 2012); Pal Wrangé, *Intervention in National and Private Cyber Space and International Law*, in THE FOURTH BIENNIAL CONFERENCE OF THE ASIAN SOCIETY OF INTERNATIONAL LAW 1, 5 (2013); Russell J. Buchan, *The International Legal Regulation of State-Sponsored Cyber Espionage*, in INTERNATIONAL CYBER NORMS: LEGAL, POLICY & INDUSTRY PERSPECTIVE 65, 68–86 (Anna-Maria Osula, Henry Roigas eds., Tallinn, 2016).

⁶⁴ The *Island of Palmas Case* was decided by the Permanent Court of Arbitration between the Netherlands and the United States. Spain had ceded the island to the United States, but the Netherlands claimed sovereignty over the island. See PERMANENT COURT OF ARBITRATION, <https://pca-cpa.org/en/cases/94/>.

⁶⁵ *Island of Palmas (Neth. v. U.S.)*, 2 R.I.A.A. 829, 838 (Perm. Ct. Arb. 1982).

any form in the territory of another state.”⁶⁶ Regarding jurisdiction, the PCIJ added that “it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention.”⁶⁷

In 1996, the Inter-American Juridical Committee, too, confirmed that “the State may not exercise its power in any form in the territory of another State. Under international law, the basic premise for establishing legislative and judicial jurisdiction is rooted in the principle of territoriality.”⁶⁸

As the two cases outlined above demonstrate, however, the United States is increasingly exerting extraterritorial jurisdiction by asserting a right to regulate conduct that takes place on the territory of other states. In the case of Reza Zarrab, the fact that United States banks acted as correspondent banks during business transactions that occurred abroad was deemed sufficient to indict a non-United States citizen on the grounds that United States’ sanctions laws were violated.⁶⁹ In the case of Meng Wanzhou, the sale abroad of products of U.S. origin by a foreign company’s (alleged) foreign subsidiary violated United States’ sanctions laws.⁷⁰ It is doubtful that such a broad understanding of a state’s right to exercise jurisdiction is compatible with public international law.

A. *Jurisdiction under Customary International Law — Permissive Rules*

While many agree that some rules on jurisdictional rules have been incorporated into customary international law,⁷¹ the rules’ precise contours are at times contentious.⁷² A rule of customary international law exists when sufficient state practice and states have justified their practice by referring to international law (*opinio juris*).⁷³ Customary international law provides that every state has exclusive territorial jurisdiction, i.e., the right to regulate conduct on its territory.⁷⁴ This is a core element of sovereignty.

⁶⁶ France v. Turkey, 1927 P.C.I.J. at 18–19.

⁶⁷ *Id.*

⁶⁸ Inter-Am. Juridical Comm., In Response to OAS Resolution of the Gen. Assembly of the Org., Entitled “Freedom of Trade and Investment in the Hemisphere,” AG/DOC.3375/96, reprinted in 35 I.L.M. No. 5 at 1333 (1996).

⁶⁹ Superseding Indictment Against Zarrab, *supra* note 41, at 29.

⁷⁰ Superseding Indictment Against Meng, *supra* note 47, at 1.

⁷¹ Dodge, *supra* note 58, at 6; Emmenegger, *supra* note 10, at 644.

⁷² Emmenegger, *supra* note 10, at 647–48, 650–51, 653.

⁷³ See North Continental Shelf (Ger./Den., Ger./Neth.), Judgment, 1969 I.C.J. Rep. 72, ¶ 73–74 (Feb. 20); see also Int’l L. Comm’n, Draft Conclusions on Identification of Customary International Law, with Commentaries, U.N. Doc. A/73/10, at 124–126 (2018); Statute of the International Court of Justice, art. 38, § (1)(b); 141 CONG. REC. S15106 (1995) (“While the practice of states represents a source of international law, state practice makes law only when it is widespread, consistent and followed out of a sense of legal obligation.”).

⁷⁴ See Inter-Am. Juridical Comm., *supra* note 68, at 1333, ¶ 8(c); see also Mahir Al Banna, *The Long Arm of US Jurisdiction and International Law: Extraterritoriality Against Sovereignty*, 60 J. L. POL’Y & GLOBALIZATION 59, 62 (2017); Noah Bialostozky, *Extraterritoriality and National Security*:

Under the more expansive “subjective territoriality principle,” a state’s jurisdiction may also extend to a set of events that occurred partially abroad, if a substantial portion of the events took place on the state’s territory.⁷⁵

Nevertheless, United States’ sanctions laws go beyond even the most generous interpretation of the territoriality principle. The United States invokes the territoriality principle if its financial system is involved solely in the clearing process.⁷⁶ However, neither the use of U.S. correspondent banks by foreign banks during the course of complicated transactions taking place abroad nor the sale of U.S. products abroad provide a sufficient link to U.S. territory to justify territorial jurisdiction.⁷⁷

Under the “effects doctrine,”⁷⁸ a state can lawfully assert its jurisdiction if an action has direct and substantial effects on that state, irrespective of where it occurs.⁷⁹ Originally developed in the context of antitrust law in the United States,⁸⁰ the doctrine is now often accepted as a means of justifying a state’s jurisdiction.⁸¹ However, it remains controversial whether the effects doctrine in fact has developed into a valid basis for claiming jurisdiction under customary international law.⁸²

Protective Jurisdiction as a Circumstance Precluding Wrongfulness, 52 COLUM. J. OF TRANSNAT’L L. 617, 617–20 (2014); HOFF, *supra* note 5, at 100–01, 138–39; Fitzgerald, *supra* note 7, at 90; Larsson, *supra* note 11, at 25–26; Meyer, *supra* note 13, at 123, 143–44; Meyer, *supra* note 4, at 937; Emmenegger, *supra* note 10, at 645; Emmenegger & Döbeli, *supra* note 40, at 247.

⁷⁵ Inter-Am. Juridical Comm., *supra* note 68, at 1333, ¶ 8(d); Larsson, *supra* note 11, at 26; Emmenegger, *supra* note 10, at 646–47; Emmenegger & Döbeli, *supra* note 40, at 247.

⁷⁶ See, e.g., U.S. Patriot Act, Pub. L. No. 107-56, 115 Stat. 272 (codified as amended at 31 U.S.C. § 5318A(e)(1)); HOFF, *supra* note 5, at 85–87; DE RUYT, *supra* note 11, at 4; Emmenegger & Döbeli, *supra* note 40, at 249.

⁷⁷ HOFF, *supra* note 5, at 139–40; Emmenegger, *supra* note 10, at 655–56; Emmenegger & Döbeli, *supra* note 40, at 249; LOHMANN, *supra* note 11, at 7.

⁷⁸ The effects principle is described as an “aspect” of the territoriality principle. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 402 cmt. d (AM. L. INST. 1987); Emmenegger & Döbeli, *supra* note 40, at 247–48.

⁷⁹ *Comments of the European Community on the Amendments of 22 June 1982 to the U.S. Export Regulations*, at 9, EUROPEAN COMMUNITY NEWS No. 23/1982 (Aug. 12, 1982), http://aei.pitt.edu/1768/1/US_dispute_comments_1982.pdf [hereinafter *Comments of the European Community*]; 141 CONG. REC. S15106; Inter-Am. Juridical Comm., *supra* note 68; HOFF, *supra* note 5, at 162; Graves, *supra* note 9, at 716, 734–35; Meyer, *supra* note 13, at 147; Meng, *supra* note 12, at 751–52; Meyer, *supra* note 4, at 937; Emmenegger, *supra* note 10, at 646–47; Emmenegger & Döbeli, *supra* note 40, at 250.

⁸⁰ Lowe, *supra* note 14, at 378; HOFF, *supra* note 5, at 148; Graves, *supra* note 9, at 734–35; Meyer, *supra* note 13, at 137–39; Meng, *supra* note 12, at 705–11; Emmenegger, *supra* note 10, at 648, fn. 73; Senz & Charlesworth, *supra* note 3, at 13. For a detailed look at the evolution of the effects doctrine in the United States, see KAL RAUSTIALA, DOES THE CONSTITUTION FOLLOW THE FLAG? THE EVOLUTION OF TERRITORIALITY IN AMERICAN LAW 93–125 (2009).

⁸¹ RAUSTIALA, *supra* note 80, at 111–25; 141 CONG. REC. S15106; Emmenegger, *supra* note 10, at 648–49.

⁸² *Comments of the European Community*, *supra* note 79, at 9; Al Banna, *supra* note 74, at 62; HOFF, *supra* note 5, at 147; Fitzgerald, *supra* note 7, at 90; Larsson, *supra* note 11, at 29, 52; Emmenegger, *supra* note 10, at 648–49, 656; Emmenegger & Döbeli, *supra* note 40, at 247; Senz & Charlesworth, *supra* note 3, at 13.

Irrespective of whether states can successfully invoke the effects doctrine, it fails to justify the wide reach of United States' sanctions laws. According to the United States' expansive interpretation, its sanctions laws are already violated when two U.S. correspondent banks unknowingly enable the electronic transfer of monies as part of a sanctioned commercial transaction taking place abroad.⁸³ However, such an electronic transfer has negligible, if any effect at all on the United States.⁸⁴ This is, even more, the case when evaluating the sale of U.S. products abroad.⁸⁵ Judge Meyer⁸⁶ has correctly claimed that the United States is thus "prone to exaggerated claims that secondary sanctions measures can be justified by the protective or effects jurisdictional principles, even when these measures aim to redress ... conduct that occurs in distant lands and that has no real prospect of jeopardizing the safety or of causing any substantial effect in the United States."⁸⁷

As the quote from Judge Meyer suggests, some argue that U.S. sanctions laws, including their extraterritorial reach, are justified under the *protective principle*,⁸⁸ a principle that is also viewed as related to the territoriality principle.⁸⁹ Under the protective principle, a state can claim jurisdiction over matters that pose a substantial threat to its national security.⁹⁰ This, however, does not justify jurisdiction based solely on divergent foreign policy goals.⁹¹ In 1982, this was confirmed by a Dutch

⁸³ See International Emergency Economic Powers Enhancement Act, Pub. L. No. 110-96, 121 Stat. 1011 (codified as amended at 50 U.S.C. § 1705(a)); Iranian Transactions and Sanctions Regulations, 31 C.F.R. § 560.203 (2020); HOFF, *supra* note 5, at 87–89; *Developments in the Law – Extraterritoriality*, *supra* note 34, 1251; Emmenegger, *supra* note 10, at 636, 654; Emmenegger & Döbeli, *supra* note 40, at 243–45. This policy is sometimes referred to as "Dollar unilateralism." See generally, Suzanne Katzenstein, *Dollar Unilateralism: The New Frontline of National Security*, 90 IND. L. J. 293, 351 (2015).

⁸⁴ See HOFF, *supra* note 5, at 153 (regarding the Iran Sanctions Act), 162; *Developments in the Law – Extraterritoriality*, *supra* note 34, at 1251; Emmenegger, *supra* note 10, at 657; Meyer, *supra* note 4, at 941; Emmenegger & Döbeli, *supra* note 40, at 250.

⁸⁵ Ryngaert, *supra* note 19, at 634.

⁸⁶ Currently a Judge of the United States District Court for the District of Connecticut; formerly, senior counsel to the Independent Inquiry Committee into the United Nations Oil for Food Program in Iraq (2004–05), a professor of law at Quinnipiac University School of Law and a visiting professor of law at Yale Law School. See Judge Meyer, *Biography*, UNITED STATES DISTRICT COURT OF CONNECTICUT, <http://www.ctd.uscourts.gov/biography-district-judge-jeffrey-alker-meyer> (last visited Dec. 18, 2020).

⁸⁷ Meyer, *supra* note 4, at 909.

⁸⁸ Inter-Am. Juridical Comm., *supra* note 68, at 1322, ¶ 8(f); Meyer, *supra* note 13, at 147; Emmenegger, *supra* note 10, at 651.

⁸⁹ RESTATEMENT (THIRD) OF FOREIGN REL. L. OF THE UNITED STATES § 402 cmt. d, f (AM. L. INST. 1987) (stating "[th]e protective principle may be seen as a special application of the effects principle," which itself is seen as an "aspect" of the territoriality principle).

⁹⁰ Inter-Am. Juridical Comm., *supra* note 68, at 1322, ¶ 8(f); Al Banna, *supra* note 74, at 60; Bialostozky, *supra* note 74, 620–21, 622–23, 626, 631–36 (describing the abuse this jurisdictional principle is subject to); HOFF, *supra* note 5, at 153–54; Meyer, *supra* note 13, at 144; Meyer, *supra* note 4, at 938; Emmenegger, *supra* note 10, at 651–52; Emmenegger & Döbeli, *supra* note 40, at 248.

⁹¹ Dziggel, *supra* note 4, at 144–45.

court when addressing U.S. sanctions laws.⁹² While the court agreed that the protective principle allowed States “to exercise jurisdiction over acts—wheresoever and by whomsoever performed—that jeopardize the security or creditworthiness of that State or other State interests,”⁹³ it emphasized that “[s]uch other State interests do not include the foreign policy interest that the U.S. measure seeks to protect.”⁹⁴ When invoking the protective principle, a state must be able to show how specific actions by others affect its security.⁹⁵ As the ICJ stressed in *Nicaragua v. United States*, a mere claim that this is the case is insufficient.⁹⁶ Furthermore, the protective principle does not justify the imposition of blanket secondary sanctions that ban all trade with the target state.⁹⁷ Instead, under the protective principle, a state can only target those transactions that are actually related to the perceived national security threat.⁹⁸

Both the exact scope of the protective principle and whether customary international law recognizes it as a valid justification for claiming jurisdiction is still disputed.⁹⁹ Regardless, U.S. sanctions laws often do not meet even the necessary minimum requirements.¹⁰⁰ For example, the United States’ contention that Cuba is a meaningful threat to the United States’ national security is, far-fetched by any objective standard.¹⁰¹ The national security argument is also strained in the Iran case. Iran’s alleged attempts to acquire nuclear weapons pose a significant threat to U.S. national security, but this can only justify sanctions that target

⁹² The Dutch District Court heard a dispute between a French and a Dutch company. The Dutch company had agreed to provide the French company with 2,400 strings of geophones with spare parts, which were to be exported to the Soviet Union. The Dutch company was a subsidiary of a United States corporation and subsequently informed the French company it would not deliver the goods to comply with the United States’ export embargo against the Soviet Union, imposed by the Reagan Administration. The French company subsequently sued the Dutch company, and the Hague District Court ruled in favor of it. For the details of the case, see *Compagnie Européenne des Pétroles S.A. v. Sensor Nederland B.V.*, Case No. 82/716, Judgment, 22 I.L.M. 66, ¶ 1 (Dist. Ct., The Hague Sept. 17, 1982).

⁹³ *Compagnie Européenne des Pétroles*, Case No. 82/716 ¶ 7.3.3, n.62 (Netherlands).

⁹⁴ *Id.*

⁹⁵ In the *Nicaragua* Case, the ICJ indicated that it is opposed to an over-generous interpretation of what constitutes a threat to national security. When interpreting the term “essential security interests” (to be found in Article XXI (d) of the Treaty of Friendship, Commerce and Navigation between Nicaragua and the United States, 367 UNTS 3 (1956)), it found that US claims of Nicaragua’s attempts at overthrowing neighboring states’ governments, which had allegedly been continuing for a couple of years, were not sufficient in order to rely on this exception, as the United States had not shown “how Nicaraguan policies had in fact become a threat to ‘essential security interests’” *Nicaragua v. United States*, 1986 I.C.J. ¶ 282.

⁹⁶ *Id.*

⁹⁷ Emmenegger & Döbeli, *supra* note 40, 250–51; Meyer, *supra* note 4, 941.

⁹⁸ Emmenegger & Döbeli, *supra* note 40, 250–51; Meyer, *supra* note 4, 941.

⁹⁹ *Comments of the European Community*, *supra* note 79, at 9; Bialostozky, *supra* note 74, 620–21, 626.

¹⁰⁰ Bialostozky, *supra* note 74, at 633–35; Menkes, *supra* note 24, at 333, 355–56; Ryngaert, *supra* note 19, at 633–34; Emmenegger, *supra* note 10, at 658; *Nicaragua v. United States*, 1986 I.C.J. ¶ 224.

¹⁰¹ HOFF, *supra* note 5, at 154; Ryngaert, *supra* note 19, at 642; Malloy, *supra* note 5, at 381 (referring to how other nations view the United States’ invocation of “national security” with respect to Cuba within the World Trade Organization (WTO)).

transactions that are linked to the Weapons of Mass Destruction program (WMD).¹⁰² The United States' sanctions against Iran that affect third states are undoubtedly much broader.¹⁰³ Not even the United States has claimed that there is a link between the transactions prohibited under U.S. sanctions laws and the alleged attempts by Iran to acquire nuclear weapons.¹⁰⁴ In fact, the United States withdrew from the JCPOA and re-imposed sanctions against Iran, targeting third states, at a time when the International Atomic Energy Agency had already repeatedly certified that Iran was adhering to the agreement and not pursuing nuclear weapons.¹⁰⁵

Customary international law recognizes a state's right to exert jurisdiction over its nationals even when acting abroad ("active personality principle").¹⁰⁶ This form of extraterritorial jurisdiction similarly fails to justify U.S. sanctions laws. The definition of persons under the United States' jurisdiction, which includes permanent (foreign) residents in the United States, even when they are acting abroad,¹⁰⁷ evidences an overly expansive view of the principle.¹⁰⁸ Furthermore, the United States views foreign legal persons as bound by U.S. sanctions laws, if they are "controlled" by persons under the United States' jurisdiction.¹⁰⁹ This presumption, however, cannot be reconciled with the "active personality principle." There is widespread agreement within the international community that its registered head office or the laws under which it is organized determines the "nationality" of a legal person, and not the nationality of the persons controlling it.¹¹⁰ Similarly, the United States

¹⁰² Ryngaert, *supra* note 19, at 642; Emmenegger, *supra* note 10, at 658; Emmenegger & Döbeli, *supra* note 41, at 250–51.

¹⁰³ HOFF, *supra* note 5, at 155; Meyer, *supra* note 4, at 941; Ryngaert, *supra* note 19, at 643, 650–51; Emmenegger & Döbeli, *supra* note 40, at 250–51.

¹⁰⁴ See Emmenegger & Döbeli, *supra* note 40, at 251; see also Superseding Indictment Against Zarrab, *supra* note 41 (the United States did not claim the transactions Zarrab was indicted for were linked to Iran's nuclear weapon program); Superseding Indictment Against Meng, *supra* note 47 (no claimed link to Iran's nuclear weapon program).

¹⁰⁵ Memorandum on Ceasing U.S. Participation in the JCPOA and Taking Additional Action to Counter Iran's Malign Influence and Deny Iran All Paths to a Nuclear Weapon, *supra* note 21; Press Release, Aabha Dixit, Int'l Atomic Energy Agency (IAEA), *supra* note 24.

¹⁰⁶ Inter-Am. Juridical Comm., *supra* note 68, at 1322, ¶ 8(f); Al Banna, *supra* note 74, at 62; HOFF, *supra* note 5, at 140–41; Fitzgerald, *supra* note 7, at 90; Meyer, *supra* note 13, at 144; Meyer, *supra* note 4, at 937; Emmenegger, *supra* note 10, at 649–50; Emmenegger & Döbeli, *supra* note 40, at 248.

¹⁰⁷ See Cuban Democracy Act of 1992, Pub.L. 102-484, 106 Stat. 2575 (codified at 22 U.S.C. § 6010); Exec. Order No. 13,382, 70 Fed. Reg. 38,567 (June 28, 2005); Cuban Assets Control Regulations, 31 C.F.R. § 515.329(a) (2020).

¹⁰⁸ HOFF, *supra* note 5, at 141; Davidson, *supra* note 1, at 1426; contrast: Meng, *supra* note 12, at 753 (arguing that such an extension of jurisdiction is justified).

¹⁰⁹ Cuban Assets Control Regulations, 31 C.F.R. §§ 515.329(d)–515.330(a)(4) (2020) (this being one example); Lowe, *supra* note 14, at 378; Iranian Transactions and Sanctions Regulations 31 C.F.R. § 560.537 (2020); HOFF, *supra* note 5, at 81–82, 141–46; Clark, *supra* note 19, at 457–58; Dunning, *supra* note 4, at 177, 183; Viterbo, *supra* note 28, at 160; Emmenegger, *supra* note 10, at 649–50; Senz & Charlesworth, *supra* note 3, at 7–8.

¹¹⁰ See *Comments of the European Community*, *supra* note 79, at 5–6; see also *Barcelona Traction, Light and Power Company, Limited (Belg. v. Spain)*, 1970 I.C.J. 3, ¶¶ 41, 70, 88 (Feb. 5); *Compagnie*

extends sanctions to products of U.S. origin,¹¹¹ thereby presumably attempting to invoke the active personality principle based on the products' U.S. "nationality."¹¹² However, the international community does not assign nationality to goods and rejects attempts at exercising jurisdiction on that basis.¹¹³

It remains controversial whether the so-called "passive personality principle," whereby a state may assert extraterritorial jurisdiction in cases when its nationals have been harmed, even if the relevant event occurred abroad,¹¹⁴ has been accepted within the international community as a lawful exercise of jurisdiction.¹¹⁵ In any case, the principle would not justify the sweeping nature of the United States' sanctions laws as they evidently apply to transactions that do not harm U.S. persons, as the Zarrab and Wanzhou cases illustrate.¹¹⁶

The "universality principle" has been emerging as a new justification for extraterritorial jurisdiction, although not yet in the economic sphere.¹¹⁷ According to the universality principle, a state can claim jurisdiction even for cases that have no connection to the state, if crimes were committed which the international community regards as particularly heinous, e.g., genocide,¹¹⁸ or which are considered "universal crimes," e.g., piracy.¹¹⁹ When the United States applies its sanctions laws, in most cases, it provides

Européene des Pétales, Case No. 82/716 ¶ 7.2 and 7.3.2, note 94 (Netherlands); Meng, *supra* note 12, at 733–34; HOFF, *supra* note 5, at 143–46; Clark, *supra* note 19, at 65; Ryngaert, *supra* note 19, at 627–29, 633; Emmenegger, *supra* note 10, at 649–50; Senz & Charlesworth, *supra* note 3, at 7–8; LOHMANN, *supra* note 11, at 7; Ziaee, *supra* note 11, at 39–40; Meng, *supra* note 12, at 754–57 (expressing a nuanced view on the topic by concluding the American practice of forcing foreign subsidiaries of U.S. companies to comply with U.S. foreign policy goals cannot be reconciled with public international law). *See also* Fruehauf Corporation v. Massardy Cour d'appel [CA] [regional court of appeal] Paris, May 22, 1965 (Fr.), translated in 5 I.L.M. 476 (1966) (allowing French company Fruehauf Corporation to fulfill a contract with the People's Republic of China under French law even though the company was majority-owned by an American company and the U.S. Treasury ordered the cancellation of the contract).

¹¹¹ *See* Iranian Transactions and Sanctions Regulations, 31 C.F.R. § 560.205 (2020); Export Administration Regulations, 15 C.F.R. § 746.2(a) (2019); 15 C.F.R. § 746.7(a) (2020); Clark, *supra* note 19, at 63–64, 462–65; Viterbo, *supra* note 28, at 159; Fitzgerald, *supra* note 7, at 43.

¹¹² Lowe, *supra* note 14, at 378; HOFF, *supra* note 5, at 84; Fitzgerald, *supra* note 7, at 42; Senz & Charlesworth, *supra* note 3, at 8; LOHMANN, *supra* note 11, at 7.

¹¹³ *Comments of the European Community*, *supra* note 79, at 6; Lowe, *supra* note 14, at 378; Meng, *supra* note 12, at 756; Senz & Charlesworth, *supra* note 3, at 8.

¹¹⁴ Meyer, *supra* note 13, at 144; Larsson, *supra* note 11, at 26; Meng, *supra* note 12, at 753–54; Meyer, *supra* note 4, at 938; Ryngaert, *supra* note 19, at 643; Emmenegger, *supra* note 10, at 650; Emmenegger & Döbeli, *supra* note 40, at 248.

¹¹⁵ Meng, *supra* note 12, at 753–54; Ryngaert, *supra* note 19, at 643; Emmenegger, *supra* note 10, at 650; Emmenegger & Döbeli, *supra* note 40, at 248.

¹¹⁶ *See* Superseding Indictment Against Zarrab, *supra* note 41; Superseding Indictment Against Meng, *supra* note 47.

¹¹⁷ Emmenegger & Döbeli, *supra* note 40, at 251.

¹¹⁸ HOFF, *supra* note 5, at 156–57; Meyer, *supra* note 13, at 144–45; Meyer, *supra* note 4, at 938; Larsson, *supra* note 11, at 26; Emmenegger, *supra* note 10, at 653–54; Emmenegger & Döbeli, *supra* note 40, at 248–49.

¹¹⁹ Graves, *supra* note 9, at 736; Meyer, *supra* note 13, at 144–45; Dunning, *supra* note 4, at 938; Larsson, *supra* note 11, at 26; Ryngaert, *supra* note 19, at 644; Emmenegger, *supra* note 10, at 653–54; Emmenegger & Döbeli, *supra* note 41, at 248–49.

no evidence that the penalized transactions were related to heinous or universally accepted crimes.¹²⁰

In summary, the recent extraterritorial effect of the United States' sanctions laws is not justified even if the more generous grounds justifying extraterritorial jurisdiction were invoked. The U.S. State Department came to a similar conclusion as far as the 1996 LIBERTAD Act was concerned, which included provisions that permitted lawsuits against foreigners "trafficking" expropriated property in Cuba that initially belonged to U.S. citizens.¹²¹ According to the U.S. State Department, the bill "would be very difficult to defend under international law" as "it would...make [...] U.S. law applicable to, [...], properties located in Cuba as to which there is no United States connection other than the current nationality of the owner of a claim to the property."¹²² Nevertheless, Congress ignored the State Department's assessment.¹²³

Given the breadth of the current sanctions on Iran and their extraterritorial effect, the impression that eminent British international law scholar, Vaughan Lowe, had of the less burdensome Helms-Burton and D'Amato Acts of 1996 seems more than justified now.¹²⁴ According to him, both acts "impose[d] penalties upon violators of the law" despite there being no "link between the United States and the alleged offender," thus completely disregarding "the principles of international law concerning the allocation of jurisdiction between the states."¹²⁵

B. Jurisdiction under Customary International Law — Prohibitive Rules

Some may counter that the above analysis on permissive rules misconstrues the legal situation as far as jurisdiction is concerned, as the PCIJ actually seemed to take a much more generous view of national legislation with an extraterritorial impact.¹²⁶ Indeed, in its judgment in the *S.S. "Lotus"* case, the court also emphasized that it did "not...follow that international law prohibits a State from exercising jurisdiction in its own territory, in respect of any case which relates to acts which have taken place abroad, and in which it cannot rely on some permissive rule of international law."¹²⁷ Instead, the PCIJ explained, "[international law] leaves [States]... a wide measure of discretion which is only limited in certain cases by

¹²⁰ Graves, *supra* note 9, at 736 (regarding ILSA); Ryngaert, *supra* note 19, at 644–45 (regarding the Helms-Burton Act); Emmenegger, *supra* note 10, at 658–59; Emmenegger & Döbeli, *supra* note 40, at 251.

¹²¹ LIBERTAD Act §§ 301–06.

¹²² 141 CONG. REC. S15106.

¹²³ LIBERTAD Act §§ 301–06.

¹²⁴ Chichele Professor of Public International Law at the University of Oxford (1999-2012); Emeritus Professor of International Law at the University of Oxford since 2012.

¹²⁵ Lowe, *supra* note 14, at 385–86; Davidson, *supra* note 1, at 1426–27.

¹²⁶ Meyer, *supra* note 13, at 136–37; Emmenegger, *supra* note 10, at 644.

¹²⁷ The court, being evenly divided, required the president to cast the deciding vote. *France v. Turkey*, 1927 P.C.I.J. at 32.

prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.”¹²⁸

The difference between the two statements by the PCIJ is clear-cut: the first seems to require a permissive rule in international law in order to justify extraterritoriality,¹²⁹ while the second implies the necessity of a prohibitive rule in international law to render such legislation unlawful.¹³⁰

This crucial distinction in legal reasoning is hardly relevant to the United States’ practice. For many years now, states have taken the view that the United States’ approach to asserting extraterritorial jurisdiction, especially in cases of alleged violations of United States’ embargo and sanctions laws, is unlawful.¹³¹ Consistent international objections to such U.S. actions have not only prevented the creation of a permissive rule but have actually led to a customary international law prohibition.¹³²

In 1982, the United Kingdom’s Prime Minister, Margaret Thatcher, usually a staunch United States ally, responded to U.S. sanctions targeting the proposed Soviet gas pipeline by stating that, “the question is whether one very powerful nation can prevent existing contracts being fulfilled; I think it is wrong to do that.”¹³³ Her Trade Secretary, Lord Arthur Cockfield, was more blunt, describing the United States’ measures as “an unacceptable extension of American extraterritorial jurisdiction which is

¹²⁸ *Id.* at 19.

¹²⁹ *Id.* at 18–19.

¹³⁰ *Id.* at 19.

¹³¹ Lew & Nephew, *supra* note 3, at 142; Larsson, *supra* note 11, at 24–25, 27; Meng, *supra* note 12, at 730–37; Tirkey, *supra* note 28, at 2; Ryngaert, *supra* note 19, at 655–57; Ziaee, *supra* note 11, at 40.

¹³² See Charlotte Beaucillon, *Practice Makes Perfect, Eventually? Unilateral State Sanctions and Extraterritorial Effects of National Legislation*, in COERCIVE DIPLOMACY, SANCTIONS AND INTERNATIONAL LAW 103, 112–18 (Natalino Ronzitti ed., 2016); see, e.g., Idriss Jazairy (Special Rapporteur on the Negative Impact of Unilateral Coercive Measures), *Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights*, ¶¶ 10–11, U.N. Doc. A/HRC/42/46 (July 5, 2019) [hereinafter *Negative Impact*]; Idriss Jazairy (Special Rapporteur on the Negative Impact of Unilateral Coercive Measures), *Report of the Special Rapporteur of the Human Rights Council on the Negative Impact of Unilateral Coercive Measures on the Enjoyment of Human Rights*, ¶¶ 52–62, U.N. Doc. A/72/370 (Aug. 29, 2017) [hereinafter *Report of the Special Rapporteur*]; see also Daniel Franchini, *‘With Friends Like That, Who Needs Enemies?’: Extraterritorial Sanctions Following the United States’ Withdrawal from the Iran Nuclear Agreement*, EJIL: TALK! (May 29, 2018), <https://www.ejiltalk.org/with-friends-like-that-who-needs-enemies-extraterritorial-sanctions-following-the-united-states-withdrawal-from-the-iran-nuclear-agreement/>; Al Banna, *supra* note 74, at 68–69; Ziaee, *supra* note 11, at 40; Gordon, *supra* note 20, at 72–75; Fitzgerald, *supra* note 7, at 2, 86–87, 91–94 (“emerging rule”); Ryngaert, *supra* note 19, at 655–57 (“might be argued”); Asian-African Legal Consultative Org. (AALCO), *Extraterritorial Application of National Legislation: Sanctions Imposed Against Third Parties*, ¶¶ 64–65 AALCO/58/DAR ES SALAAM/2019/SD/S6 (2019), http://www.aalco.int/SG_Brief%20on%20Sanctions-Revised-18.9.2019.pdf.

¹³³ See generally Gary H. Perlow, *Taking Peacetime Trade Sanctions to the Limit: The Soviet Pipeline Embargo*, 15 CASE W. RES. J. INT’L L. 252, 252–73 (1983) (The Reagan administration prevented the sale of United States’ products that would have facilitated construction of the pipeline and imposed sanctions on the Soviet Union in response to the alleged Soviet involvement in the Polish government’s declaration of martial law); see also James Feron, *Mrs Thatcher Faults U.S. on Siberia Pipeline*, N.Y. TIMES (Jul. 2, 1982), at A1.

repugnant in international law.”¹³⁴ Many other European States followed suit in condemning U.S. sanctions.¹³⁵ The European Community (EC) declared “that the U.S. regulations, as amended, contain sweeping extensions of U.S. jurisdiction which are unlawful under international law.”¹³⁶

The European Union has repeatedly stressed its opposition to extraterritorial sanctions.¹³⁷ In December 2017, for example, the European Union reiterated that it “condemned the extraterritorial application of third-country legislation imposing restrictive measures which purport to regulate the activities of natural and legal persons under the jurisdiction of the member States of the European Union, as being in violation of international law.”¹³⁸

In 2013, the Group of 77, a group of developing States that now has 134 members,¹³⁹ and China, adopted a “Ministerial Declaration,” in which the States’ foreign ministers “firmly rejected the imposition of laws and regulations with extraterritorial impact” because such measures “undermine the principles enshrined in the Charter of the United Nations and international law” and “also severely threaten the freedom of trade and investment.”¹⁴⁰

In 2016, Russia, India, and China issued a joint statement also criticizing extraterritorial sanctions as “inconsistent with principles of international law.”¹⁴¹ Responding to the threat of U.S. sanctions on foreign companies participating in the *Nord Stream 2* project, the Austrian and German governments issued a joint statement in June 2017: “We cannot accept the threat of extraterritorial sanctions, illegal under international law, against European companies that participate in developing European energy supplies.”¹⁴²

¹³⁴ Statement of Lord Cockfield, U.K. Sec’y of State for Trade (Aug. 2, 1982) (published in 21 International Legal Materials at 851); Davidson, *supra* note 1, at 1429.

¹³⁵ Dunning, *supra* note 4, at 184–85.

¹³⁶ *Comments of the European Community*, *supra* note 79, at 1.

¹³⁷ Stefan Brocza, *The EU Legal Protection System Against the Effects of Extra-territorial Application of Legislation Adopted by a Third Country, and Actions Based Thereon or Resulting Therefrom*, 9 KLRI J. L. LEGIS. 145, 157–62; *Developments in the Law – Extraterritoriality*, *supra* note 35, 1246–50; Graves, *supra* note 9, at 721–25; Larsson, *supra* note 11, at 35–36; *see also* Davidson, *supra* note 1, at 1425–27 (outlining the British position on the matter of the Helms-Burton and D’Amato Acts).

¹³⁸ Council of the European Union, Sanctions Guidelines – update No. 5664/18 of 4 May 2018.

¹³⁹ The Group of 77 at the United Nations, <https://www.g77.org/doc/members.html>.

¹⁴⁰ Ministerial Declaration from the Group of 77 and China (Sept. 26, 2013) (available at <http://g77.org/doc/Declaration2013.htm>).

¹⁴¹ Joint Communiqué of the 14th Meeting of the Foreign Ministers of the Russian Federation, the Republic of India and the People’s Republic of China (Apr. 19, 2016), (available at https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/t1356652.shtml).

¹⁴² The United States opposes the *Nord Stream 2* project and seeks to expand these sanctions to businesses involved, no matter their nationality. *See* Daniel Flatley and Dina Khrennikova, *U.S. Targets Insurers In Latest Round of Nord Steam 2 Sanctions*, BLOOMBERG (Nov. 11, 2020),

In line with this world-wide opposition to the United States' policy on secondary sanctions, the General Assembly of the United Nations has passed annual resolutions since 1992 that disapprove of the United States' embargo against Cuba with particular reference to the extraterritorial effects of United States' laws.¹⁴³ These resolutions have always gained overwhelming support.¹⁴⁴

The United States itself has also rejected the legitimacy of secondary sanctions in the past.¹⁴⁵ In the 1970s, in response to the Arab boycott under which American companies were barred from business with Arab states if they commercially engaged with Israel, U.S. Secretary of State, Cyrus Vance, declared "that decisions as to what commerce U.S. firms may or may not have with other countries or with other U.S. firms should be made, consonant with American policy, by Americans and only Americans."¹⁴⁶ He went on to emphasize the United States' "right to regulate, through our laws, the activities of our citizens."¹⁴⁷ This sentiment is also reflected in a U.S. Senate Committee Report on the proposed amendments to the Export Administration Act, which intended to undermine the Arab boycott. In it, the Committee stressed that "the United States should not acquiesce in attempts by foreign governments through secondary or tertiary boycotts to embroil American citizens in their battles against others."¹⁴⁸

Considering the near-unanimous consensus as reflected in the statements set out above, it is justified that the UN Special Rapporteur concluded that "comprehensive coercive measures with extraterritorial reach are almost universally rejected as unlawful under international law" ¹⁴⁹ and that "States should be considered as being under a legal

<https://www.bloomberg.com/news/articles/2020-11-11/nord-stream-2-sanctions-to-be-included-in-u-s-defense-bill>; *Foreign Minister Gabriel and Austrian Federal Chancellor Kern on the imposition of Russia sanctions by the US Senate*, AUSWÄRTIGES AMT (June 15, 2017), <https://www.auswaertiges-amt.de/en/newsroom/news/170615-kern-russland/290666>.

¹⁴³ G.A. Res. 74/7, ¶¶ 2–3 (Nov. 12, 2019).

¹⁴⁴ G.A. Res. 74/7, ¶¶ 2–3 (Nov. 12, 2019) (187 states voted in favor with three against and two abstentions).

¹⁴⁵ See Fitzgerald, *supra* note 7, at 48–59, 92; Meyer, *supra* note 13, at 112; Meyer, *supra* note 4, at 907, 926–27; Ryngaert, *supra* note 19, at 640–42; see generally Henry J. Steiner, *Pressures and Principles — The Politics of the Antiboycott Legislation*, 8 GA. J. INT'L. & COMP. L., 529 (1978); (describing the legislative battles preceding the Antiboycott Legislation passing and providing many examples of leading politicians, lobbyists, and business representatives rejecting the extraterritorial nature of the Arab boycott).

¹⁴⁶ *Arab Boycott: Hearings Before the Subcomm. on Int'l Fin. of the Comm. on Banking, Hous., and Urb. Affairs*, 95th Cong. 426, 437 (1977) (statement of Cyrus R. Vance, Secretary of State of the United States).

¹⁴⁷ *Id.*

¹⁴⁸ See S. REP. NO. 95–114, at 20–21 (1977); see also Steiner, *supra* note 145, at 538.

¹⁴⁹ *Negative Impact*, *supra* note 132, at 5, ¶ 10; see also *Report of the Special Rapporteur*, *supra* note 132, at 17–20.

obligation not to recognize as lawful such unilateral coercive measures, especially extraterritorial, secondary sanctions.”¹⁵⁰

In sum, there is ample evidence to support the argument that customary international law prohibits the extraterritorial application of unilateral sanctions based on national legislation to matters that have no substantial link to the state passing the legislation. Such legislation violates the sovereignty of other States and is therefore unlawful.¹⁵¹

II. UNILATERAL SANCTIONS TARGETING THIRD STATES ARE UNLAWFUL INTERVENTIONS IN THE INTERNAL AFFAIRS OF THOSE STATES AND THEY VIOLATE THE PRINCIPLE OF SOVEREIGN EQUALITY.

Customary international law prohibits interventions in other states’ internal affairs.¹⁵² The 1933 Montevideo Convention includes the provision that “no state has the right to intervene in the internal or external affairs of another,”¹⁵³ and Article 2(7) of the 1945 UN Charter even rules out UN intervention in a member state’s internal affairs.¹⁵⁴ By the 1960s, there was broad international consensus on the prohibition of interventions in another state’s internal affairs.¹⁵⁵ In 1965, the General Assembly passed the *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty* in a 109 to nothing vote, with one abstention.¹⁵⁶ The 1970 General Assembly’s *Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States (Friendly Relations Resolution)*, passed without a vote, reaffirmed the broad consensus on the unlawfulness of interventions by confirming that “no State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State.”¹⁵⁷

Although the General Assembly’s resolutions were not legally binding,¹⁵⁸ their passage supports the argument that states viewed the

¹⁵⁰ *Negative Impact*, *supra* note 132, at 5, ¶ 11; *see also Report of the Special Rapporteur*, *supra* note 132, at 17–20.

¹⁵¹ Dziggel, *supra* note 4, at 130, 143; Larsson, *supra* note 11, at 53; Tirkey, *supra* note 28, at 2.

¹⁵² *See* United Kingdom v. Albania, 1949 I.C.J. at 34–35; Nicaragua v. United States, 1986 I.C.J. ¶ 202; *see also* Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), 2005 I.C.J. 168, ¶¶ 161–65.

¹⁵³ Montevideo Convention on the Rights and Duties of States art. 8, Dec. 26, 1933, 165 L.N.T.S. 19; *see also* Charter of the Organization of American States art. 19, Apr. 30, 1948, 119 U.N.T.S. 47; The Warsaw Security Pact: Treaty of Friendship, Cooperation and Mutual Assistance art. 8, May 14, 1955, 219 U.N.T.S. 23.

¹⁵⁴ U.N. Charter art. 2, ¶ 7.

¹⁵⁵ *See, e.g.*, G.A. Res. 2131 (XX) (Dec. 21, 1965); G.A. Res. 2625 (XXV) (Oct. 4, 1965).

¹⁵⁶ G.A. Res. 2131 (XX), at 1 (Dec. 21, 1965).

¹⁵⁷ G.A. Res. 2625 (XXV), at 7 (Oct. 4, 1970).

¹⁵⁸ Anthea Roberts & Sandesh Sivakumuran, *The Theory and Reality of the Sources of International Law*, in INTERNATIONAL LAW 89, 102–03 (Malcom D. Evans ed., 5th ed. 2018).

declarations as reflecting international legal rules.¹⁵⁹ In 2005, the ICJ confirmed that the *Friendly Relations Resolution* was “declaratory of international law.”¹⁶⁰ The ICJ itself had previously stressed the legal quality of the prohibition of such interventions: already in 1949, it declared interventions in other states’ affairs to be unlawful.¹⁶¹ Therefore, the prohibition on interventions in the internal or external affairs of another state qualifies as a rule of customary international law.

The ICJ’s 1986 judgment in the *Nicaragua Case* is frequently cited when discussing the prohibition of interventions because the court provided a partial definition of its scope.¹⁶² Reaffirming the principle of non-intervention as a rule of customary international law,¹⁶³ the ICJ went on to define a prohibited intervention:

A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of State sovereignty to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy. Intervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones.¹⁶⁴

Some claim this reference to “methods of coercion” limits the scope of the prohibition.¹⁶⁵ As a result, some scholars conclude that economic sanctions, even when targeting third states, do not meet the ICJ’s requirement of a coercive element.¹⁶⁶

However, the ICJ stressed it was only looking at “those aspects of the principle which appear to be relevant” to the case before it.¹⁶⁷ The court was dealing with the United States’ massive support of the Nicaraguan rebels, the *Contras*, who were attempting to overthrow their country’s

¹⁵⁹ The United States Representative to the United Nations at the time said the resolution had “the precise job of enunciating that law” as far as non-intervention was concerned. See Robert Rosenstock, *The Declaration of Principles of International Law Concerning Friendly Relations: A Survey*, 65 AM. J. INT’L L. 713, 714–15, 726–29 (1971); see also *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, ¶ 70.

¹⁶⁰ *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, 2005 I.C.J. 168, ¶ 162.

¹⁶¹ *United Kingdom v. Albania*, 1949 I.C.J. at 34–35.

¹⁶² See *Nicaragua v. United States*, 1986 I.C.J. 14. The case was initiated by Nicaragua. *Id.* It accused the United States of violating international law by supporting the *Contra* rebels that were attempting to overthrow the *Sandinista* government of the country. *Id.*

¹⁶³ See *id.* ¶ 202 (June 27); see also *Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, 2005 I.C.J. 168, ¶ 161–65.

¹⁶⁴ *Nicaragua v. United States*, 1986 I.C.J. ¶ 205.

¹⁶⁵ See generally Maziar Jamnejad & Michael Wood, *The Principle of Non-intervention*, 22 LEIDEN J. INT’L L. 345 (2009) (offering a general discussion of the difficulty of distinguishing between acceptable “persuasion” of another state and unlawful “coercion”).

¹⁶⁶ See generally *id.*; Alexandra Hofer, *The Developed/Developing Divide on Unilateral Coercive Measures: Legitimate Enforcement or Illegitimate Intervention?*, 16 CHINESE J. OF INT’L L. 175 (2017); Antonios Tzanakopoulos, *The Right to be Free from Economic Coercion*, 4 CAMBRIDGE J. OF INT’L AND COMPAR. L. 616 (2015).

¹⁶⁷ *Nicaragua v. United States*, 1986 I.C.J. ¶ 205.

government by force. There was no need to explore the issue of “coercion” in any detail. The United States’ involvement in the rebels’ use of force was undoubtedly coercive regarding Nicaragua’s government system.¹⁶⁸

The fact the ICJ did not provide a more concise definition of prohibited interventions does not mean that lesser coercive means are permissible. Rather, the difference between coercive intervention and potentially permissible interference comes down to whether the target state retains its freedom to choose in matters related to its sovereignty. Thus, an intervention is unlawful when the target state risks losing its freedom to act on an issue related to its internal and/or external affairs. In contrast, actions below that threshold, aiming at persuasion rather than compulsion, may well be permissible.¹⁶⁹

Applying these parameters to the United States’ practice of extraterritorial application of unilateral secondary sanctions reveals this to be unlawful intervention.¹⁷⁰ As the ICJ stressed in *Nicaragua*, “the formulation of foreign policy” is a matter “in which each State is permitted, by the principle of State sovereignty, to decide freely.”¹⁷¹ Moreover, the fact that the “capacity to enter into relations with other states” is widely perceived to be a requirement of statehood reinforces the argument that a state’s ability to conduct its foreign policy freely is a vital element of its sovereignty.¹⁷²

By targeting other states’ businesses and citizens who do not adhere to U.S. sanctions laws, the United States coerces them into undermining their home state’s foreign policy.¹⁷³ This in turn effectively coerces those states to abandon their foreign policy.¹⁷⁴ For example, in response to the Helms-Burton-Act, the First Secretary (Trade Policy) at the United Kingdom Embassy in Washington D.C., declared the act to be “an unwelcome and objectionable attempt to substitute the foreign and trade policies of the U.S. Congress for those of foreign sovereign

¹⁶⁸ *Id.* ¶¶ 241–42.

¹⁶⁹ See generally Lori Fisler Damrosch, *Politics Across Borders: Nonintervention and Nonforcible Influence over Domestic Affairs*, 83 AM. J. INT’L L. 1 (1989) (discussing the difficulty in distinguishing between permitted interference and prohibited intervention).

¹⁷⁰ AALCO, *supra* note 132, ¶¶ 21–22; HOFF, *supra* note 5, at 132–36, 170, 172; Fitzgerald, *supra* note 7, at 15, 35; Meng, *supra* note 12, at 747–50; Tirkey, *supra* note 28, at 2; Ryngaert, *supra* note 19, at 657 (“may violate”).

¹⁷¹ *Nicaragua v. United States*, 1986 I.C.J. ¶ 265.

¹⁷² Montevideo Convention on the Rights and Duties of States art. 3, Dec. 26, 1933, 165 L.N.T.S. 19; Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403 (July 22); Written Statement of the Government of the United States of America, Advisory Opinion, 1994 I.C.J. 1 (June 10); Alice Lacourt, Legal Advisor, U.K. Foreign and Commonwealth Office, Address at the Chatham House International Law Discussion Group Meeting: The Approach of the United Kingdom (Apr. 22, 2008) (referring to Kosovo).

¹⁷³ HOFF, *supra* note 5, at 165–66, 172; Clark, *supra* note 19, at 63; Davidson, *supra* note 1, at 1432–34; GERANMAYEH & RAPNOUIL, *supra* note 11, at 5; Senz & Charlesworth, *supra* note 3, at 10.

¹⁷⁴ GERANMAYEH & RAPNOUIL, *supra* note 11, at 5; Tirkey, *supra* note 28, at 2, 9; Ryngaert, *supra* note 19, at 626, 657; Senz & Charlesworth, *supra* note 3, at 10.

governments.”¹⁷⁵ The D’Amato Act met a similarly cool reception, as it effectively instructed the United States’ president “to act as a world policeman, imposing US law upon every person and every place on the planet.”¹⁷⁶

This tendency to interfere in other States’ foreign policies is also evident in the case of Iran: all the other signatories of the JCPOA wish to uphold the agreement, which the United States has renounced.¹⁷⁷ Therefore, the United Kingdom, Germany, France, the European Union, China, and Russia are encouraging their business communities to strengthen commercial ties with Iran in order to ensure Iran’s continuing compliance with the agreement.¹⁷⁸ Meanwhile, the United States is attempting to undermine these States’ foreign policy choices by threatening their businesses and citizens with the prosecution, forcing them to comply with U.S. policy decisions.¹⁷⁹ A similar situation is developing in relation to the *Nord Stream 2* project, which is supposed to enable the delivery of gas from Russia to Germany via the Baltic Sea.¹⁸⁰ U.S. authorities, wishing to undermine German government policy in favor of the project, are targeting German and third state companies to persuade them to withdraw from the project.¹⁸¹

¹⁷⁵ Davidson, *supra* note 1, at 1432–34 (addressing the Helms-Burton and D’Amato Acts).

¹⁷⁶ Lowe, *supra* note 14, at 386.

¹⁷⁷ *Iran Nuclear Deal: Europe Strives to Keep Agreement*, BBC (May 11, 2018), <https://www.bbc.com/news/world-europe-44090948>; David Reid, *Russia Slams US Sanctions Against Iran, Promises to Save Nuclear Deal*, CNBC (Aug. 7, 2018), <https://www.cnbc.com/2018/08/07/russia-slams-us-sanctions-against-iran-promises-to-save-nuclear-deal.html>; Kinling Lo, *China Backs Iran Nuclear Deal As United States Walks Away, but Could It Be a Costly Decision?*, SOUTH CHINA MORNING POST (May 9, 2018), <https://www.scmp.com/news/china/diplomacy-defence/article/2145406/china-backs-iran-nuclear-deal-united-states-walks-away>; Kay Armin Serjoe, *‘The Americans Cannot Be Trusted.’ How Iran Is Reacting to Trump’s Decision to Quit Nuclear Deal*, TIME (May 9, 2018, 9:22 AM), <https://time.com/5270821/iran-nuclear-deal-trump-ayatollah-khameini-hassan-rouhani/>; DE RUYT, *supra* note 11, at 1.

¹⁷⁸ KENNETH KATZMAN, CONG. RSCH. SERV., RS20871, IRAN SANCTIONS 45–46, 48–49 (Jan. 2019); GERANMAYEH & RAPNOUIL, *supra* note 11, at 1; Lew & Nephew, *supra* note 3, at 147.

¹⁷⁹ See AALCO, *supra* note 132, ¶¶ 21–22 (unilateral economic sanctions applying extraterritorially to stop third parties from economic dealing with the targeted State are prohibited by the International Court of Justice) (citing *Nicaragua v. United States*, 1986 I.C.J. ¶ 205; HOFF, *supra* note 5, at 165–66, 172; Davidson, *supra* note 1, at 1427; GERANMAYEH & RAPNOUIL, *supra* note 11, at 1, 5; see generally Lew & Nephew, *supra* note 3, at 140–41).

¹⁸⁰ *Project Background*, NORD STREAM 2 (July 2019), <https://www.nord-stream2.com/en/pdf/document/4/>.

¹⁸¹ See *Nord Stream 2: Trump Approves Sanctions on Russia Gas Pipeline*, BBC (Dec. 21, 2019), <https://www.bbc.com/news/world-europe-50875935>; *Swiss Allseas Withdraws Pipe-Laying Vessels from Nord Stream 2 Construction Zone Following US Sanctions*, UAWIRE (Dec. 23, 2019, 9:00 AM), <https://uawire.org/swiss-allseas-withdraws-pipe-laying-vessels-from-nord-stream-2-construction-zone-following-us-sanctions>; *Germany Tells US to ‘Mind Its Own Business’ over Nord Stream 2*, EURACTIV (Dec. 12, 2019), <https://www.euractiv.com/section/energy/news/germany-tells-us-to-mind-its-own-business-over-nord-stream-2/>; Michelle Martin, *After U.S. Sanctions Threat on Nord Stream 2, Germany Rejects Extraterritorial Sanctions*, REUTERS (May 22, 2019, 5:18 AM), <https://www.reuters.com/article/us-usa-ukraine-perry-nord-stream/after-us-sanctions-threat-on-nord-stream-2-germany-rejects-extraterritorial-sanctions-idUSKCN1SS1E9>.

There have been belated attempts by the European Union and others at introducing legislation to stop domestic businesses from complying with U.S. legislation.¹⁸² These have proven to be ineffective due to the United States' economic power.¹⁸³ Moreover, the United States has succeeded in stoking fear among foreign business executives who risk being arrested in the United States or abroad in the case of non-compliance with the United States' sanctions laws.¹⁸⁴ Since U.S. courts now assume jurisdiction on the flimsy grounds of the involvement, at some point, of a "correspondent account" in the United States, meaning that the clearance of a transaction in the United States between two foreign banks situated abroad is sufficient to criminalize non-resident foreign actors,¹⁸⁵ the ineffectiveness of blocking instruments is unsurprising. Thus, the United States' approach has not only brought the JCPOA "to the brink of collapse,"¹⁸⁶ but the subsequent decision by European businesses to quit Iran "has revealed an uncomfortable truth to European policymakers, namely that those companies are effectively regulated in Washington, D.C."¹⁸⁷

The United States' secondary sanctions violate the prohibition on the intervention in other states' affairs by effectively coercing them into abandoning their own foreign policy.¹⁸⁸ As the Dean of the Indiana University Maurer School of Law, Austen Parrish, has commented, the United States' practice of "unilateral extraterritoriality has served as a tool for empire-building."¹⁸⁹

Furthermore, U.S. secondary sanctions violate the principle of sovereign equality of states, enshrined in Article 2(1) of the UN Charter.¹⁹⁰ The way the United States applies its sanctions laws shows complete

¹⁸² Council Regulation (EC) 2271/96 of 22 Nov. 1996, Protecting Against the Effects of the Extra-Territorial Application of Legislation Adopted by a Third Country, and Actions Based Thereon or Resulting Therefrom, 1996 O.J. (L 309) 1, 1–6; Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018, Amending the Annex to Council Regulation (EC) 2271/96 Protecting Against the Effects of Extra-Territorial Application of Legislation Adopted by a Third Country, and Actions Based Thereon or Resulting Therefrom, 2018 O.J. (L 191) 1, 1–6; Brocza, *supra* note 137, 162–84; LOHMANN, *supra* note 11, at 3.

¹⁸³ See Viterbo, *supra* note 28, at 162; Fitzgerald, *supra* note 7, at 47; GERANMAYEH & RAPNOUIL, *supra* note 11, at 3–4; Larsson, *supra* note 11, at 52–53; Tirkey, *supra* note 28, at 9; DE RUYT, *supra* note 11, at 1, 2; LOHMANN, *supra* note 11, at 3; Ziaee, *supra* note 11, at 42.

¹⁸⁴ See Superseding Indictment Against Zarrab, *supra* note 41, for an example in Reza Zarrab's case, who was arrested while on holiday in the United States. See Superseding Indictment against Meng, *supra* note 47, for an example in Meng Wanzhou's case, who was arrested in Canada based on a United States warrant.

¹⁸⁵ Emmenegger, *supra* note 10, at 654–55; Emmenegger & Döbeli, *supra* note 40, at 243–45; see generally Katzenstein, *supra* note 83 (describing the way the United States utilizes the status of the United States Dollar in order to pursue policy objectives across the globe).

¹⁸⁶ LOHMANN, *supra* note 11, at 2.

¹⁸⁷ *Id.*

¹⁸⁸ AALCO, *supra* note 132, 7–8; HOFF, *supra* note 5, at 132–36, 170, 172; Fitzgerald, *supra* note 7, at 15, 35; Meng, *supra* note 12, at 747–50; Tirkey, *supra* note 28, at 2, 9.

¹⁸⁹ Parrish, *supra* note 13, at 1–2.

¹⁹⁰ AALCO, *supra* note 132, 6; HOFF, *supra* note 5, at 126.

disregard for other states' right to pursue an independent foreign policy.¹⁹¹ The United States utilizes its economic might to force other countries to follow the United States' foreign policy by threatening third state businesses and individuals and thus rendering their home states' foreign policy ineffective.¹⁹² The re-imposition of sanctions against Iran illustrates that—while the United Kingdom, France, and Germany wanted to adhere to the agreement with Iran, almost all these states' businesses, including major corporations, pulled out of negotiations or even cancelled agreements they had already concluded in/with Iran.¹⁹³ These states therefore were forced to watch their foreign policy goals crumble.¹⁹⁴ Passing blocking statutes at the European Union level, which make it unlawful for businesses in the European Union to comply with the United States' sanctions, proves to be a blunt instrument.¹⁹⁵ It is almost impossible to ascertain whether a company has withdrawn from its Iran business in order to comply with U.S. sanctions or whether there are sound business reasons for doing so.¹⁹⁶ This exodus of third states' businesses, however, fatally undermines their respective nation's foreign policy initiatives.¹⁹⁷ The United States' sanctions laws therefore effectively compel third, economically less powerful states to abandon their independent foreign

¹⁹¹ Davidson, *supra* note 1, at 1432–34; Dunning, *supra* note 4, at 169–71, 184; GERANMAYEH & RAPNOUIL, *supra* note 11, at 5; Meng, *supra* note 12, at 749; Senz & Charlesworth, *supra* note 3, at 10.

¹⁹² See Clark, *supra* note 19, at 63; Davidson, *supra* note 1, at 1427; Dunning, *supra* note 4, at 169–71, 184; Dziggel, *supra* note 4, at 147; see generally, Ghodoosi, *supra* note 3, at 104; Graves, *supra* note 9, at 715; Lew & Nephew, *supra* note 3, at 139; Larsson, *supra* note 11, at 52–53; Meng, *supra* note 12, at 749, 764; Senz & Charlesworth, *supra* note 3, at 10.

¹⁹³ CONG. RSCH. SERV., *supra* note 178; Ellen R. Wald, *10 Companies Leaving Iran As Trump's Sanctions Close*, FORBES (June 6, 2018), <https://www.forbes.com/sites/ellenwald/2018/06/06/10-companies-leaving-iran-as-trumps-sanctions-close-in/#11492254c90f>; David Keohan & Niameh Bozorgmehr, *Threat of US Sanctions Pushes France's Total out of Iran*, FINANCIAL TIMES (Aug. 20, 2018), <https://www.ft.com/content/6baba178-a459-11e8-926a-7342fe5e173f>; Alanna Petroff, *Siemens CEO: We Can't Do New Deals with Iran*, CNN (May 14, 2018, 4:42 PM), <https://money.cnn.com/2018/05/14/investing/iran-sanctions-siemens-europe/index.html>; Jürgen Dahlkamp et. al., *Erleben, was trennt*, DER SPIEGEL, Mar. 16, 2019, at 76, 76–77; GERANMAYEH & RAPNOUIL, *supra* note 11, at 1, 2; LOHMANN, *supra* note 11, at 2; see generally DeFrancia, *supra* note 31, at 755; Viterbo, *supra* note 28, at 162; Cuba: Fitzgerald, *supra* note 7, at 14.

¹⁹⁴ See Ali Vaez, *Europe is Running Out of Time to Save the Iran Deal*, FOREIGN POLICY (Jan. 16, 2020, 3:59 PM), <https://foreignpolicy.com/2020/01/16/europe-is-running-out-of-time-to-save-the-iran-deal/>; Robert Czulda, *European Failure to Safeguard Iran Deal Shows EU is Still a Paper Tiger*, ATLANTIC COUNCIL (Aug. 14, 2018), <https://www.atlanticcouncil.org/blogs/iransource/european-failure-to-safeguard-iran-deal-shows-eu-is-still-a-paper-tiger/>.

¹⁹⁵ Council of the European Union, *supra* note 138.

¹⁹⁶ Fabio Cozzi, *US Secondary Sanctions and EU Blocking Statute: Will the Political Clash Have Real Impact on EU Operators?*, INT'L BAR ASSOC. (Jan. 29, 2019), <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=785FC4D7-624B-43D4-882F-08FB123A8EE1>.

¹⁹⁷ See Anna Sauerbrey, *The Failure of Europe's Feeble Muscle Flexing*, N.Y. TIMES (Feb. 10, 2020), <https://www.nytimes.com/2020/02/10/opinion/europe-iran-nuclear-deal.html>; John Irish & Robin Emmott, *As U.S. Sanctions Near, Europe Fails to Protect Iran Deal*, REUTERS (Sept. 24, 2018, 8:12 AM), <https://www.reuters.com/article/us-iran-nuclear-eu/as-u-s-sanctions-near-europe-fails-to-protect-iran-deal-idUSKCN1M41UO>; GERANMAYEH & RAPNOUIL, *supra* note 11, at 3–4, 5; LOHMANN, *supra* note 11, at 3.

policy.¹⁹⁸ As Federica Mogherini, the European Union's former High Representative for Foreign Affairs and Security Policy, stated, this is unacceptable: "We Europeans cannot accept that a foreign power – even our closest friend and ally – makes decisions over our legitimate trade with another country. This is a basic element of sovereignty"¹⁹⁹

CONCLUSION

U.S. sanctions laws and their consequences for third states are incompatible with public international law. By assuming jurisdiction and enforcing its domestic legislation in cases with no relevant connection to the United States, the United States violates customary international law on jurisdiction and other States' sovereignty, which includes the right to govern to the exclusion of other States. By intimidating foreign businesses and citizens so that they do not enter into commercial transactions that may violate the United States' sanctions laws, the United States imposes its foreign policy on other States. The United States is thus unlawfully intervening in matters, which, as the ICJ pointed out, every state is entitled to "decide freely."²⁰⁰ By utilizing its economic strength in order to impose its will on third states, the United States also disregards the principle of sovereign equality. As one observer commented more than 20 years ago, United States' sanctions policy "does little to reassure those who think that many members of the United States' Congress do not understand international law at all, but see the world as one great federal state with the United States filling the role of the federal government."²⁰¹ This corresponds with Austen Parrish's conclusion that the United States views "the use of national law, applied extraterritorially, as a way to displace international law."²⁰²

At a time when the United States' power is in relative decline, it is likely that other powerful states will implement similar sanctions policies in the future.²⁰³ One can only speculate what the United States' reaction would be should China secure the arrest of a U.S. businessperson somewhere in Asia for engaging in dealings with Taiwan, similar to the United States' conduct in Reza Zarrab's or Meng Wanzhou's cases. Based on its reaction to the Arab boycott in the 1970s, it seems probable that the United States would not consider such conduct lawful under public international law. Therefore, the United States' strategy of imposing its

¹⁹⁸ GERANMAYEH & RAPNOUIL, *supra* note 11, at 5; Senz & Charlesworth, *supra* note 3, at 10.

¹⁹⁹ Mark Leonard, *Shaping Europe's Present and Future: An Interview with Federica Mogherini*, EUR. COUNCIL ON FOREIGN RELATIONS (Jan. 11, 2019), https://www.ecfr.eu/article/commentary_shaping_europes_present_and_future.

²⁰⁰ *Nicaragua v. United States*, 1986 I.C.J. ¶ 205.

²⁰¹ Lowe, *supra* note 14, at 386.

²⁰² Parrish, *supra* note 13, at 8.

²⁰³ *Id.* at 11.

foreign policy on other states by targeting them with secondary sanctions will fail.²⁰⁴

The United States' withdrawal from JCPOA evidences this failure: not only is the United States now isolated in its Iran policy,²⁰⁵ but Iran has made considerable progress in its nuclear program since the United States abandoned the agreement.²⁰⁶ The lesson seems to be this: there will always be disagreements between states, even between allies. Nonetheless, states are more likely to achieve policy goals in cooperation, not in opposition, to one another.

²⁰⁴ Lew & Nephew, *supra* note 3, at 147–49.

²⁰⁵ Patrick Wintour, *UN Security Council Rejects US Attempt to Extend Iran Sanctions*, THE GUARDIAN (Aug. 25, 2020) <https://www.theguardian.com/world/2020/aug/25/iran-sanctions-trump-administration-un-security-council>.

²⁰⁶ Laurence Norman, *Iran's Enriched Uranium Stockpile is 12 Times Nuclear Accord's Cap*, U.N. Agency Says, WALL ST. J. (Nov. 11, 2020), <https://www.wsj.com/articles/irans-enriched-uranium-stockpile-is-more-than-10-times-nuclear-accords-cap-u-n-agency-says-11605120768>.