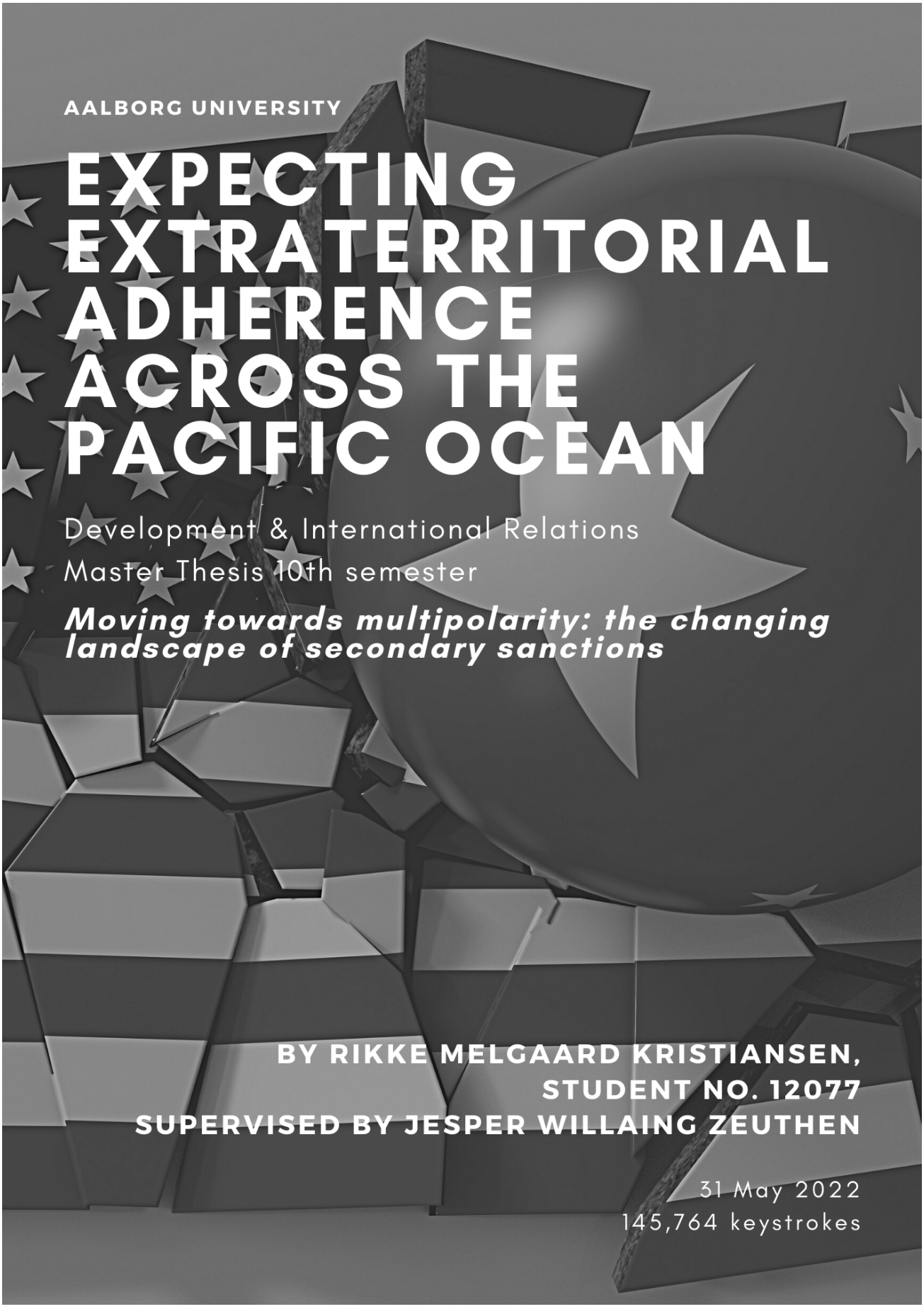

AALBORG UNIVERSITY

EXPECTING EXTRATERRITORIAL ADHERENCE ACROSS THE PACIFIC OCEAN

Development & International Relations

Master Thesis 10th semester

Moving towards multipolarity: the changing landscape of secondary sanctions

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ABSTRACT

EXPECTING EXTRATERRITORIAL ADHERENCE ACROSS THE PACIFIC OCEAN

Sanctions – and secondary sanctions – are in the spotlight more than ever as Russia has invaded Ukraine. The Western world has shown its disapproval through economic sanctions targeting Russia's economy and Russian entities and individuals. Further, the US is strongly considering implementing secondary sanctions to combat foreign countries and entities buying oil from Russia. This would affect a number of countries, including China. The US-China relationship would likely become even more strained as a result. With China's countermeasure and retaliatory regulatory secondary sanctions framework, economic warfare may erupt.

Sanctions are being increasingly utilized in the international community. Secondary sanctions sprung from sanctions and are ultimately penalties on countries, entities or individuals not subject to the sanctioning country's legal jurisdiction. They have mainly been implemented by the US, which has increasingly extraterritorially applied its foreign policy to assert its dominance. This has been possible due to it being the dominant polar power in a unipolar world. However, the world order is moving towards multipolarity, thus the ability to apply national foreign policy abroad is spreading to other countries, most notably China. Countermeasures to the US secondary sanctions are increasingly adopted as well.

This paper builds on the notion that China's changing relationship with secondary sanctions is indicative of a change in polarity where the world order is shifting from unipolarity to multipolarity. As such, it attempts to examine what the changing relationship implies about the changing world order and how each affect the other. China is not the only emerging power challenging the US as the unipole. Rather, the world is likely moving towards a complex multipolarity where the other BRIC countries and the EU are all potential candidates for polar power. However, China is specifically interesting due to its prominent position in the international community, in addition to its evidently changing relationship with secondary sanctions.

This contribution falls in the research design category of a case study and data was collected via desktop research. The data consisted of primary sources – case law and legislation of China, the US and partially the EU - and secondary sources – including, but not limited to, academic articles, newspaper articles, books, book chapters and reports. It rests on a foundation of socio-legal research, which inherently forms it throughout and effectively shapes its analysis, but also informs its theoretical aspects. In addition, polarity is the other crucial theoretical perspective included. Polarity is a predictable theoretical perspective to include considering how fundamental the examination of an emerging multipolar world order is for this paper.

The analysis establishes the past of secondary sanctions, which is marked by US legislation and compliance by the rest of the world. This is shown by examples, including China complying with the US decisions pertaining to Iran. Thereafter, recent times are explored, where it is clear to see that China's relationship to secondary sanctions is shifting. This part also includes a look at China's party-state capitalism, which is integral in understanding China's moves in the international community. It ties closely together with China's expectation of extraterritorial adherence by foreign countries and

entities, as well as discussions of China potentially leaning towards a rule by law legal tradition, rather than rule of law. Moving to the present, Lithuania is used to illustrate China's application of secondary sanctions. Finally, reflections are provided for a future characterized by geopolitical movements such as Russia's invasion of Ukraine, which this contribution considers a factor having sped up the emergence of multipolarity.

Conclusively, this contribution determines that China's changing relationship to secondary sanctions is indeed indicative of the emerging multipolar world order. A key point established is the fact that the increasingly complex and conflicting regulatory sanctions regimes leads to multinational corporations having difficulties navigating them. Ultimately, the multinational corporations are the real losers in the changing sanctions landscape. The present contribution further reflects upon how multipolarity may look in the contemporary world. It is suggested that cooperative multipolarity build on multilateralism, diversity and tolerance is achievable. Though, unification and collective agreement is needed rather than the seeming trend towards emerging powers and polar poles independently extraterritorially applying its foreign policy and taking it upon themselves to penalize other countries.

Keywords: secondary sanctions, extraterritoriality, polarity, US, China, unipolarity, multipolarity, sovereignty, jurisdiction, socio-legal research, doctrinal research

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AFSL	Anti-Foreign Sanctions Law
AIIB	Asian Infrastructure Investment Bank
BRI	Belt and Road Initiative
BRIC	Brazil, Russia, India & China
CCP	Chinese Communist Party
CISADA	Comprehensive Iran Sanctions Accountability and Divestment Act
EDD	China's Equipment Development Department
EU	European Union
EO	Executive Order
FDPR	Foreign Direct Product Rule
JCPOA	Joint Comprehensive Plan of Action
MNC	Multinational corporation
MOFCOM	Ministry of Commerce of the People's Republic of China
NATO	North Atlantic Treaty Organization
OFAC	Office of Foreign Assets Control
UAE	United Arab Emirates
UN	United Nations
UNSC	United Nations Security Council
US	United States of America
USD	United States Dollar

1. INTRODUCTION

In 2018, Huawei's founder's daughter and Chief Financial Officer, Meng Wanzhou, a Chinese citizen, was arrested in Canada on the basis of an arrest warrant issued by the United States of America (US) (Gordon & Stecklow, 2018; United States v. Wanzhou Meng, 2020). Among other things, the US authorities charged her of bank and wire fraud, in addition to partaking in conspiracies to commit such in relation to financial transactions conducted by Skycom, which functioned as Huawei's Iran-based subsidiary, which violated US sanction law (Gordon & Stecklow, 2018; United States v. Wanzhou Meng, 2020). Meng allegedly convinced various banks to enter into transactions with Huawei, despite violating US secondary sanctions (Gordon & Stecklow, 2018). China denounced the arrest and indicated that Meng did not violate Chinese laws. Nonetheless, the US demanded she be extradited from Canada.

When the news initially broke about Meng being detained, the Chinese embassy in Canada protested the arrest and demanded her release. Chinese officials called the arrest a serious mistake and Canada was accused of double standards and: "Western egotism and white supremacy" (Lu, 2019, para. 4). Further, there were threats made of severe consequences should Meng not be released. Shortly after her arrest, two Canadians – Michael Kovrig and Michael Spavor – a former diplomat and a businessman, respectively, were detained in China. They were detained on allegedly endangering Chinese national security (Gao, 2018).

Nonetheless, Meng stayed in Canada up until September 2021, where she reached a deal with the US authorities to resolve the case through a deferred prosecution agreement. Part of this deal included that she issued a statement of facts admitting she had made false statements about the relationship between Huawei and Skycom, Further, that Skycom conducted transactions through a bank in the US, of which

at least partially supported Huawei's work in Iran, thereby actively violating US sanctions legislation. Though, Meng did not have to pay any fine, nor did she have to plead guilty to the key charges raised against her (Fife & Chase, 2021; Prosecution agreement, 2021). When Meng boarded a plane leaving Canada, Kovrig and Spavor were released and allowed to leave China.

This case exemplifies an increasingly contested issue of the international community, namely the application and contestation of sanctions with extraterritorial reach: secondary sanctions. Where primary sanctions are designed to change the conduct of a primary target, secondary sanctions are directed at persons, entities or countries that engage with the primary target. Secondary sanctions are often used as a joint non-military effort with primary sanctions with the goal of asserting the sanctioning states own norms and values, as well as in an effort to isolate a particular subject in the international community (Hoeffelman, 2021). The US dictating who Huawei can and cannot do business with on the basis of its sanctions legislation pertaining to Iran, is an attempt to assert its own foreign policy on non-US entities. Huawei violated US sanctions legislation by failing to comply with the obligations to refrain from conducting business with certain Iranian actors, thereby going against the US secondary sanctions.

The present paper aims to establish the contextual framework of secondary sanctions, as well as why the application of them is so controversial in the international community. This leads to discussions on polarity and the problem of how a unipolar power can apply secondary sanctions versus what such receival thereof and response thereto looks like in an increasingly multipolar world. Sovereignty is one aspect of international law having a long history of being respected, but since the US has taken a position of unipole, as is clearly illustrated via the Meng case, the application of secondary sanctions is putting such into question. With the changing world order moving from unipolar to multipolar, China seems to have found inspiration in the US assertion of power in this extraterritorial manner. This paper will focus on China specifically, namely at the change in China's relationship to secondary sanctions, and its response and countermeasures to the US secondary sanctions regime. The starting point of the present contribution is that the changing relationship between China and secondary sanctions ins indicative of a changing world order.

This contribution takes the form of a case study based on the principles of socio-legal research, which shapes both the methodological and theoretical choices made. When adopting a socio-legal approach, there is an underlying prerequisite of dealing not only with law, but with the context of the law. Therefore, the present paper adopts, in addition to the theoretical perspectives born by the socio-legal

approach, a theoretical perspective of polarity. Further, recognizing that law cannot exist in a vacuum – a fundamental principle of socio-legal research, the political economy of China will be considered. This in order to ultimately assess the following: **What does the changing relationship between China and secondary sanctions imply with respect to polarity and a changing world order?**

1.1 Polarity and sanctions in the international community

Sanctions are hardly a new concept in international relations, but the twentieth century is especially rich in sanction episodes (Delevic, 1998). A sanction at its very basic definition is an act of forcing a country, entity or person to obey or comply with laws, typically by restricting trade, not allowed economic aid or other economic consequence (*Sanction,* n.d.). There is a distinction between primary and secondary sanctions, with primary sanctions being the aforementioned. Secondary sanctions are intended to prevent third parties from trading with countries, entities or individuals subject to sanctions issues by another country. As such, they have extraterritorial effect. Secondary sanctions are considered the most significant for this contribution.

Sanctions – both primary and secondary - are most often decided politically, enacted through law and economics in nature, however, as will be clear from the present contribution, this is not always the case. The trend of increasing implementation of secondary sanctions is likely a result of the (shifting) polarity in the international community. Over the past three decades, rapid transformation in the world has occurred. From a bipolar configuration between 1945 and 1989 to a unipolar configuration between 1989 up until recently where we are arguably moving towards a complex multipolarity with the BRIC countries – Brazil, Russia, India & China - and the European Union (EU) potentially threatening the US' unipolarity (Borrell, 2021).

Under international law, all states are recognized as sovereign; therefore, the principle, *par in parem non habet* imperium ("equals have no sovereignty over each other"), has been applied (He, 2020). Historically, states imposed their own rules and wishes through the use of force. However, land acquisition, which has previously been the most important purpose for using force at an inter-state level, has become far less important with the rise of the mercantile economy and the focus of developed states has shifted towards controlling the market in non-industrialized states. Power displays have moved away from the use of force and towards economic and diplomatic mechanisms towards asserting dominance – such as the application of secondary sanctions (Marossi & Basset, 2015).

Secondary sanctions are widely criticized as violating the principle of state sovereignty and the rule of law. Thus, they could be considered as a challenge to the existing legal order anchored in the United Nations (UN) Charter, according to which sanctions are to be imposed by the UN Security Council (UNSC) and only following consensus that there is a threat to, or a breach of, international peace and security (Marossi & Basset, 2015). Secondary sanctions are never authorized by the UN and are non-compliant with the meaning of article 2(4) of the UN Charter. No international or universally accepted body of law or other authority governing their legality exists. Due to the controversy surround secondary sanctions, they are heavily debated in the international legal sphere, academic community and beyond (Ilieva, Dashtevski & Kokotovic, 2018).

1.2 Secondary sanctions

Sanctions are a political tool used to force a, or multiple, targets to fall in line with the targeting state's political preferences or norms. As mentioned previously, typically, they are economic in nature and often they are formalized in legislation, although this is not necessarily the case. Due to their usual economic nature, sanctions are sometimes referred to as economic sanctions. The economic coercion of the typically applied sanctions often take the form of embargos, boycotts, travel restriction or various financial restrictions (Masters, 2019). The political preferences and norms of the targeting state can pertain to various issues, such as, but not limited to, human rights compliance, disarmament, terrorist activities and trade conflicts. Sanctions can be applied against both states and non-state actors, for example entire terrorist groups. They can take varying forms, including trade, finance, investment and asset restrictions (*Counter Terrorism Sanctions*, n.d.; Ruys & Ryngaert, 2020). When sanctions are political or diplomatic in nature they are typically manifested as, for example, recall of diplomatic representatives or interruption of diplomatic relations. When they are cultural, it may be expressed via restrictions to participation in cultural events and sport competitions. Sanctions, as described here, are considered primary sanctions and these are by far most frequently applied. However, the US specifically, has been notoriously known to apply secondary sanctions as well (Ilieva, Dashtevski & Kokotovic, 2018).

In contrast to the above defined primary sanctions, secondary sanctions work by imposing penalties on persons and organizations not subject to the sanctioning country's legal jurisdiction and they are applied against entities engaged in the same dealing as are prohibited under primary sanctions (*What are Secondary Sanctions?,* n.d.). In order to illustrate how secondary sanctions work, and how they differ from primary sanctions, please consult figure 1.

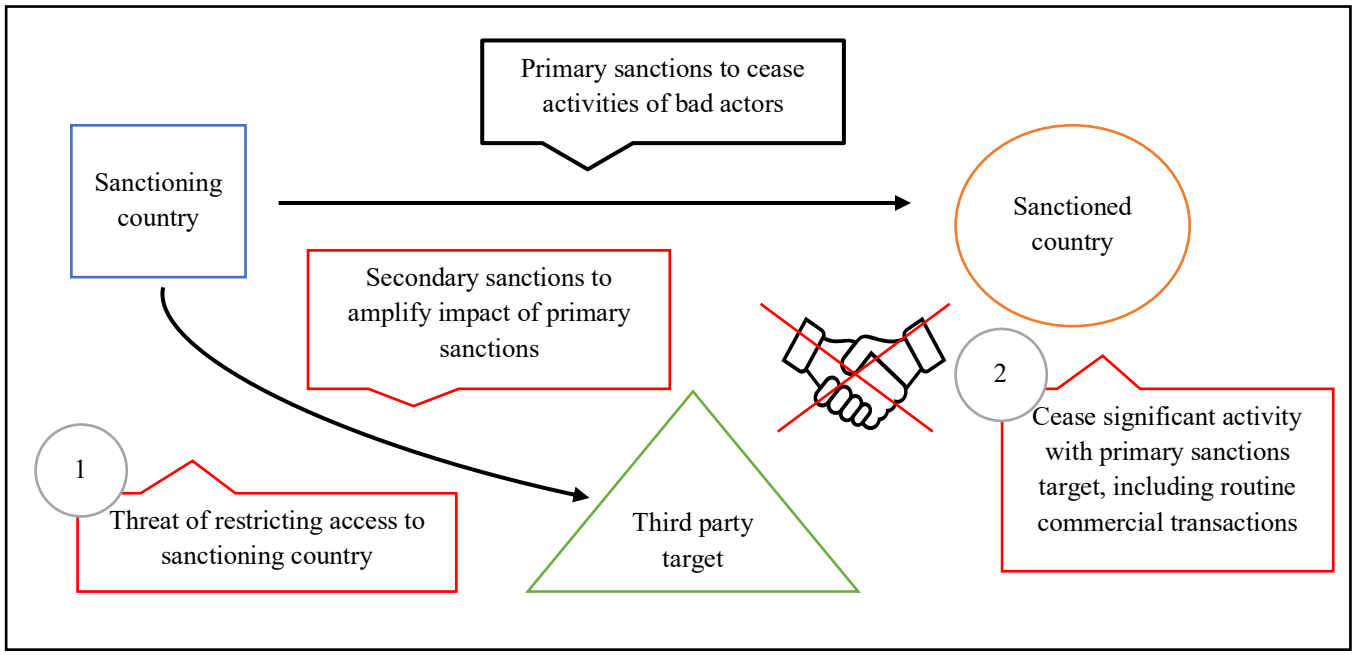

Figure 1: Secondary sanctions

Secondary sanctions are a viable tool for policymakers when unilateral sanctions prove ineffective and multilateral sanctions unachievable. Perhaps it is this attraction that lies root at the rationale behind the US contradictory approach towards secondary sanctions. On one hand, the US has long condemned secondary boycott laws, such as the Arab League's secondary boycott of Israel, which would require as a condition of sale of oil to US companies that they agreed not to do business with Israel. On the other hand, the US itself frequently enacts secondary sanctions measures, such as the Helms-Burton Act and the Iran Sanctions Act, which aims to deter foreigners from doing business with Cuba and Iran, respectively. The US has also been implementing secondary sanctions measures to prompt human rights improvements in, for example, Sudan and Myanmar, in an attempt to make effective change where existing sanctions have failed to do so (Meyer, 2009).

If secondary sanctions implemented are considered unreasonable, governments may decide to implement countermeasures, most frequently referred to as blocking laws or measures. Not all countermeasures are institutionalized or formalized in a law. There may be diplomatic efforts made for dialogue with the sanctioning party, but on the other end of the spectrum, and which was clear from the Wanzhou example, retaliation may also be introduced. Such as by punishing nationals of the sanctioning state or even implementing countersanctions. Institutionalized and formalized efforts often take the form of blocking statutes. Such are adopted by a country in order to obstruct the extraterritorial application of foreign legislation, often in the form of economic sanctions (Kamminga, 2012). A prominent example is the EU's adoption of Council Regulation No 2271/96 (hereinafter "EU Blocking

Statute") from 1996 protesting the US' secondary sanctions legislations pertaining to Cuba, Iran and Libya (EU Blocking Statute, 1996) and amended in 2018 in response to the US sanctions on Iran. Another, and more recent example, is the introduction of Chinese blocking efforts in 2021 as a response to growing economic tension between China and the US. More light will be shed on the Chinese countermeasures in section 5.2.

Much academic literature has dealt with and deals with secondary sanctions, the effect (or lack) thereof, extraterritoriality and the US' controversial application of both, particularly. Little academic light has so far been shed on China's implementation of secondary sanctions. Further, as the countermeasure legislation implemented by China against the US secondary sanctions regime was only adopted last year, it has also received limited academic attention, albeit more than the former aspect. Finally, the link between the new trend of China engaging actively with and implementing their own secondary sanctions, and the link of this to a shifting world order, namely multipolarity, has not yet been dealt with. Therefore, this contribution intends to put focus on those aspects and connect China's use of secondary sanctions with the emergence of multipolarity. In order to do so, the methodological and theoretical considerations had in constructing this contribution, are shared in section 2.

2. METHODOLOGICAL AND THEORETICAL CONSIDERATIONS

The present contribution's research design takes the form of a case study of the changing relationship between China and secondary sanctions and what such implies about the world order moving from unipolar to multipolar. This will be done primarily via socio-legal research, which will also function as a theoretical perspective in addition to polarity. Further, socio-legal research has certain implication about the context in which law is adopted, implemented and enforced, which will be dealt with via the perspective of political economy.

A case study is the comprehensive and intensive analysis of a case. Stake (1995) defines a case study as being concerned with the particularities and complexities of the chosen case. the research design of the present contribution is aligned with Yin's definitions of a case study:

> A case study is an empirical inquiry that: investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon are not clearly evident; and in which multiple sources of evidence are used (Yin, 1989, p. 23).

The case study holds a central place in social science research. By definition, the prime referent in a case study is the case, not the methods by which the case operates (Yin, 1989).

The following section will expand about the practicalities briefly mentioned above, by providing the reader with a structural overview of the paper. This in order to guide the reader through the organization of the paper in order to create a common frame of reference when moving through the different sections.

2.1 Structure of paper

The following figure shows the structure of this contribution. The funnel leads to, and is connected with, choices pertaining to methodology, theory and concepts. Only when such foundation has been laid, the analysis will commence. The analysis consists of four parts, which takes the reader through the developing relationship between China and secondary sanctions, which is undeniably interconnected with the US as a unipolar power and it being the instigator in applying secondary sanctions. Upon completing the analysis, certain discussions will be had before moving to final concluding remarks, which will summarize the findings of the paper and provide ultimate conclusions on the posed problem formulation.

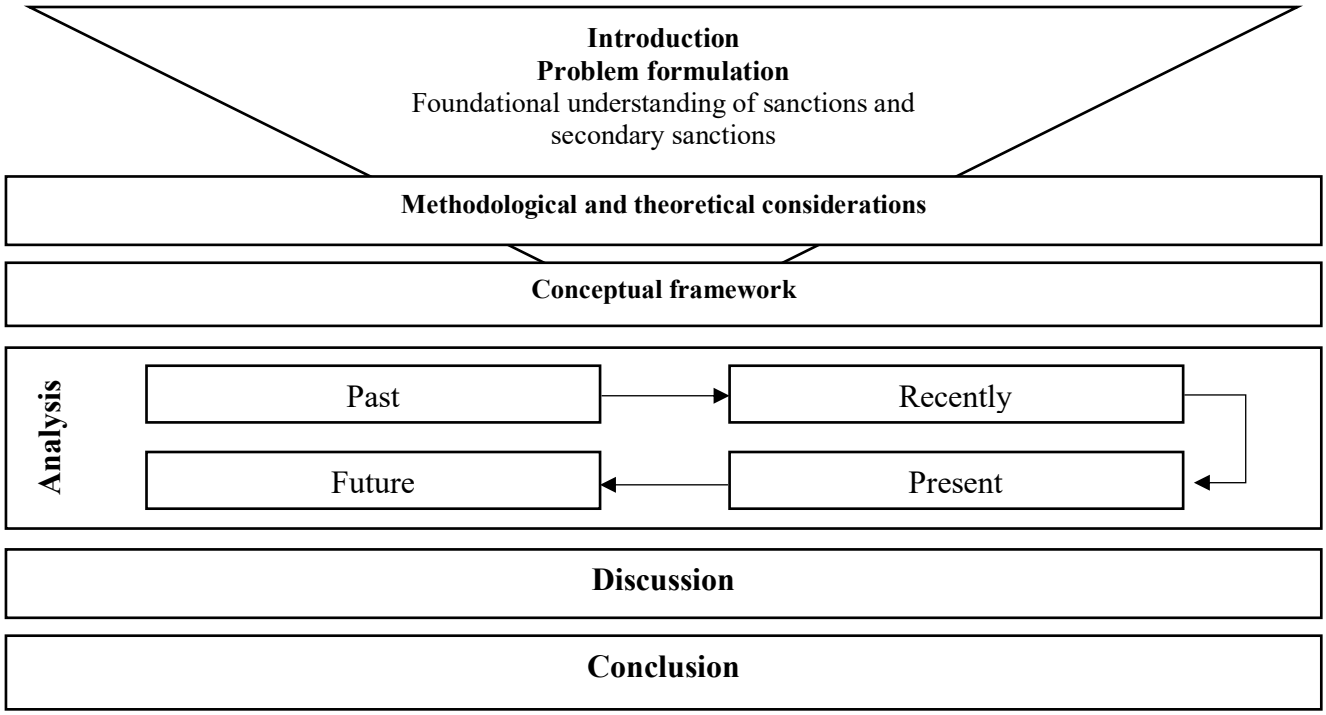

Figure 2: Project structure

First and foremost, socio-legal research functions as the primary methodological framework of the present paper, in addition to shaping the analysis and forming part of the theoretical context, as well. Thus, the following sections will outline such approach.

2.2 Socio-legal research

Socio-legal research is an interdisciplinary field in which law is explored as a social phenomenon. Research in this field is aimed at understanding the relationship between legal notions, practices and institutions and the cultural, economic, historical, social and political context. As such, exploring secondary sanctions, which in its traditional form is in the form of legislation, as witnessed by US' application, in the political and economic context of multipolarity, especially through the lens of China's changing approach to secondary sanctions, this field of research encompasses it. Socio-legal studies have heavily influenced legal scholarship and challenged assumptions pertaining to the nature of law, legal thought, the relationship between law and ethics, as well as those between government and governance, law and community, as well as has helped shape and provide meaning to legal culture and consciousness. A positivistic 'black-letter' approach to law in no longer the primary paradigm of legal studies, as it is being challenged by critique emphasizing the vital importance of understanding the context of law and the world in which it operates. As such, socio-legal studies have fused way of academic collaboration across disciplines in fields such as sociology, psychology, geography, politics, economic and international relations (Creutzfeldt, Mason & McConnachie, 2019).

2.2.1 Doctrinal research as the starting point

There has been a shift in the legal academic community and modern academics, most notably Cotterrell, argue that true legal scholarship must include a sociological understanding of the law (Cotterrell, 1998). Such would include a study of the law in practice from a perspective outside the legal system, for example by utilizing scientific or social science methodologies (Lucy, 2009). Nonetheless, there is still consensus that the immediate first step when dealing with legal material is to understand the contents thereof, this before concerning oneself with its derivation or effects on society (Watkins & Burton, 2018). This means that before embarking on socio-legal research, doctrinal research is a feasible means to commence.

Doctrinal research is the research process used to identify, analyze and synthesize the contents of law. The term 'doctrinal' derives from the Latin 'doctrina', which means instruction, knowledge or learning (Hutchinson & Duncan, 2012). Another interpretation of the concept suggests it may emanate from the 'doctrine' of precedent in that:

> Legal rules take on the quality of being doctrinal because they are not just casual or convenient norms, but because they are meant to be rules which apply consistently, and which evolve organically and slowly (Hutchinson & Duncan, 2012, p- 85).

Doctrine has been defined as: "a synthesis of rules, principles, norms, interpretive guidelines and values", which: "explains, makes coherent or justifies a segment of the law as part of a larger system of law" (Mann, 2010, p. 197). When conducting doctrinal research one essentially critically examines the crucial elements of legislation and case law, whereafter all such elements are merged or synthesized in order to be able to establish a complete statement of the law pertaining to the matter being dealt with (Watkins & Burton, 2018).

This type of research has a number of similarities with social science research but there is one important exception. The collected data is not quantifiable, rather, it is legislation and case law – namely primary materials of law – as well as secondary commentary. The doctrinal method typically involves a two-step process which include 1) locating the relevant sources of law and then 2) interpreting and analyzing such. The first step involves locating the appropriate sections of the legal codes – potentially including both current and historical legislation – along with administrative regulations and judicial interpretation of such regulations and statutes. Upon locating the relevant sources, the data gathered must be read and analyzed in order to establish meaning and patterns so as to be able to condense the writing to its core. The second step involves the utilization of reasoning, problem-solving skills, deductive logic, inductive reasoning and analogy (Baghoomians, 2009).

Doctrinal research has been characterized by a variety of criticism as well. As with any research endeavor, the individual doctrinal researcher's theoretical stance can be a pervasive influence when determining the researched topic. Another criticism is the matter of considering law in a vacuum. Westerman views 'legal doctrine' as research drawing on the legal system: "as the main supplier of concepts, categories and criteria" (2011, p. 94). Thus, the legal doctrinal researcher tries to: "give sense and to order new cases or developments" (Westerman, 2011, p. 94) rather than to understand the legal system as a whole (Westerman, 2011, p. 91). When viewing doctrinal research in that light, it distinguishes itself from research studying law: "from an independent theoretical framework, which consists of concepts, categories and criteria that are not primarily borrowed from the legal system itself" (Westerman, 2011, p. 91) and which include "historical studies, socio-legal research, philosophy, political theory and economy" (Westerman, 2011, p. 94).

Doctrinal methodology is an approach to research aligned with legal practice and it is therefore well suited to find solutions and map out legal problems. In social and political science, it is often applied when assessing legislation and/or case law, before moving into deeper layers of analysis and on to other methods of research; most frequently socio-legal (Watkins & Burton, 2018).

2.2.2 Moving to a socio-legal approach

Law and society have been dealt with in the academic community for decades. In 1969, Nader advocated for 'law in society' rather than 'law and society'. Socio-legal scholars understand law as being encompassed by social, cultural, economic, linguistic and ideological aspects. Essentially, socio-legal research is the examination of: "law, legal phenomena and/or phenomena affected by law and the legal system occur in the world, interact with each other and impact upon those who are touched by them." (Creutzfeldt, Mason & McConnachie, 2019, p. 49). The inclusion of 'socio' implies the societal context, or the impact of law in practice, rather than law in theory and in books or on paper. The 'legal' aspect of socio-legal research is defined as wider than the mere text of the law. A common denominator for socio-legal research is seeking to understand phenomenon in a specific environment.

In the Economic and Social Research Council's 1994 review of socio-legal studies, socio-legal research is described as being an umbrella term for a wide-ranging and varied area of research activity (ESRC, 1994). No specific definition is attempted, rather it is referred to as: "an approach to the study of law and legal processes", which: "... covers the theoretical and empirical analysis of law as a social phenomenon" (ESRC, 1994, p. 1). In short, for research questions pertaining to issues where conclusions must be drawn beyond from what the law is, socio-legal research may likely be an effective means to such end.

As the present contribution deals with not only secondary sanctions, which are often a product of law, but rather, the multipolarity of the international community, and secondary sanctions as a phenomenon within such, studying it with socio-legal lenses is viable. The socio-legal approach has been applied throughout the analysis contained in sections 4 to 7, but also in the discussions in section 8. It is building upon the doctrinal approach, which it utilized where legislation or case law has been analyzed before putting it into the larger socio-legal context.

2.3 Polarity

This section outlines theoretical considerations had in the context of the present contribution. This pertains primarily to polarity, which also include reflections relating to the transition of power from a unipolar to a multipolar world order.

The international community is a complex system made up of cultural, social, scientific, technological, military, economic and political systems. Its dynamic structures are difficult to categorize and evaluate, especially whilst changes are happening ongoingly. It is even more difficult to predict future outcomes (Arif, 2020). The power potential distribution in the international community defines the number of great powers and thereby the polarity of the international community. Keersmaeker stated: "Polarity is about the number of great powers or polar powers" (2017, p. 232). Scholars of international relations were inspired by the natural sciences approach to polarity, which is clear by the application of the words "uni-", "bi-" and "multi-" (Keersmaeker, 2017, p. 13). Therefore, there are three types of polarity. If there is a single great power, as arguably the US has been in the post-Cold War era and until recently, it is unipolar. If there are two great powers, it is bipolar. If there are more than two, as the present contribution argues the world is heading towards, the world order is multipolar (Arif, 2020).

Scholars have quite differing arguments about stability when it comes to the concept of polarity. Wohlforth argued that unipolarity is the most stable condition (Wohlforth, 1999), whilst Waltz argued that a bipolar system is more stable than multipolarity. He emphasized that stability is: "the avoidance of great power war or wars between poles" (1979 cited in Keersmaeker, 2017) and he believed that if a war occurs between two countries – the polar powers - only, the level of war is less extensive under bipolarity, as it means there is a balance of power between the two polar powers (Keersmaeker, 2017).

2.3.1 Unipolarity

A unipolar world order is defined by one great power dominating the international community. Wohlforth stated that such great power will have an extensive material capability too great to be counterbalanced, in fields such as military and economy, which means there is no power great enough to adequately challenge (1999, p. 19). The primary example is the US after the Cold War. Wohlforth stated regarding the advantage of a unipolar world order:

> The unipolar system tends to create a peaceful international system and through hegemony theory and balance of power theory because powerful states foster international orders that are stable until differential growth in power produces a dissatisfied state with the capability to challenge the dominant state for leadership (1999, p. 20).

This means a unipolar world order is likely to create an international community that is stable and peaceful, however, the unipolarity is temporary and other great powers will emerge and attempt to surpass the unipolar power.

Whilst the relative power of the unipole allows for it to rule on its own, it will often make use of international institutions in its pursuit of remaining in power. Institutions may be very useful when it comes to coalition building, as well as facilitate the interests and values of the unipolar through patterns of behavior. Further, making use of institutions can somewhat conceal, or soften, the exercise of power by the unipole, making behavior and decision making appear more as collective ones. Not only the unipole has an incentive to utilize institutions, so do the weaker states. Weaker states may utilize institutions in an effort to constraint the unipole, to persuade it to engage in a rule-based international order, as well as they may use participation in international institutions as an appeal playing on the unipole's desire for a positive reputation in the international community. An example is the dispute regarding US participation in the International Criminal Court, where weaker states attempt to hold the unipolar power responsible and engage it in an international rule-based order, where the US rather strives to remain a so-called free agent. Another manner in which weaker states utilize institutions in a unipolar setting, is by engaging in institutions excluding the unipole. This in order to build capacity towards interference from the unipole (for example, the European common currency), create a separate and common identity (such as the EU and the Easy Asian Economic Caucus), as well as ensure the ability to act independently without the involvement of the unipole (such as the Shanghai Cooperation Organization or the European Rapid Reaction Force). The risk of the weaker states successfully engaging in such institutions is that they may become too big of a challenge to the unipolar and create disruption in the world order (Ikenberry, Mastanduno & Wohlforth, 2009, pp. 20-21).

2.3.2 Bipolarity

A bipolar world order is when poles are divided into two power poles or two superpowers more powerful than others in the international community. According to Wagner, bipolarity is when most states are organized into two hostile coalitions, or there are two nuclear superpowers. The two superpowers have approximately the same level of power and there is therefore a balance of power between the two (Wardhani, 2021). During the Cold War, the world order was bipolar with the US and the USSR being the two polar powers. In this era there was an emergence of nuclear power, which has therefore become a new indicator of great power (Wardhani, 2021; Wagner, 1993).

2.3.3 Multipolarity

Multipolarity is when there are more than two power poles in the international community. The term began to appear in the 1960s and 70s in The New York Times introduced by Nixon and Kissinger and related to their foreign policy. They stated: "the world remained militarily bipolar for the time being but was quickly moving to multipolarity in economic and other fields" (Keersmaeker, 2017, p. 14). Multipolarity essentially is a system with several rivalling states with approximately the same resources.

An association one might make when considering multipolarity is multilateralism. Multilateralism, similar to multipolarity to bipolarity and unipolarity, is typically defined in opposition to bilateralism and unilateralism. However, this is largely where the similarity between the concept stops. Typically, the two are seen are mutually exclusive due to multilateralism's implications of international cooperation with minimum three states via international intuitions – the UN being a prime example thereof – which is difficult to merge with a multipolar world order with rivalling major powers. This is considered relevant for the present contribution due to the nature of international institutions in a multipolar world. An in an increasingly complex globalized world, some scholars are suggesting that a hybrid form of multipolarity and multilateralism may occur, which will lead to international institutions having a significant role – also in a multipolar world order (Shulze, 2019).

2.3.4 Transition of balance of power from unipolar to multipolar world order

Following the end of the Cold War, especially after the collapse of the Soviet Union's economy, there has been some debate as to the polarity of the international community, namely whether it was unipolar or multipolar. Many US scholars would argue that the world order was unipolar with the US as the main power until now. Krauthammer argued that the international system after the Cold War was unipolar, with the US as the unchallenged superpower with its Western allies. Although previous superpowers, such as Germany, Japan, Britain, France and Russia have kept several power capabilities, such as military, economy and political, albeit all in decline (1990/1991, p. 24). Others argued that the system was multipolar with the US, Russia and China as polar powers. The present contribution considers the world order as having been largely unipolar since the end of the Cold War, however, it also considers that this is slowly changing towards a multipolar world order.

In 2009, Finnemore published a study arguing that unipolarity has not provided the US with free rein to do what it wants, and rather, that unipolarity has also proven challenging to the US. The reasons

being that unipolarity does not only mean material superiority, but also implies a social structure where the unipole maintains its unipolar status via legitimation and institutionalization. In order to obtain legitimacy from the other international actors, the unipole must give those actors some degree of power. Further, the unipole obtains legitimacy and lessens the risks of challenges to its power via the creation of institutions, however, such institutions also mean diffusing power away from the unipole (Finnemore, 2009).

Likely the future multipolar world will be characterized by multiple nations with varying degrees of power and capabilities. An obvious comprehensive emerging power is China with its complete portfolio of great power capabilities and which in recent years has become the US' biggest competitor, albeit perhaps is yet to come an entirely equal peer competitor (Schweller & Pu, 2011). The emergence of China as a rising power makes for an interesting dynamic in the international community. China has experienced a rise in economic development and military and is now the second-biggest military spender (Keersmaeker, 2017, p. 113). According to Xuetong, a Chinese realist: “economically the world is already bipolar, and China is the only country that can challenge the American strategic predominance if it allies with Russia.” (cited in Schweller & Pu, 2011, p. 53).

China emergence in the international community has also given rise to questions of bipolarity with some scholars suggesting that we are in a state of bipolarity with the US and China as the bipolar powers (Keersmaeker, 2017). Other scholars have argued that the world order remains unipolar: predicting that in 2025, the US would retain its prominent role, although it would no longer be the only global player (Keersmaeker, 2017). And finally, aligned with the stance of the present contribution, many scholars argue that the world order is moving towards multipolarity. For example, in 2008, the National Intelligence Council (NIC) published a report called Global Trends 2025, where it predicted that the world would be multipolar by 2025. NIC also predicted, in the 2012 version of the report, that China would have the largest economy in the world by 2030 (Keersmaeker, 2017; NIC Global Trends 2025, 2008). Also, in 2011, Posen argued that unipolarity was in decline and the world was moving towards multipolarity. Aligned with such view, in 2019, Mearsheimer stated that the international system was shifting from uni- to multipolarity (2019). As is evident, polarity in the international community is a much-debated topic and making firm conclusions, apart from recognizing the three types of polarity, in the field is challenging (Wardhani, 2021).

Moving from theoretical concerns laying the foundation of the present contribution, to another foundational understanding; namely, the analytical approach. The following section delves into such, keeping in mind the methodological and theoretical considerations outlined above.

2.4 Analytical approach

In order to consider the changing world order towards multipolarity through the lens of secondary sanctions via comparing the US and China, it is necessary to, firstly, familiarize oneself with central concepts utilized. These concepts are considered in the following chapter. Thereafter, the analysis will commence, which will largely follow a chronological account of China's changing relationship with secondary sanctions, which inevitably includes quite significant analysis of the US' sanctions regime, as well as more general analysis of the shift from unipolarity to multipolarity.

The analysis will lay on the foundation of socio-legal research, which will shape it throughout. This via an empirical review of secondary data in the form of various documents, articles and books, as described in the following section. Further, and rather as a starting point, doctrinal analysis will be conducted based on the legal regimes pertaining to secondary sanctions and countermeasures. The analysis will then remain in the socio-legal research field but move back to political economy and contextualize the analyzed legal framework by assessing political economy's effect on secondary sanctions. Once the analysis has been provided, a discussion of key findings and perspectives gained via the analysis will be had. Only then, discussions can be had, and conclusion may be drawn.

2.5 Data collection

For the present contribution, a desk review of a variety of primary and secondary sources constituting qualitative data was conducted. The primary sources primarily consist of legislation by the US and China, as well as case law pertaining to those jurisdictions. Secondary legislation includes executive orders, case commentary, newspaper articles, academic articles and similar. The choices of data are aligned with firstly a doctrinal approach, linking to the primary data chosen. As well as the socio-legal approach applied throughout this paper – where both the primary data and secondary data analyzed is vital to fulfil the threshold of analysis needed for this approach. The table below categorizes the data and specifies where the data was collected from, as well as where it is applied in the paper.

Source of data	Data	Purpose
Official websites of the US government and OFAC, official website of China and the EU	National legislation and statutes	Assessed via a doctrinal research approach in order to interpret and analyze the legislation before moving into deeper layers of analysis through the socio-legal approach.
Lexis Library, Westlaw and EUR-lex	Case law	Assessed via a doctrinal research approach in order to interpret and analyze applicable jurisprudence before moving into deeper layers of analysis through the socio-legal approach.
Aalborg University AUB library portal and Google Scholar portal	Academic articles, newspaper articles, books and book chapters	Provide historical perspective of polarity in the international community, as well as inform conceptual definitions of foundational terms of this contribution, including, but not limited to, sanctions, secondary sanctions, rule by law, polarity. Contextualize political economies of China and partially the US, as well as the geopolitical matters dealt with throughout, and the shifting polarity of the international community. This variety of information is necessary for the socio-legal approach applied throughout this contribution, in order to contextualize the legalities in its surrounding world.

Figure 3: Data collected

As is evident from the above, the present contribution is largely based on legal sources, namely legislation, case law and commentary thereto. Such data is gathered as a starting point in order to assess the legislative framework of the respective jurisdictions, as well as case law pertaining to each. However, this contribution also heavily draws on relevance academic literature to inform its analysis, in addition to establishing a mapping of the academic milieu in the area, the conceptual framework and theoretical considerations applied. One advantage of utilizing the latter, is the fact that the present contribution deals with a larger number of concepts and fields of research, whereby it is necessary to rely on expert insights and perspectives. It further helps in making the primary data more specific, framing it in the context of the problem formulation and may fill gaps in and between the primary data. Other advantages include practicalities, such as it being an economical and less time-consuming data collection. The reliability of data is examined in section 2.5.1.

2.5.1 Reliability of data

Since primary data is retrieved primarily form governments of the US and China, the reliability of the data can be questioned, as a government fundamentally has an interest in projected a positive image of the country it governs. Therefore, the information provided by the respective governments is held against and considered in light of, academic articles, newspaper articles and books. The primary sources considered could not be excluded from this contribution as they are necessary in order to address the problem formulation. The bias of government documents and the risk of inaccurate information could be an interesting topic to address in its own right, but for the purposes of this case, and the legislation and case law considered, has not provided any profound concern about reliability

of the data used. Although, one minor note is the fact that one of the pieces of Chinese legislation relied on for the purpose of the doctrinal analysis, namely the Anti-Foreign Sanctions Law, could not be obtained translated from an official Chinese authority. Rather, an unofficial but reliable translation was obtained and utilized. Academic articles reviewed for the purposes of this paper are largely peer reviewed. Where newspaper articles are used, there has been an attempt to review articles from both China, the US and/or other Western newspaper media.

Having established methodological and theoretical considerations of this contribution, the following section will address the conceptual framework. Both these sections are fundamental in establishing the foundation for a common framework of understanding needed to tackle the problem formulation.

3. CONCEPTUAL FRAMEWORK

The present section offers a conceptual framework where key concepts utilized in the present contribution are explored. This framework is based on the review of academic articles, book chapters, studies and reports gathered for the purpose of providing the reader with a deeper understanding of the concepts. Ultimately, this with the aim of shedding light on the present academic environment in this field of study. Further, the review will, along with the previous sections, provide a foundation on which the analysis can be conducted, and finally, the problem formulation can be handled. The key concepts identified are sovereignty, extraterritorial jurisdiction, norms and rule of law versus rule by law.

3.1 Sovereignty

The most concise description of sovereignty is: “a power that has no higher power above it” (Dowding, 2011, p. 2). State sovereignty embodies the notion of supreme decision-making and enforcement authority over a given territory and populace. It is neither about the means by which power is exercised, nor the goals to which it aspires. Rather, it is about the position of political power in relation to other forms of social power, such as economic power, patriarchal power and others. What is commanded by the sovereign is law. However, the sovereign is by its very autonomy inherently entitled to break the laws it creates, and is the only party entitled to do so. Such claim to absolute power in political decision-making is a heavily debated aspect of sovereignty. Claiming absolute power seems somewhat outdated and totalitarian in the present time of human rights and globalization (Dowding, 2011).

While providing a precise definition of sovereignty as understood in public international law is challenging (Craven, 2007), there is consensus that sovereignty includes the right of the state to claim

respect for its territorial integration and political independence (UN Charter, art. 2). In 1949, the International Court of Justice emphasized the significance of sovereignty: "between independent states, respect for territorial sovereignty is an essential foundation of international relations." (Corfu Channel, 1949, p. 35). The right of a state to exclude other states from its territory is part of the territorial sovereignty of states (Lotus, 1927). Territorial sovereignty means that exercising governance on another state's territory without that state's authorization is prohibited (France v. Turkey, 1927; Morgenthau, 1948). In the *Island of Palmas Case*, which was a dispute between the US and the Netherlands pertaining to sovereignty over an island, the arbitrator of the Permanent Court of Arbitration rationalized that: "sovereignty signifies independence. 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" (Island of Palmas, 1982, p. 829; Terry, 2020).

The following deals with the conceptual overlays of sovereignty and jurisdiction, whilst section 4.3 deals with extraterritorial jurisdiction. The two concepts are related but quite distinct concepts. Where sovereignty in short refers to the possession of ultimate legal authority within a defined territory, jurisdiction, on the other hand, refers to the authority to exercise legal power. Where sovereignty is a normative concept and a product of moral philosophy and legal theory utilized when making claims about how political and legal systems ought to be organized, whilst jurisdiction is an empirical concept describing how such systems are actually organized in practice (Clark, 2007).

There are two aspects of sovereignty – de jure sovereignty is the normative claim to the right to govern a state whereas de facto sovereignty rather involves having the effective power to act as the sovereign in practice. Under international law, sovereignty and jurisdiction are comparable insofar as a sovereign has jurisdiction within its territory excluding all other powers. All territorial states have one single sovereign. However, within each state, the sovereign delegates authority to make law and judge cases to various other authorities. In some cases, courts have jurisdiction if, and only if, it has the following three dimensions: firstly, authority over the particular person or class of persons involved (known as jurisdiction in personal); secondly, authority over the subject matter (jurisdiction in rem); and thirdly, the power to judge the particular type of remedy or judgment sought (Clark, 2007).

3.2 Extraterritorial jurisdiction

Jurisdiction is defined as the: "authority of a sovereign power to govern or legislate" (Merriam-Webster, n.d., para. 2), as well as refers to the: "power, right or authority to interpret and apply the law" (Merriam-Webster, n.d., para. 1). Finally, it refers to the: "limits or territory within which

authority may be exercised" (Merriam-Webster, n.d., para. 3). Extraterritoriality, however, or the exercise of extraterritorial jurisdictions, refer to a state's competence to enact, apply and enforce rules of conduct pertaining to persons, property or events beyond its own territory. This proficiency can be exercised through prescription, adjudication or enforcement. The former - prescriptive jurisdiction - is the authority to lay down legal norms. Adjudicative jurisdiction is the authority to decide competing claims. Enforcement jurisdiction is the authority to ensure compliance with a state's laws (Kamminga, 2012). Secondary sanctions can be an exemplification of extraterritorially applying jurisdiction. Essentially, secondary sanctions are a means to strengthen primary sanctions. There is a general misconception that secondary sanctions lack legitimacy solely due to their effect in altering conduct occurring extraterritorially (Meyer, 2009), as it is often assumed the subjects of secondary sanctions are exclusively foreign entities. This is incorrect, as secondary sanctions can be imposed on the sanctioning state as well.

In academic literature, the concept of extraterritorial jurisdiction is very often linked to the terms extraterritorial sanctions and secondary sanctions. In order to find an adequate definition of secondary sanctions, it is vital to address the controversial character of such, which is rooted in extraterritoriality. Expanding on the above, however, it must also be kept in mind that secondary sanctions are not necessarily controversial per se. Specifically, when the jurisdictional claim is based on the territorial or personality principle, which are considered to be the soundest jurisdictional claims, the secondary sanctions are less likely to be contested. It is because the jurisdictional claim is missing that secondary sanctions are controversial (Hoeffelman, 2021).

The following concept to be examined for the purposes of the contribution is not as closely linked as sovereignty and jurisdiction, nonetheless, it ties very much into both, and especially into the overall notion of international law and the dynamics and polarity of the world order. It is, the concept of norms as understood under international law, particularly.

3.3 Norms

Norms are the social rules governing behavior in a community. As such, norms may be explicit, such as laws, or implicit, such as polite behavior. Norms are culturally contingent and to study them, the actions or behavior must be contextualized and considered in light of all the surrounding circumstances. With international norms, this becomes far more challenging, which is why few internationally universally accepted norms exist. Sovereign states are the primary subjects of binding international law norms. Paradoxically, one of the main challenges to the legitimacy of international

law is that it arguably fails to respect the sovereignty of states by interfering with decision-making that ought to be left to the states themselves. Similar to individual autonomy, state sovereignty is often understood in international law as a competence or power to make autonomous choices. Just like legitimate authority of domestic law is frequently opposed to individuals' autonomy, the legitimate authority of international law is considered as contradicting state sovereignty (Lumen, 2018).

Sanctions are often understood as referencing any measure "taken against a State to compel it to obey international law or to punish it for a breach of international law" (Law & Martin, 2014, 'sanction'). Such purpose-oriented understanding of sanctions is borrowed from a corresponding measure within the national sphere, where sanctions generally: "represent a range of actions that can be taken against a person who has transgressed a legal norm." (Farrall, 2007, p. 6). As such, sanctions are genuinely accepted as a tool for disciplining targeted subjects, such as individuals, states and other entities, to comply with international legal norms. International law leaves a vacuum for unilateral measures applied by states and subject to controversy when it comes to their legality, particularly when imposed extraterritorially. Such measures risk violating the principle of state sovereignty and the rule of law, as well as other principles of international law, which are international legal norms. Correspondingly, the imposition of such measures could arguably be considered a challenge to the existing legal order enshrined in the UN Charter, which states that sanctions are to be imposed by the UNSC, and only following a threat to, or an actual breach of, international peace and security (Marossi & Bassett, 2015; Ilieva, Dashtevski & Kokotovic, 2018).

3.4 Rule of law versus rule by law

In an ideal world, everyone abides by the laws in a country. And whilst this is true for the vast majority of peoples, there are also many who break the law regularly, sometimes even with malicious intent. How the law is exercised and implemented differs from country to country. One can break such categorization into two main categories: namely, rule of law and rule by law.

Rule of law is an intrinsically abstract concept grounded in philosophical and moral conceptions. A basic notion within the concept is that all peoples are equal under the law – meaning no one is above the law and any law which is broken should be penalized in an equal way regardless of the individuals position in society (Ten, 2017). Not only does rule of law imply certain elements pertaining to how law in exacted in society, but it also entails qualities about characteristics and contents of the laws themselves. Specifically, it entails laws being transparent, clear, general in their form, universally applicable and knowable to all. Furthermore, the law must work as a guidance, and as such no

excessive behavioral demands should be placed on peoples. This also entails that the law should be relatively stable and consist of clear and explicit requirements that peoples can refer to before they choose to act. The law shall be internally consistent and there must be processes to abide by if this is not to the case and legal contradictions arise. Lastly, the law shall not be established or applied retroactively (Ten, 2017).

Despite the quite comprehensive description of what the rule of law entails, there has never been a universally accepted formulation of systematic definition of the concept. This not due to a lack of attempts by various jurists and political philosophers, rather, it is a result of the basic notion that law should contribute beneficially insofar as it should channel and constrain the exercise of public power, can be interpreted in a variety of ways (Choi, 2019).

Rule by law, in contrast to the rule of law, simplistically sees the governing authority as being above the law. It implies an instrumental use of the law by rulers to facilitate social control and impose penalties. The rule of law is often considered as presuming political or economic structures of human rights and liberal democracies. And whilst there largely is consensus about the Western world's legal roots stemming from the basic notions of the rule of law, this is not as clear-cut in China. One of the most utilized legal phrases in China – both by jurists and politicians – is fǎzhì (法治). Fǎzhì is roughly translated to the English rule of law, however, there has been quite the controversy regarding whether China is rather based on the concept of rule by law (Li, 2000; Peerenboom & Xin, 2009).

Some academics have suggested that based upon China's political and economic system and practice, it can be considered as being based on rule by law insofar as the law is used by the Chinese government as an instrument for social control (Li, 2000; Peerenboom & Xin, 2009). An example of this from practice is the fact that Chinese lawyers must swear an oath of loyalty to the Chinese Communist Party (CCP). Lawyers refusing this, may have their licenses revoked (*China strips license*, 2021).

Understanding the differences between these concepts – rule of law and rule by law – is fundamental when attempting to understand the legal systems laying ground for the sanctions regimes analyzed in the present contribution. However, as previously established, these cannot be considered in a vacuum, and political and economic considerations and factors are inevitably a part of the regimes as well. Nonetheless, understanding this fundamental difference in applying law in China and the US, respectively, offers a deeper understanding of why and how secondary sanctions are being implemented differently in China in comparison to in the US.

With main concepts defined and discussed above, a conceptual framework of common understanding is laid. Therefore, the following sections will move on to the analysis parts of the posed problem formulation. Such will start with a look to the past in order to understand the starting point of the application of secondary sanctions. After such, more recent development will be examined, before the present will be observed. Finally, the last part of the analysis consists of a look at the future of secondary sanctions, China and multipolarity.

4. **PAST:** US UNIPOLARITY AND SECONDARY SANCTIONS EMERGENCE

Relying on sanctions rather than alternative means of coercions may lead to fewer international military conflicts being initiated (Gutmann et al., 2017). However, sanctions are increasingly controversial especially being criticized for not being sufficiently efficient in reaching its aims, as well as because of the negative side effects they often have on the civil population when they are in fact targeted at a government, or specific authoritarian individuals.

In the unipolar post-Cold War world, a widespread use of economic sanctions became the policy tool of choice for the US. Today, there is scarcely a foreign policy crisis that arises where the US does not resort to sanctions. When the US withdrew from Kabul last year, 2021, the US government froze more than USD 9 billion in Afghan state assets in an attempt to punish the Taliban. Currently, in an attempt to deter Russian activities in Ukraine, sanctions have been imposed heavily on Russia as well (Mulder, 2022). However, the threat of secondary sanctions as a tool to force compliance abroad may have repercussions. An example was when sanctions were introduced against a number of overseas companies violating the terms of US legislation against Cuba, Iran and Libya. Whilst the threat of secondary sanctions may have had a deterrent effect on the willingness of some entities to conduct business activities in the countries to a certain degree, such deterrence was outweighed by the increased anti-US sentiment that it spurred. Ultimately, this led to a number of challenges in international trade, which became apparent in the World Trade Organization (WTO). And such challenges and anti-US sentiment rather drew attention away from the provocative behavior of the targeted countries (Haass, 1998).

4.1 US sanctions regime

Since the 1980s, the US has been aggressively imposing controversial sanctions as part of their foreign policy. Recently the US imposed sanctioned pertaining to the construction of Nord Stream II – a project concerning the construction of an offshore gas pipeline aimed at providing Western Europe with Russian natural gas. In striving to obstruct the project, the US imposed sanctions on foreign entities that engaged in the construction – namely secondary sanctions. The US asserted prescriptive jurisdictional authority over any foreign entity that was involved in the project in terms of investment, facilitation, construction and more. Ultimately, this meant: "While this may seem like a technical sanction aimed at Russia, the potential targets are actually major European companies." (Hoeffelman, 2021, p. 1). Such extreme example of extraterritorial prescriptive jurisdiction raises questions about legality, as well as whether this example is a stand-alone exceptional case, or rather, part of a trend where what is accepted in international law is progressively changing (Hoeffelman, 2021).

Initially, in 1948, the US rejected the extraterritorial reach of prescriptive jurisdiction when the Arab League imposed secondary sanctions during the establishment of Israel. Now, however, the US has: "…become the leading proponent of measures that have extraterritorial effect." (Rathbone, Jeydel & Lentz, 2013, p. 1070). US practice is the main application of extraterritorial reach of secondary sanctions, and with the changing world order from unipolar to multipolar, one can only conjecture that other world powers will follow suit (Geranmayhed & Rapnouil, 2019).

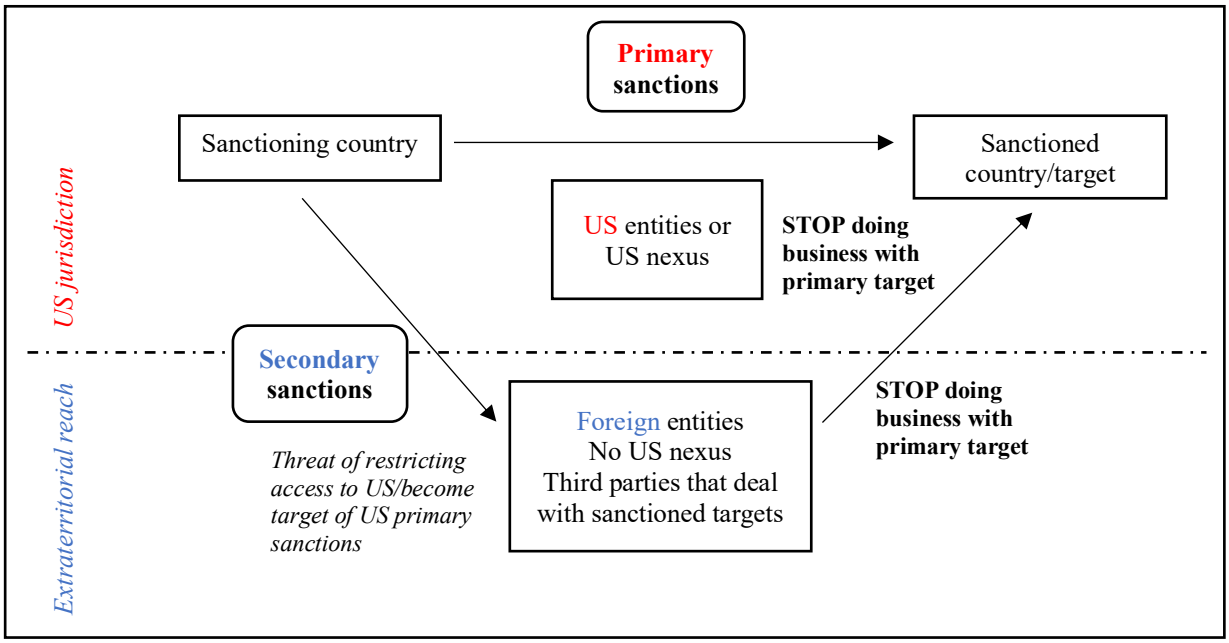

Figure 4: Functioning of US secondary sanctions

The above figure illustrates the relationship between US jurisdiction and the extraterritorial reach of secondary sanctions. As such, it shows how the extraterritorial reach of the secondary sanctions dictate who foreign entities without a US nexus cannot do business with under threat of being restricted from the US financial market, financial repercussions or otherwise.

4.1.1 Illustrative jurisprudence

As established above, the manner in which the US applies secondary sanctions violate other states' sovereignty. The US is effectively overruling other states' sovereign decisions when it comes to permitting transactions or trade their own territory. In order to illustrate the US' extraterritorial application of secondary sanctions, it is helpful to consider case law where this has been dealt with. Therefore, section 4.2.1.1, in addition to the aforementioned example of Nord Stream II, outlines a recent case, which involved non-US citizens indicted by the US authorities based mainly on their conduct abroad (Terry, 2020).

4.1.1.1 Reza Zarrab

One case concern Turkish executive Reza Zarrab whom in 2016 was arrested by the US' authorities while on vacation in Florida (Filkins, 2017). He was arrested for violating US sanctions law, as he has been involved in Turkish efforts to purchase Iranian gas in exchange for Turkish lira paid into a bank account in the Turkish bank (Emmenegger & Döbeli, 2018). The US sanctions made it challenging for the Iranian government to access the money deposited in Turkey (United States v. Zarrab, 2016). Therefore, a scheme was put in place enabling the conversion of the money into gold via the United Arab Emirates (UAE), which allowed the Iranian government access to the Turkish gas payments (United States v. Zarrab, 2016). Reza Zarrab partook in the scheme, which in itself did not violate neither Turkish, UAE or Iranian laws (Emmenegger & Döbeli, 2018). Nonetheless, a US court found the arrest of Reza Zarrab to be justified (United States v. Zarrab, 2016).

Among other things, Reza Zarrab was accused of violating US sanctions law because money had been transferred between foreign actors and such transfers has been cleared in the US, despite the money ultimately benefitting the Iranian government (Terry, 2020). US banks has unwittingly violated US sanctions law as a result (United States v. Zarrab, 2016; Emmenegger & Döbeli, 2018). Furthermore, by partaking in the outlined scheme, Reza Zarrab has circumvented the US prohibition on payments to the Iranian government, as well as the export of precious metals to Iran (United States v. Zarrab, 2016).

4.1.2 Summary

The case outlined above, in addition to the Meng case described in the introduction, illustrate the US' application of secondary sanctions where non-US citizens can be indicted on the basis of alleged offenses committed abroad in a jurisdiction where their actions were legal. In both, the US connection is tenuous at best. Nonetheless, the US claims a right to extraterritorial jurisdiction (Terry, 2020). This partially on the basis of Executive Order (EO) 13608 of May 2012, which banned "certain transactions with" and the "entry" of "foreign sanction evaders with respect to Iran and Syria." (EO 13608). The United States' Department of the Treasury argued that the EO permits 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." (FAQ 192 EO 13608, n.d.). Consequently, "the sanctioned individual or entity" would "be cut off from the U.S. commercial and financial systems." (FAQ 192 EO 13608, n.d.).

As a result, the US assert authority by claiming a right to prohibit certain behavior of residents of third states, which further occurs in the territories of those third states, where the behavior may not merely be legal but at times even encouraged (Nesbit, 2016). As the cases outlined illustrate, the US is progressively exercising extraterritorial jurisdiction by asserting a right to regulate conduct that takes place on third states' territory (Terry, 2020). In the Reza Zarrab case, the fact that US banks functioned as correspondent banks during business transactions occurring abroad was considered adequate to indict a non-US citizen on the basis of a violation of the US sanctions laws (United States v. Zarrab, 2016). In the Meng case, the sale abroad of products with US origin by a foreign company's alleged foreign subsidiary also was deemed sufficient to violate US sanctions law (United States v. Zarrab, 2016).

It seems likely that the US' approach to prescribing jurisdiction extraterritorially violates the sovereignty of third states (Dodge, n.d.). Further, it is questionable that such broad prescription of a state's right to exercise jurisdiction is compatible with public international law (Terry, 2020). Furthermore, and for the purposes of this contribution, what happens when the world order moves from that of unipolarity to multipolarity?

Where US has for many years been the primary applier of secondary sanctions, China, and the rest of the world, has largely accepted this assertion of power by the unipole: the US. This past acceptance from the international community is exemplified by the US approach of secondary sanctions towards Iran. The US, through OFAC, implemented secondary sanctions on Iran and ultimately isolated Iran's

financial sector through the Comprehensive Iran Sanctions Accountability and Divestment Act (CISADA) in 2010 (CISADA, 2010). After the enactment of CISADA, it became apparent to the international financial community that they faced the choice of either conducting business with the US and the USD or conducting business with Iran. Essentially, due to the US and the USD's prominent and dominant roles in the international community and financial market, this was no real choice at all (Gheibi, 2022). One specific example showing China's former relationship to US secondary sanctions was when Chinese oil companies, namely China National Petroleum Company and Sinopec, halting upcoming projects in Iran's energy sector, of which some would have been worth billions of USD (Tiezzi, 2015).

Recently, the approach to US secondary sanctions by China, as well as its own relationship to implementing secondary sanctions is changing, along with the shifting world order. The following section will move from the past to more recent times, as it well delve into the changing relationship between China and secondary sanctions, which demonstrate such emerging materialization of multipolarity in the international community.

5. **RECENTLY:** MATERIALIZATION OF MULTIPOLARITY AND COUNTERMEASURES TO SECONDARY SANCTIONS

In 2009, at the first BRIC Summit there was an expression of support for: "a more democratic and just multipolar world order" (BRIC, 2009). BRIC-produced communication following the first summit has continued supporting this notion. A year later, in 2010, US Secretary of State at the time, Hillary Clinton, stated: "we see a shifting of power to a more multipolar world as opposed to the Cold War model of a bipolar world" (Clinton, 2010). In 2013, former UN Secretary-General Ban Ki-moon said that the world has begun to: "move increasingly and irreversibly to a multipolar world" (Ki-moon, 2013). And in 2016, during the second annual Sino-Russia Conference, the Russian Foreign minister, Sergei Lavrov, stated: "international relations have entered into a conceptually new historical stage that consists in the emergence of a multipolar world order and reflects the strengthening of new centers of economic development and power" (Lavrov, 2016). Whilst all of these statements indicate a consensus of the fact that multipolarity is an undeniable part of international relations and understanding the current world order, there is arguably less consensus on how close to multipolarity the world is, whether or not it is inevitable and if it is irreversible (Patriota, 2017).

As mentioned previously, the stance of the present contribution is that the world order is in the process of changing from unipolar, with the US as the unipolar power, to a multipolar world order where China is one of the polar powers. Exploring China's relationship with secondary sanctions, as originally applied primarily by the US, could potentially provide valuable insights into such shifting world order, as the relationship has changed significantly in recent years. This section will explore these recent changes with a particular focus on signs of resistance from China, whereof a prominent example is the Meng case, as outlined in the introduction, as well as legislative countermeasures explored in section 5.2. However, in order to assess these changes adequately, a contextual framework must be provided. Practice, as well as law cannot be viewed in a vacuum; political, economic and cultural circumstances are undeniably vital in order to understand legislation, why it was implemented, how it is enforced, as well as what lies beyond black letter law in the classical sense. In contrast to the US, which is largely considered a mixed economy comprised of capitalism and socialism, China is considered a party-state capitalism. This will be explored in more detail in section 5.1.

Upon Donald Trump becoming the US president, the US government officially defined China as its competitor (White House, 2017). As a result, China has increasingly been battered by US sanctions. For example, in 2018 the US imposed broad sanctions on China's Equipment Development Department (EDD), the military branch in charge of weapons procurement, as well as its director, for violation of the US sanctions law against Russia (CAATSA, n.d.). Two years later, in 2020, the US applied sanctions on Chinese corporations for aiding North Korea's nuclear weapons program (North Korea Designations, n.d.). A number of "Belt and Road" countries[1] have been targeted by US primary sanctions meaning that Chinese entities may likely risk secondary sanctions if trading with these countries.

These circumstances have led to the exploration by Chinese scholars and policy makers of the feasibility of enacting blocking law in order to counter the foreign sanctions (Yan, 2020; Zhengxin, 2020). Ultimately, this led to the Ministry of Commerce of the People's Republic of China (MOFCOM) issuing "Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures" (hereinafter "China's Blocking Rules" or "the Chinese Blocking Rules"), which was announced and entered into force on 9 January 2021 (China's Blocking Rules, 2021). Nearly six months later, on 10 June 2021, the Standing Committee of the National People's Congress of China enacted the Anti-Foreign Sanctions Law (hereinafter "AFSL"). Both of these

[1] Five countries are considered as making up the Belt and Road countries, all located in Central Asia. These include Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan and Tajikistan (Nedopil, 2022).

legislative countermeasures outlined will be explored in section 5.2. Before delving into the law, however, the "socio-" aspect of socio-legal research will be explored, as the political economy of China shall be established, as offered in section 5.1.

5.1 China's party-state capitalism

As global tension increases and China's global economic footprint accompanies such increase, the country's economic structure is becoming a focal point. Under Xi Jinping's conservative leadership, China's economic model has developed into one where the state has an even stronger role. Previously, China has been defined as having a "state capitalism" economic system, which is an umbrella term meant to explain mixed economies where the state has a dominant role whilst markets and private corporations remain present (Pearson, Rithmire & Tsai, 2021). Such system is found in various regimes and types of regimes, including authoritarian countries such as China and Russia, as well as democratic countries such as Norway, Brazil, and India. State capitalism systems usually include state ownership and other mechanisms of government intervention aiming to achieve economic development goals, particularly growth and competitiveness in globalized sectors (Pearson, Rithmire & Tsai, 2021).

However, recent changes in China's economic model means it may no longer fall strictly within the state capitalism classification. This primarily due to the Chinese aims of the application of the mechanism of state intervention, and its underlying logic, being different from that of state capitalism (Pearson, Rithmire & Tsai, 2021). Contemporary China, ruled by the CCP, could perhaps more accurate be classified as a sui generis form of political economy where the party-state's survival takes precedence over development goals. This classification "party-state capitalism" has far-reaching implications for China's domestic politics and international relations (Pearson, Rithmire & Tsai, 2021).

China as a party-state capitalism apply not only state ownership and market intervention but increasingly apply party-state power to discipline private capital. This means that Chinese entrepreneurs, as well as foreign corporations operating in the country, are expected to follow the party line. This is leading to backlash from foreign state's, as the fusion of state and private interests in China is deemed a threat to the foreign states' national security (Pearson, Rithmire & Tsai, 2021).

5.1.1 Indicators of Chinese party-state capitalism

There are a number of indicators that China has moved from state capitalism into an era of party-state capitalism. In the table below, three main categories of indicators have been provided, whereof the latter - expecting extraterritorial political adherence – is essential in the understanding of the key issues this contribution deals with (Pearson, Rithmire & Tsai, 2020).

1. Institutional expansion of the state's role in China's economy	2. Ambiguity in functioning and interests of state and private sector	3. Expecting extraterritorial political adherence
Beyond public ownership of large enterprises in strategic industries	China's private sector's economic value is described as "60/70/80/90", which means private firms contribute to 60% of China's GDP; generate 70% of innovation, 80% of urban employment and 90% of new employment (Zitelmann, 2019)	Expectation of political compliance by foreign corporations doing business in China and in territories where China claims sovereign authority
An emerging trend where the party-state occupies - institutionally and financially - the private sector	Lack of clarity and transparency in the definition of private ownership	Multinational corporations pressured to show support for political faux pas, related to, for example the portrayal of Hong Kong, Tibet and Taiwan in advertisements, websites and on social media (Niewenhuis, 2019)
Party cells are present within, and increasingly influencing, private- and foreign firms (Wong & Dou, 2017; Yan & Huang, 2017)	The lack of clarity surrounding the concept of "mixed ownership"	Political monitoring and censoring of foreign capital.
Party-state oversight of the private sector.	Private firms with governance functions.	
Financialization of the state - expansion of state capital beyond entities that are majority-owned by the state.		
Evolution of Chinese industrial policy to involve the private sector as both the targets and the executors (PRC, 2017)		
Private sector as innovators and global competitors.		

Figure 5: Indicators of party-state capitalism in China (Pearson, Rithmire & Tsai, 2020)

As is clear from the above figure, there are a number of indications supporting the claim that China is a party-state capitalism. Especially significant for the present paper, is the dominance and oversight of the party-state in the private sector, the lack of clarity when it comes to ownership and functions of

private companies, as well as the expectation of political compliance by foreign companies. The latter point will be explored in more depth in the following section.

5.1.2 Expecting extraterritorial political adherence

Whilst all indications in figure 5 are relevant as to the characterization of China as being a product of party-state capitalism, "expecting extraterritorial political adherence" is the aspect having received far least scholarly attention. Additionally, it is the aspect arguably most relevant to the present contribution and will therefore be considered in more depth in the following. Essentially, it is the expectation that not only domestic but also foreign corporations doing business in China and its territories, or with Chinese entities or individuals, comply with the political stance of the Chinese government. Some corporations have taken steps to comply with the expectation by instituting a party cell in their China offices (Pearson, Rithmire & Tsai, 2020).

There has been a shift in China from the 1990s where Chinese localities were competing with each other in order to obtain and attracts foreign direct investments. This was done via offering concessionary policies, such as: "tax breaks, preferential access to land and credit, and lax oversight of labor and environmental practices." (Pearson, Rithmire & Tsai, 2020, p. 22) However, a move towards intensification of political monitoring and censoring of foreign capital and corporations is a more recent expression of China's party-state capitalism. Previously, objections to statements and events perceived as challenges to China's sovereignty or territorial claims were primarily directed at governments and institutions. Since the mid 2010s, the party-state has been extending its: "political radar" (Pearson, Rithmire & Tsai, 2020, p. 22) to multinational corporations (MNCs). As a result, recently, foreign corporations have increasingly been expected to publish apologies for failing to comply with the political stances of the Chinese government. Additionally, the expectations have also been that MNCs modify their discourse and behavior to fit within the party-state's political directions. This expectation is both expressed implicitly and done via self-censoring, as well as explicitly and done via direct pressure (Pearson, Rithmire & Tsai, 2020).

5.2 Countermeasure legislation

Moving to the aforementioned countermeasure legislation adopted by China under the party-state capitalism rule, application of a doctrinal analytical approach is necessary. This in order to assess the law in its entirety and as objectively as possible, whilst recognizing that complete objectivity is impossible. The adopted legislation will be dealt with in chronological order, the Chinese Blocking Rules from January 2022 first and the AFSL from June of that year second.

5.2.1 China's Blocking Rules

The newly introduced Chinese Blocking Rules provide a framework allowing the Chinese government to counteract foreign laws, including the US economic sanctions, as well as potentially export control laws or even other laws, if they are applied extraterritorially in a manner that affects China and therefore is determined to be unjustified by China. This seems a direct response to the US secondary sanctions. The Chinese Blocking Rules seem to have found quite a lot of inspirations from the European model. However, there are a number of clarifications that needs to be made by the Chinese authorities in order for the framework to be considered clear and transparent (Krauland & Yue, 2021).

China's Blocking Rules authorize government entities in China to take substantive measures, such as issuing prohibition orders declaring foreign sanctions unenforceable, penalizing Chinese entities for the violation of prohibition orders, as well as allowed Chinese entities to seem damages from entities that do comply with the foreign sanctions (Cinelli, 2021). Further, it also authorizes Chinese government entities to take countermeasures, which include adding foreign entities or individuals to MOFCOM's Unreliable Entity List[2] and barring them from engaging in China-related import or export activities (Cinelli, 2021).

The Blocking Rules are ultimately a means for MOFCOM and other Chinese authorities to have an increased level of discretion and flexibility when it comes to the determination of what foreign laws they block. The rules apply to foreign laws and measures when they:

a) Prohibit or restrict a Chinese citizen or entity's activities with a third country/region citizen or entity (art. 2);
b) are deemed by Chinese authorities to be "unjustifiable," (art. 2) and;
c) are in violation of "international law and the basic principles of international relations." (art. 2).

One aspect where the Chinese Blocking Rules differ significantly from the EU Blocking Statute is the fact that the former does not have an annex wherein the foreign laws that fall under are listed, unlike the annex attached to the EU Blocking Statute. This means that companies must wait for MOFCOM to publish prohibition order continuously, which, if judging by the effective date of the Chinese Blocking Rules itself, might be effective immediately (Krauland & Yue, 2021).

[2] Comparable to the US Department of Commerce Entity List (see footnote 3).

As mentioned previously, it appears the Chinese Blocking Rules are targeting the US secondary sanctions, namely those applied extraterritorially, but not primary sanctions (art. 2). The Chinese Blocking Rules dictate that it is Chinese citizens, legal persons or organizations that ought to comply with the prohibition order when published by MOFCOM. Failing to comply means being subject to administrative penalties, which may include a warning, correction order and a fine. Furthermore, the party failing to comply risks being sued for damages by an adversely affected Chinese (legal) person in a Chinese court (art. 9; Krauland & Yue, 2021). In addition, it appears there may also be a chance of third country individuals and entities could be sued for damages in a Chinese court, in case an adversely affected Chinese citizen or entity wishes to do so. Whilst whether or not this is true remains somewhat unclear, it is mentioned in this context because the Chinese Blocking Rules state: "a person" – not a Chinese citizen, legal person or organization – may be sued for damages by someone adversely-affected by the person's compliance with a foreign law or measure blocked by a prohibition order. Whether the wording in fact refers back to the aforementioned Chinese parties, or rather, refers to any person, including third country persons, is unclear (art. 9). If there in fact is an option for third country persons to be sued in a Chinese court on the basis of the Chinese Blocking Rules, it would certainly align with the expectation of extraterritorial adherence, as described when discussing party-state capitalism in the previous section.

MOFCOM, the National Development and Reform Commission (NDRC) and other relevant Chinese authorities (the Working Mechanism) will assess foreign laws and determine whether the extraterritorial application is unjustified under the Chinese Blocking Rules (art. 4). Based on the rules it appears the Working Mechanism will have to make such determination in light of:

a) whether the foreign law or measure violates an international law or a basic principle governing international relations (art. 6(1);
b) the impact on China's sovereignty, national security, and "development interest; (art. 6(2))" and
c) the impact on the legitimate rights and interests of Chinese persons, legal persons and organizations as well as any other factors that the Working Mechanism deems relevant (art. 6(2)(3)).

The Working Mechanism assess laws that are reported to it, which means there is procedural requirement for Chinese citizens and entities (the latter appears to also include the aforementioned subsidiaries and affiliates) to report. These reports must be made when experiencing a restriction on trade or business transaction with a third country party resulting from a foreign law. In such case, a report must be made to MOFCOM within 30 days, whereafter the Working Mechanism assess it. If it is determined that a violation has occurred, MOFCOM issues a prohibition order, which prohibits

recognition of, and compliance with, the foreign law (art. 5). Once the prohibition order is issued, any affected Chinese citizen or entity must comply with unless they have obtained an exemption. However, applying for an exemption from MOFCOM can take up to 30 days (art. 8).

A prohibition order triggers the aforementioned potential for actions where adversely affected Chinese citizens or entities may sue for damages. Further, the Chinese authorities can provide "necessary support" (art. 11) to Chinese citizens and entities having suffered significant losses from complying with the prohibition order rather than complying with the foreign law. However, what necessary support entails is not defined. Additionally, the Chinese government may choose to take countermeasures against the extraterritorial foreign law (art. 12).

5.2.2 Anti-Foreign Sanctions Law

In June 2021, China implemented the AFSL (Cinelli, 2021). Also similar to the EU Blocking Statute (Torres, 2021), the AFSL created a legal framework that will:

> … block the impact of the foreign sanctions on Chinese persons, prohibited relevant persons from following specific foreign sanctions, authorized the Chinese government authorities to launch retaliations and allowed relevant Chinese persons subject to the foreign sanctions to claim damages (Torres, 2021, para. 1).

The AFSL protect Chinese entities from discriminative measures of foreign countries (art. 3). However, what discriminative measures specifically means is not defined explicitly. Ultimately, the AFSL allows Chinese authorities to take countermeasures against foreign individuals and entities involved in discriminatory measures violating international law and basic norms (art. 3). Such countermeasures include the denial of visas and deportation, as well as the freezing of assets. Under AFSL articles 11 and 12 it is further explained that no Chinese person or entity may aid in another state implementing measures that goes against China. On top of that, such Chinese person or entity is actually required to help the Chinese government in carrying out retaliatory measures. Article 14 dictates that anyone refusing to either implement or cooperate with such retaliatory measures will be subject to legal liability (art. 14).

Whereas the Chinese Blocking Rules target extraterritorial application of foreign sanctions impacting China's dealings with third countries – such as the restriction on an EU entity to comply with US sanctions – the AFSL targets unilateral foreign sanctions measures – such as those imposed by the US or the EU directly against Chinese entities. Thus, it does not solely target the extraterritorial application of such sanction measures that may impact Chinese dealings with third countries – such as an EU

entity deciding to stop dealings with a Chinese entity in order to comply with US sanctions (Mintzer, Soliman, Ito, Li & Zhang, 2021).

Ultimately, a US or other foreign government sanction measure targeting China can, with the introduction of the Law, be scrutinized by the Chinese government through a countermeasure under the Law. It is similar to the Chinese Blocking Rules insofar as both allow Chinese entities to sue other entities failing to comply with the laws, which creates a mechanism for private enforcement (Mintzer, Soliman, Ito, Li & Zhang, 2021).

An example of the law in practice is from earlier this year when China imposed sanctions on US defense contractors Raytheon Technologies and Lockheed Martin. The sanctions were imposed as a result of the US continued arms sales to Taiwan, which directly goes against Beijing's strategic goals. It is the third time China announces punishments against the US companies, however, it is the first time under the AFSL. Previous times penalties were announced against Raytheon and Lockheed were in 2019 and 2020, respective. Beijing has not, however, explained what the punishments implicated and whether or not, and if so, how they were enforced. The countermeasure sanctions against the companies ultimately amount to a deal worth more than USD 100 million to maintain Taiwan's missile defense system, as approved by the US (Baptista, Chow & Blanchard, 2022). A spokesperson from the ministry, Wang Wenbin, cited the AFSL:

> In accordance with the relevant stipulations in China's anti-foreign sanctions law, the Chinese government has decided to take countermeasures on the infringing acts of Raytheon Technologies and Lockheed Martin. Both are military enterprises that have long participated in U.S. arms sale to China's Taiwan region (Wang cited in Bijlsma, 2022, para. 4).

Whilst seeing the AFSL in practice provides the legislation with some contextual understanding, no further details were provided on the specificities of the sanctions. Therefore, some uncertainty remains regarding the application and enforcement of the AFSL (Baptista, Chow & Blanchard, 2022; Bijlsma, 2022)

It is yet to be seen how aggressively the countermeasure legislation will be enforced. It will also be interesting to observe whether they are meant merely as a political response to the US trade sanctions against China, or if they will be enforced via concrete retaliatory actions targeting the US increasingly comprehensive application of asserting extraterritorial dominance (Braverman & Kuka, 2021).

The introduction of China's countermeasures ultimately further increases the regulatory complexities surrounding the sanctions field, with the real losers being the corporations having to navigate the contesting regimes. In the following section, the countermeasures and general Chinese approach will be put in the context of China's party-state capitalism, as well as tendency towards rule by law. However, firstly, a brief account of the political economy of the US – the unipole – will be provided in order to have an additional reference point.

5.3 Significance of party-state capitalism and rule by law compared to the US

The influence of the government on trade, private corporations and the economy as a whole differs significantly from the US to China. Where the US government is largely separate from private corporations, the lines between public and private is far more blurred and less transparent in China. This difference comes in addition to the difference between a legal system characterized by rule of law in the US versus rule by law in China. The latter compared to the former ultimately means China's legal system is constructed differently and helps understand both how secondary sanctions are not implemented by China through the typical legislative avenue, as well as it explains how the governing authority is above the law (Siripurapu, 2022). Even in the countermeasures adopted and outlined above, there is a relatively high level of uncertainty in phrasing not supported by a guidance note or similar mechanism helping the companies who are fall under the measures. This adds to the uncertainty and lack of transparency and feeds into the tendency of ambiguity when it comes to the laws role in the Chinese society.

Having established the recent changes in China's relationship to secondary sanctions and the potential relation of such with polarity and a changing world order, this paper now moves on to the present. China's efforts in combatting secondary sanctions and retaliating against them has only intensified. Further, China is now shifting from being on the defensive to actually adopting extraterritorial efforts similar to those of the US themselves. All this will be explored in the following section.

6. **PRESENT:** INCREASINGLY INTENSIFYING EFFORTS AND THE QUESTION OF LAW VERSUS PRACTICE

There are a number of seeming reasons for the trend towards a multipolar world order. One primary reason is the US-China tensions, which are likely to endure and even increase as a result of Chinese relations to Russia. There are no indications that the tensions between the two countries are decreasing, rather it seems they are intensifying. This leads to a second reason for the emergence of multipolarity,

namely the fact that the EU, Japan and the rest of the world is facing difficulty in striking a balance between satisfying relations with both the US and China at the same time amidst the growing tensions. Europe, specifically, is challenged in addressing its own interconnected relations with both countries, and negotiations are typically complicated as both markets are key customers and competitors. With this going on, naturally new systems of cooperation and mechanisms are emerging to fill the vacuum. As aforementioned, improved Sino-Russian relations being one of them, but also the materialization of China's Belt and Road Initiative (BRI), the New Development Bank (previously known as the BRICS Bank), and the Asia Infrastructure Investment Bank (AIIB) all provide alternatives to previous institutions and are clear indicators of a shift towards a multipolar world (Morgan Stanley, 2020).

The shifting world order is not only clear by the development of new institutional frameworks, but also in the way in which China is starting to not only counter US secondary sanctions, as outlined in section 5.2, but in fact starting to implement similar mechanisms as well. Whilst sanctions most frequently have economic consequences posed on the sanctioned party, and are a political decision when being adopted, they are most often implemented by means of legislation. However, such standard practice excludes the example of China posing secondary sanctions on Lithuania, as described in the following section. This measure taken by China is not formally adopted in legislation and, at best, constitute a policy expected to be followed in a similar manner to the OFAC expecting its secondary sanctions are complied with. Such approach from China aligns with its Party-State Capitalist system and the expectation of extraterritorial political adherence.

6.1 China-Lithuania relations

In its dispute with Lithuania, Beijing has started debuting a type of economic pressure comparable to the US secondary sanctions but without any legislative framework – rather, they are a product of policy. In July 2021, China-Lithuania relations took a turned very sour due to Lithuania's decision to allow a Taiwanese representative office to open in Vilnius under the name of "Taiwan". A few months later in November, the de facto embassy opened, a move seen by China as an attack on the "One China" policy. Only 15 states have formal ties with Taiwan, where most other states have informal relations to Taiwan through trade offices named as Taipei representations, in order to avoid conflict with China (Ozer, 2022; Allen-Ebrahimian, 2022).

Lithuania has relatively little direct trade with China, but it does have many factories that supply MNCs that do have direct trade with China. Since the Taiwan representative office opened in Lithuania, German corporations with Lithuanian suppliers have experiences their business with China seizing

and as a result, the German corporations are pressuring the Lithuanian government to meet Beijing's demands of shutting the office down (Ozer, 2022; Allen-Ebrahimian, 2022; O'Donnell & Sytas, 2021). This is not the first time China has used restriction to market access as a means to punish corporations and other countries for political transgressions, as described in the following section.

6.2 Other Chinese actions

Further, when Slovenia attempted to bolster ties with Taiwan, it was met with similar Chinese resistance, which was evident when Chinese companies immediately withdrew from contractual obligations in Slovenia and with Slovenian companies, as a result of Beijing's disapproval. Given the centralized nature of the Chinese party-state capitalism and the expectation of extraterritorial adherence, as well as a private sector heavily influenced by the Chinese government, this behavior is not surprising, and in the future, it will very likely become a predictable first response (Godec, 2022).

Beijing has also made use of denial of market access in an attempt to punish companies and entire countries for political infractions. For example, last year when certain textile companies criticized Chinese policies in the cotton region of Xinjiang, which was met with immediate backlash from China (Li, 2021). As well as in the aforementioned examples of Lithuania and Slovenia, where Beijing considers there is a too close engagement with Taiwan.

As is evident, China is increasingly asserting its trade dominance by sanctioning countries in ways that strongly resemble the US dominant position in the international financial market. However, China is doing so in a less transparent and comprehensible manner lacking the formalities, and thereby the contestability of the more common legislative mechanisms. Some have gone so far as to argue that the Chinese approach is far less constructive (Allen-Ebrahimian, 2022). And while the two measures by the US and China are in its effects comparable, one must be careful with direct comparison, as the US sanctions, however controversial: "go through a careful legal process, are appealable, and are actually declared." (Schrader as quoted in Allen-Ebrahimian, 2022, para. 11). The Chinese way may be just as "correct", as that of the US. However, it is a way that differs from what has been the norm for decades, where a Western-dominated approach to politics and law has largely dominated. Chinese efforts towards economic dominance via the implementation of mechanisms similar to the US secondary sanctions are an indication of a shifting world order from unipolarity towards multipolarity, which will be explored in the following section.

6.3 Moving closer to multipolarity: Russia's invasion of Ukraine

Sanctions mechanisms are more controversial and debated than ever, as we are in unprecedented times with international attention on the Russian government's invasion of Ukraine. Subsequently there has been a decry of such by parts of the international community on one hand – largely the Western world - and a reluctance to take a stand stance, on the other. Understanding the changing sanctions landscape in a changing world order is increasingly vital. Following the Russian invasion, the US, EU, UK and other allies have imposed sanctions on Russia for violating the prohibition against the use of force, which is a peremptory norm owed to the whole of the international community. Some of the sanctions implemented are so extensive and include an extraterritorial expectation of adherence across borders. The US is also considering implementing secondary sanctions onto actors purchasing Russian oil, which would very much affect China, in addition to other countries (Gordon & Jackson, 2022). Whilst the classic secondary sanctions are still to be implemented, the extraterritorial expectation of adherence to the current sanctions and the political pressure applied arguably have elements similar to secondary sanctions. And just like countermeasures against secondary sanctions, as seen in China and the EU, there are several countries having taken actions undermining the impact of the sanctions imposed on Russian entities and individuals (Essawy, 2022).

The countries having taken actions undermining the impact of the imposed sanctions include Saudi Arabia and the UAE, where both countries have refused the US' plea to increase oil production after the ban on imports of Russian oil. Further, the UAE has in fact been receiving yachts and jets of Russian individuals on the US and EU sanction lists. Such receival has also been seen in Turkey, a country which has also been reluctant to exclude Russian aircrafts from its airspace. India is another state undermining the impact of the sanctions, as it has been purchasing Russian oil at a discount, as well as it is planning to establish a rupee-ruble payment mechanism for trade with Russia. Israel has been refusing to send weapons to Ukraine and recently decided to block Ukraine from purchasing NSO Group's Pegasus spyware out of fear of angering Russia (Essawy, 2022).

China's approach to Russia's invasion of Ukraine has been characterized mostly by passiveness. A passiveness likely stemming from being stuck in the middle between the desire to preserve its so-called "no-limits" partnership with Russia, as established in February 2022, but also wanting to avoid suffering the retribution of the Western world (Lo, 2022). After the first three months of war in Ukraine, Beijing still refuses to condemn Russia's actions in the country. The Chinese President is one of the few world leaders who have not had direct talks with the Ukrainian President. China is also condemning the sanctions on Russia imposed by the Western world, and has, similar to India, started

buying Russian oil at a discount. However, as the war continues evolving, Beijing is becoming more careful in its dealings with Russia, which is reflected in both the Chinese government and Chinese companies failing to provide Russia with economic or military aid. Many Chinese diplomats have tried to appear neutral in the war in an attempt to avoid reputational backlash in the international community. The attempt to strike this balance by China, and especially the continued and increasing reluctance to actively take Russia's side, could mask a growing imbalance in the Sino-Russia partnership. This may provide some challenges in their shared aspiration to disrupt US' influence in the international community (Standish, 2022).

As the world order is changing, so is the secondary sanctions landscape. The states choosing to undermine the sanctions by the US, EU, UK and allies is a clear indication of the emergence of multipolarity. It is also clear from the initiatives by the Chinese government, such as in Lithuania and Slovenia, as well as from the general tendency to expect extraterritorial adherence from foreign entities. A secondary sanction regime is employed by the Chinese government, including both non-legal secondary sanctions implementation, such as in Lithuania, as well as the countermeasure legislation. The regime is far less formalistic and transparent than what is the case in the US. By the very nature of these changes by China, the shifting world order is evident. The difference also reflects one of the challenges in moving from a unipolar world structure with the US as the major power, to a multipolar world order where other world views than that of the Western world will need to be considered. The conflicting nature of rule of law and rule by law and each' influence of the future world order, as well as differing political and economic ideologies, will without a doubt lead to a number of challenges.

7. **FUTURE:** EXPECTING EXTRATERRITORIAL ADHERENCE ACROSS THE PACIFIC OCEAN

The stability of the international community significantly depends on whether or not, and to which degree, the larger powers are content with status quo. In *War and Change in World Politics,* Gilpin stated that the larger powers: "will attempt to change the international system if the expected benefits exceed the expected costs" (1981, p. 50). Since this argument, there has not been great debate as to whether the "expected net gain" of reassessing the international system would be positive for the US. It is difficult to think of feasible arguments, in a unipolar world system, for the usefulness of comprehensive overthrows in an age of nuclear weapons and economic globalization. However,

territorial status quo was only one aspect of what Gilpin meant. He also referred to the rules, institutions and standards of legitimacy that make-up the international system (Gilpin, 1981). One such standard that has been birthed during the US unipolar world system is the application of secondary sanctions.

As already established secondary sanctions, which prohibit third parties, including foreign entities, from conducting business with sanctioned entities, has played an increasingly large role in US foreign policy. The Foreign Direct Product Rule (FDPR), although not a sanction in the traditional sense, was initially introduced in 2020 to cut off access by Huawei Technologies and a majority of its subsidiaries to US chips by imposing a license requirement for certain foreign-made items using US-origin software, technology or equipment if the items were destined for Entity List parties (Soliman, Zhang & Morales, 2020).[3] Recently, and as a result of Russia's invasion of Ukraine, FDPR was expanded to include Entity List parties in Russia and Belarus (Rees, Van Grack & Yoshida, 2022).

The end of US unipolarity is not only shifting as a result of the rise of the BRIC countries, but the shift is becoming increasingly prominent in light of the current Russo-Ukraine war. At the essence of multipolarity is the notion of distribution of power, as well as co-dependency. But despite a multipolar world order, there is no guarantee that it is an equal one with favorable co-dependency, rather: "The hierarchical and anarchical world order implies that for great powers to retain their top position, they need to be substantially aided by the smaller and weaker nations." (Goenka, 2022, para. 1) Thus, the global polar powers may set the rules, and these rules may be restraining or disadvantageous to other states, however, the rules can only be valid if other states accept them, and even adopt them, as rules (Goenka, 2022).

Although it is impossible to predict the future world order, there are a number of factors strongly suggesting that the shift to multipolarity is very real and present (Goenka, 2022). These factors are in addition to China's secondary sanction implementation and countermeasures, the Russo-Ukraine war, the increasingly tense relationship between China and the US, and the rise of emerging powers such as the other BRIC countries. They include:

[3] Entity List parties is a list of certain foreign persons, entities or governments that are restricted from trade. The list is published by the US Department of Commerce's Bureau of Industry and Security (BIS) (*What is the Entity List?,* 2020).

> The declining power of the West and the further interconnectedness created due to globalisation allows many countries to strategically use their autonomy to pursue their goals in the global sphere (Goenka, 2022, para. 1)

The above quote also means that smaller states are empowered due to the polar powers necessity of having their support. The empowerment allows for the reconfiguration of certain power dynamics in the political order of the international community. Whether multipolarity as a whole serves to benefit smaller states is a different discussion, but their significance in validating polar powers is undeniable. Further, multipolarity is linked to technological advances, as well as stimulated greatly by the rise of MNCs (Goenka, 2022).

Without disregarding the abovementioned factors vital to the changing world order, the transformation in the distribution of power moving from a uni- to a multipolar world is perfectly encompassed by China starting to adopt similar assertions of political and economic domination to that of the US. Where the US, as the unipole, has previously been the only one to use secondary sanctions as an instrument of political power, by China adopting similar mechanisms, it can be deduced that the polarity is shifting.

7.1 Invasion of Ukraine and the Sino-Russian Partnership

Russia's invasion of Ukraine has illustrated both the strength and confines of the Sino-Russian partnership. A partnership between strategically autonomous powers, which was re-confirmed in February 2022 when the two countries cemented their so-called no limit partnership with a joint statement following a meeting. However, China and Russia's respective foreign policy is marked by differing views of global order; China seeks a stable international system tilted in its favor, where Russia strives for disorder and instability (Lo, 2022).

As mentioned previously, China is attempting to strike the difficult balance between preserving the Sino-Russian partnership, as re-confirmed in February of this year, as well as maintain its ties and trade with the Western world. However, the present contribution speculates that this balancing act will become gradually more difficult as the war is expected to continue (Lo, 2022). It has been especially difficult to maneuver, as Russia, rather than achieving a quick win as expected, has seen Ukraine resistance being greatly effective. Further, the North Atlantic Treaty Organization (NATO) is expected to expand as a result of the invasion, with the accession of Sweden and Finland. And finally, the sanctions imposed on Russia have caused enormous harm to the Russian economy. With Russia in the spotlight, arguably attention has been diverted away from China who can now pursue its strategic goals

of reunifying Taiwan with the mainland, assert its relative dominance across the Indi-Pacific, as well as challenge US unipolar position in the world order (Lo, 2022).

Ultimately, the balance of power in the Sino-Russian partnership is tilting heavily towards China, with Russia being progressively more reliant on China (Lo, 2022). This means that China is gaining even more power in the international community, which means – similar as it has meant in the past for the US – that it will likely be increasingly commonplace to see China assert extraterritorial dominance via secondary sanctions and for China to expect adherence thereto by foreign entities and states.

7.2 A new arms race

Whilst the Cold War was marked by a nuclear arms race predicated upon a doctrine of mutually assured destruction and an underlying faith in rational actors as seeking survival above all, the current arms race may arguably be that of export control and sanctions. Recently there has been an unprecedented tide of international resolve decrying Russia's invasion of Ukraine. However, cracks are appearing in the international community where the decrying is largely done by the Western world and countries such as China and India are denouncing sanctions as ineffective and rather continuing with their selective support of Russia (Chu, 2022).

Russia's invasion of Ukraine is about far more than the future of a sovereign state, rather, what is at stake is the very fate of post-Cold War settlement in Europe, as well as: "the viability of the West as a political and normative entity, and the very idea of international order." (Lo, 2022, para. 32). If Russia is successful in its Ukrainian agenda, there will be a return to a divided Europe, but it will also be a signal to other powerful states – such as China – of Western weakness and failure to meet the challenge of Russia failing to comply with international law and norms. This will undeniably show China that it may consider further expanding its geopolitical power in the Indo-Pacific and beyond (Lo, 2022).

Recent regulatory changes have led to a significant increase in the risks of non-compliance by companies across the world, especially MNCs. The landscape now requires MNCs to engage with national security and foreign policy. The fact that China has implemented mechanisms allowing them to retaliate with legalistic countermeasures, whilst not unexpected, makes the risk mitigation of corporation an even more complex exercise. The Russo-Ukraine war is a prime example. For many companies sanctions may not be the primary reason for them to exit Russia, however, due to the regulatory complexities of staying and the reputational risks, many companies are nonetheless withdrawing from the country. Arguably, withdrawing from Russia is somewhat easier and likely also

less costly than from China, where economies are – at large – more intricately and closely tied. Many companies would probably consider the stakes as higher when it comes to China. However, many foreign companies are beginning to view their operations in China as: "being in China for China". This means that rather than manufacturing goods for export out of the Chinese territory, it is in this way easier to isolate Chinese operations should it become necessary (Chu, 2022).

Naturally, navigating the regulatory frameworks of sanctions is becoming increasing challenging for MNCs. The impact that these multilateral regimes can exert on both companies and states is bigger than ever. In addition to the complex frameworks, especially the manner in which secondary sanctions are utilized is being criticized:

> Since the goal of sanctions is to pressure bad actors to change their policy, we must be prepared to provide relief from sanctions when we succeed. If we fail to follow through, we undermine our own credibility and damage our ability to use sanctions to drive policy change (Lew, 2016, para. 21).

Some scholars argue that secondary sanctions fail in being a desirable means to bring about support for sanctions. Instituting sanctions against those who fail to comply with the primary sanctions at issue is ultimately an admission of diplomatic failure to persuade such compliance.

The nuclear arms race ended when the Soviet Union collapsed, however, the export controls and sanctions arms race is at its very beginning. It shall be interesting to see for how long the US continue dominating the international economy and, more significantly in this context, whether they can continue applying extraterritorial measures in the infinitely more complex relationship with China. On the other hand, it will be equally interesting to follow China's response to the US' expectation of extraterritorial adherence, as well as how China's expectation of the same develops (Chu, 2022).

8. DISCUSSION

Through the extensive engagement with the topic of multipolarity viewed through the lens of secondary sanctions, certain topical discussions have come up throughout the process of producing this paper. This chapter will allow for a selection of such discussions to be conveyed. The aim by introducing these perspectives is answering remaining questions after the analysis, as well as present reflections on limitations of the methodological choices made and potential for future research.

Firstly, the influence of economic, political and legal systems with respect to secondary sanctions shall be explored, which will also include a brief account of the move away from the Western worldview to one influenced far more by the BRIC countries and other non-Western powers. As is evident from the application of socio-legal research and analysis throughout this paper, the context of law is vital. However, so is the law in its own right, which is why another example of countermeasure legislation to the US secondary sanctions will briefly be accounted for, namely that of the EU. Thereafter, the discussion will circle back to the case presented in the introduction and substantiated in section 4.1.2, namely that of Meng Wanzhou, who has returned to her position at Huawei. On this foundation, a final discussion point pertaining to the very subject matter of this paper will be considered when delving into whether or not the world is ready for cooperative multipolarity – a question that deserves a paper in its own right. After these topical discussions, a brief account of methodological limitations under which this paper is written will be summarized, before moving on to a section providing input for potential future research.

8.1 Influence of economic, political and legal systems

Along with a shift away from a world order where the US is the unipole, comes the potential for a shift away from an international community characterized by the values and norms of the Western world. A transformation towards an international community where other norms and values are increasingly influential. Discourses pertaining to the Western world's role in the international community is changing as a more diffuse and multipolar world is emerging. The distribution of power is moving away from the Western world and towards different power centers across the globe (Brinke & Martill, 2019). This change is spurred on by the flows of globalization and through aspirations of global power by other actors than the unipole of the US, as exemplified by the Sino-US trade disputes, as well as by Russia's invasion of Ukraine (Blagden, 2015). Therefore, the Western world – and the US as the unipole – is finding itself in a relatively declining position, which ultimately marks the end of decades of dominance in fields of strategy, economy and institutional practice by the West (Brinke & Martill, 2019).

China is the US' largest competitor (Buzan, 2018; Friedberg, 2015; Layne, 2018; Schweller & Pu, 2011) and China is active in an ever-increasing number of regions in the world – Latin America, Eurasia, South-East Asia and Africa, as well as its own "near abroad" (Gordon et al., 2008, p. 87; Ferdinand, 2016; Vatikiotis, 2017; Yu, 2018). The AIIB and the BRI are examples of Chinese attempts to "alleviate an over-reliance on the US and promote an alternative order" (Beeson & Li, 2016, p. 496). Another candidate for a position as polar power in a multipolar world is Russia, which has been

bolstering its global position in recent years. Russia's annexing of Ukraine territory and the current invasion is an indication of Russia asserting its regional geopolitical position in the international community. These Russian acts are aligned with a general perception of: "Western arrogance and encroachment in its sphere of influence, and in so doing reigniting tensions in Europe not seen since the cold war" (Lucas, 2009; Sakwa, 2015; Brinke & Martill, 2019, p. 3).

It is, however, not only China and Russia seeking global power in the emerging multipolar order. Also, the remaining BRIC countries – India and Brazil – as well as Iran (especially up until the US' withdrawal from the Joint Comprehensive Plan of Action (JCPOA)) and Turkey are working towards increasing their influence and status as interlocutors for their regions (Hurrell, 2018). India is more frequently critiquing the existing world order and has gone so far as to condemn Western policy choices, such as those related to sanctions pertaining to the Syrian conflict and NATO intervention in Libya. Further, both India and Brazil have criticized the Western world for how it handled Russia's annexation of Crimea, and both countries abstained when it came to the UN vote on the matter, as well as the opposing restriction's related to participation of Putin in the G20 meeting in Australia (Howorth & Menon, 2015; Brinke & Martill, 2019).

The way Iran is asserting its regional dominance is marked by its rivalry with Saudi Arabia, as well as its support to the Assad's regime in Syria. These factors largely contributed to its "rising geopolitical profile" (Kausch, 2015, p. 7), as well as it helped Iran's position when it was negotiating the JCPOA with the West and China (Kausch, 2015). Iran strengthening its geopolitical position has, however, been challenged by the US withdrawal from the JCPOA in 2018. Meanwhile, Turkey "assertively follow their own agenda, often against the tide and preference of dominant regional and global powers" (Kausch, 2015, p. 9). Accordingly, Turkey "pursues a cautious leadership claim" (Brinke & Martill, 2019, p. 3) in the Middle East region, as it has taken on the responsibility of a mediator of conflicts all whilst strengthening its own economic and energy links with Central Asia and the Black Sea (Parlar Dal, 2016; Brinke & Martill, 2019).

In all the above outlined cases of states asserting regional dominance and striving for a polar power position in a multipolar world order, the states are acting with great confidence and does not seem hesitant to challenge Western – and US – dominance in the international community (Brine & Martill, 2019). The US remains the most powerful state in the present world order, and it is likely that it may remain slightly more powerful than other polar powers for some time (Beckley, 2011; Cox, 2012; Quinn & Kitchen, 2018; Stokes, 2018). But with the aforementioned states pursuing and taking a larger

share of global power, the distribution of power is changing and multipolarity is emerging (Brine & Martill, 2019). Blagden argues, "conceding that China will not 'replace' the United States as the world's most capable military Great Power does not undermine the claim that America's lead will be reduced or equaled, or that other major Western powers — Japan, Britain, France and Germany – will be matched by some or all of the BRIC states" (2015, p. 335).

The diffusion and re-distribution of power where a more diverse group of states are dominating inevitably lead to a more diverse world order with differing worldviews, legal traditions and norms. "In parallel with [the] global power shift from West to East", argues Nathalie Tocci (2018, p. 1), "alternative visions of world order started surfacing". This shift is visible, for example, from the complex politics and party-state capitalism led by China (Beeson & Li, 2016; Schweller & Pu, 2011), and strong state ideologies such as those of Russia (Gat, 2007; Sakwa, 2008). With these states rising towards power offering different traditions and ideologies from what has been on offer for the past decades, it: "therefore undercuts notions of Western liberal universality which prospered in the immediate post-Cold War context" (Donnelly, 1998, p. 11; Fukuyama, 2006; Hobson, 2008, p. 84; Brinke & Martill, 2019).

Moving on from these overall reflections pertaining to the future of an increasingly diverse multipolar world order and the consequences of having polar powers with different political, economic, cultural and legal traditions, to something more tangible. Namely, another example of countermeasure legislation combatting the US secondary sanctions; that of the EU.

8.2 Blocking legislation

China's blocking legislation carries both legislative and policy power insofar as it is prescribed by law but also sends a powerful message to the US of a refusal to accept its attempts of extraterritorial application of power. China is not the first country to institute countermeasures to the US' secondary sanctions. As aforementioned, a clear inspiration for China's blocking legislation, is the EU's contribution. Generally, blocking legislation is adopted by a country in order to obstruct the extraterritorial application of foreign legislation, often in the form of economic sanctions (Kamminga, 2012). To date, the most prominent example is the EU's adoption of the EU Blocking Statute.

The EU Blocking Statute, an instrument of European private international law, is designed to counter specified third-country extraterritorial sanctions on EU persons (EU Blocking Statute, 1996).[4] It seeks to protect EU persons engaging in lawful international trade and/or movement of capital, as well as related commerce activities with third countries in accordance with EU law. It was originally introduced by the EU in November 1996 in response to the extraterritorial reach of certain sanctions imposed by the US in relation to Cuba, Iran and Libya in the 1990s. At that time there was considerable friction between the US and the EU regarding the application of the US extraterritorial sanctions regime, with the EU countering the US punitive approach towards EU companies (Clawson, 2010; Sharab, 2015/2016). Latest and in response to the US withdrawal from the JCPOA in 2018, the EU amended the EU Blocking Statute to include the secondary sanctions re-imposed on Iran by the US. According to the Commission, this was done in order to mitigate the impact of the US sanctions "on the interests of EU companies doing legitimate business in Iran." (EU Statement, 2018).

So far, there has only been one ruling on the EU Blocking Statute, namely in December 2021. The European Court of Justice ruled on the case C-124/20 *Bank Melli Iran* (Rasmussen & Jensen, 2021). Whilst this was the first judgement on an EU-level pertaining to the Blocking Statute, in a report to the European Parliament and the Council on 3 September 2021, the Commission referred to 10 legal proceedings that reference the Blocking Statute before courts of EU member states. Topics of such proceedings were reported to involve, among others, challenges against contract terminations or refusals to proceed with certain transactions, allegedly based on US secondary sanctions and therefore contrary to the EU Blocking Statute (Schueren et al., 2021). This was also the topic of the recent EU jurisprudence, which for the first time provided an opportunity for the European Court of Justice to clarify the scope and application of the Blocking Statute. The judgement follows reference for a preliminary ruling by the Higher Regional Court of Hamburg in a dispute opposing the German branch of Bank Melli Iran to Telekom Deutschland GmbH. Whilst the ruling provided some insight into aspects of the interpretation and application of the Blocking Statute, it remains marked by ambiguity. The clarification was primarily related to practical aspects and renumeration, rather than dealing with significant interpretative matters (Rasmussen & Jensen, 2021). Similar to the Chinese Blocking Statute, without clear legislation and guidance, the ultimately losers are the MNCs left to navigate complex legislative regimes without much clarity. With that being said, the EU Blocking Statute as a

[4] The EU Blocking Statute applies to all EU persons, including all (i) EU-incorporated companies; (ii) EU residents/nationals; (iii) shipping companies owned by EU nationals, with vessels registered in an EU state; and (vi) non-EU nationals resident in the EU or in respect of their acts in a professional capacity in the EU (EU Operators).

whole does provide EU companies with significant more guidance, especially as it provides an annex with the foreign legislation it applies to.

8.3 The Chinese dilemma: Huawei revisited

Circling back to the case pertaining to US secondary sanctions and Meng Wanzhou as outlined in the introduction, recently Meng made her first public appearance since her release from Canada. Huawei, whereof Meng is the chief financial officer and the daughter of the founder, has experienced times of crisis since the US has implemented sanctions against it and the extradition case, is now being further challenged by Russia's invasion of Ukraine. The company has issued a statement expressing concern for the damage caused by the war, as well as for the complexity of the sanctions and policies currently being put forward, which they claimed to be in the process of closely evaluating. Such statement is aligned with Beijing's stand, which entails not joining Western sanctions against Russia, but at the same time, attempting to refrain from providing Russia with obvious aid, which would likely trigger secondary sanctions on Chinese companies (Shepherd & Kuo, 2022).

Presenting Huawei's financial report and being officially back on Huawei's behalf for the first time in four years, Meng hit the nail on its head when stating: "The past four years, there have been tremendous changes in the world and in China," she said. "In the few months that I've been back, I've been trying to catch up. I hope I will catch up." (Quoted in Dou, 2022, para. 6). This seems to be a, perhaps unintentional, but nonetheless accurate depiction of a changing world order and a secondary sanctions landscape reflecting such changes. Building on that, the following section explores the concept of cooperative multipolarity and whether such may be the future world order.

8.4 Cooperative multipolarity: is the world ready?

This section will explore the concept of cooperative multipolarity, which will include a look at the past, present and prospects for the future, as well as multilateralism. Multilateralism, as discussed in section 2.3.3, refers to the process of organizing relations between three or more states, as well as an adherence to a common political project based on respect for a set of shared values and norms (Shulze, 2019). The current world order, rather than being led by the US or the Western world at large, already reflects a variety of influences. Ikenberry suggested that: "world orders do not just rise and decline, they also evolve" (2014, p. 105), which allude to the fact that: "the forces of democracy and modernity can push and pull history in new, more cooperative, directions." (Patriota, 2017, p. 18). However, the political forces resisting these adjustments or undermining the world order itself, cannot be underestimated (Patriota, 2017).

When looking back in history, many learnings can be drawn from previous world order transitions. For example, two centuries ago after the Napoleon army was defeated through the combined strength of Russia, Austria, Prussia and Great Britain and when unipolarity came to an end and made way for a sort of multipolarity. In 1815, during the Vienna Congress, diplomatic efforts towards reorganizing the geopolitical landscape of Europe brought about decades of relative stability on the basis of new ways of cooperation between states. The Concert of Europe was the predecessor of high-level conferences, ones that world leader are now familiar with, and the Holy Alliance was arguably a forerunner practice in preserving peace, despite it being oppressive and having conversative objectives (Deutsch & Singer, 1964; Gilpin, 1981; Tourinho, 2015; Patriota, 2017). Having looked back at the past, the following section shall look to the present, namely the opportunities for multipolarity in the 21st century.

8.4.1 Opportunities for cooperative multipolarity

With the new distribution of power, comes the unprecedented factor that a non-Wester power might assume one of, or the primary, polar position in a multipolar world. In light of the current world order, it seems a strong candidate is China. The economic growth of China will inevitably transfer into diplomatic and geopolitical influence. Similarly, other regional non-Western powers, such as other BRIC countries for example, will enhance their global dominance. The EU will perhaps find more of a cohesive collaboration with Germany, France and Italy at its center. How the US responds in new cases where their influence is less dominating in the international community – such as other countries failing to comply with secondary sanctions – will also be of great importance in how multipolarity emerges (Kissinger, 2015; Patriota, 2017).

It remains to be seen whether the changing world order will create a space of cooperative multipolarity with multilateralism and diplomacy. However, certain factors are different at this point in time in comparison to previously, which ultimately ensures a window of opportunity for cooperation and unification in a multipolar world, despite the obvious pitfalls (Patriota, 2017). One vital factor that may be significant in creating a cooperative multipolar world is:

> the higher degree of global interconnectedness among governments, economies and societies through, trade, investment, telecommunications, the media and people-to-people contacts (Patriota, 2017, p. 20)

Another factor working as a unifier across the international community is the climate change crisis and global warming, which forces states to face the reality that salvation is dependent on cooperation.

Climate change affects all countries across the globe and requires an active commitment by the largest emitters (Jones, 2016; Patriota, 2017). This need for cooperation was expressed in 2015 in the Paris Agreement: “climate change represents an urgent and potentially irreversible threat to human societies and the planet and thus requires the widest possible cooperation by all countries” (United Nations, 2015, p. 1).

Extremism and terrorism are also increasingly considered a global threat, as combatting it requires comprehensive coordination across borders. Succeeding in addressing terror requires harmonized multilateral efforts (Patriota, 2017). The Ebola outbreak in 2014, as well as the recent COVID-19 pandemic caused a huge number of preventable deaths and has, similar to when it comes to terror, shown that internationally coordinated efforts are necessary. The social and economic consequences of epidemics and pandemics are of international concern. Further, the drug problem – similar to a disease – does not stop at borders. Production and consumption chains are completed intertwined across the world and solutions to the problem are therefore needed on an international level (Patriota, 2017). In addition, civil society has a more significant role when it comes to having an influence in the international community than it had in the past. This particularly includes non-governmental organizations (NGOs), which have appeared as an important actor in the world order (Patriota, 2017).

8.4.2 Challenges to cooperative multipolarity

Whilst the previous section offers a variety of factors that provide opportunities for cooperative multipolarity, there are also a number of challenges thereto. First and foremost, with the diffusion of power as multipolar, there is a likelihood of attempts of power grabs from states wanting to (return) to a unipolar world order. Competition and even rivalry between the polar powers will lead to tension, which subsequently may potentially result in instability or even war. The latter topped with the existence of weapons of mass destruction by both state and non-state actors is a huge threat. Another challenge is the matter of refugees escaping one country and fleeing to another. The pressure of receiving huge groups of refugees, and for migrants seeking economic opportunities, is a challenge with both national and international repercussions (Reich & Lebow, 2014; Patriota, 2017). Whilst these challenges are indeed concerning, plenty potential for cooperative multipolarity remains and may even outweigh the perceived challenges. The following section strives to touch upon the potential for cooperative multipolarity and what is needed to reach it.

8.4.3 Necessities for cooperative multipolarity

Cooperative multipolarity is arguably the: "next, more democratic and just stage in the evolutionary path of the international system." (Patriota, 2017, p. 26). A foundation for such a next step was laid after the second World War, where the use of military force, except from as self-defense or aligned with multilateral authorization, was prohibited. Also, respect for universal human rights and the compliance with international law in a variety of fields – including, but not limited to, social justice, trade, education, finance - was established. However, despite this foundation, especially in the field of peace and security, the 21st century has proven that much work is yet to be done (Patriota, 2017).

Multipolarity on its own, will not lead to a world full of stability and cooperation. Rather, mechanisms of governance ought to be more democratic, tolerant and inclusive. This entails that the polar powers must move away from the disposition that they are 'more' or 'better' than other states. Moving away from such perception will allow for space to celebrate both the commonalities and diversities of our world order. Such space will subsequently mean that rising powers are able to exercise their geopolitical influence, which in turn will help cooperation across the differing ideologies, norms and values of the world. Thereby, help close some of the gaps in communication and understanding across countries (Patriota, 2017).

8.4.4 Multilateralism in a multipolar world order

Whilst the world moves towards multipolarity, that does not guarantee a move towards multilateralism – rather, it may in fact pose a challenge thereto. According to Derviş, a decline in unipolarity leads to a crisis in multilateralism (Derviş, 2018). While a multipolar system does allow for a revival of multilateralism, it is more threatened than in a unipolar world order. This largely because larger powers can negotiate so-called "mega-regional" agreements with more ease than smaller powers. In a multipolar world order with multiple competing larger powers, smaller powers may risk being left out of such agreements. And on top of that, the structure of multilateralism is not fully developed. In order to develop a strong multilateral system, it requires comprehensive commitment, cooperation and investment, which may not seem attractive to future polar powers (Juutinen & Käkönen, 2016).

All countries benefit from sovereign equality, which lies at the core of the international community, and which is deeply connected to inclusive multilateral frameworks for decision-making and cooperation. But not only states must be taken into account, civil society must be given a voice as well and provided with the necessary channels to express opinions and participate in decision-making and debates institutionally on a national, regional and international level. For cooperative multipolarity to

function in practice strong multilateralism is needed, and therefore, the UN Secretary-General, and the UN in general, must exercise strong institutional leadership (Patriota, 2017).

8.4.5 Final remarks on cooperative multipolarity

The international community may be facing a collective dilemma in the coming years, namely accepting that multipolarity is upon us, and then deciding to pursue multilateralism. Accepting multilateralism means facing the reality that the world order is diverse, but also largely fractured and conflictual. Striving towards multilateralism may aid in finding common group across the fragmented and conflictual world order – it may create cooperation across borders and pave the ground with some level of shared norms and values all whilst pursuing certain joint political ambitions.

It is the position of this contribution that cooperative multipolarity can be achieved and sustained, but only via a merge between: "a multipolar distribution of geopolitical influence and functional multilateral institutions that draws strength from confronting collective, unifying challenges." (Patriota, 2017, p. 27). By such rational, resourcefulness and tolerant political and diplomatic leadership, as well as social mobilization, an interconnected and globalized world based on stability and cooperation will be possible (Patriota, 2017).

These final remarks mark the end of the topical discussions stemming from the production of this contribution. From here, the paper moves on to reflect on methodological considerations, as well as potential for future research based on the findings of this paper.

8.5 Review of methodological considerations

Relying solely on secondary data always comes with a range of limitations. As is evident from the following section, examining MNCs compliance dilemmas when navigating sanctions regimes, would have been a way of effectively including primary data. For example, through surveys and interviews. In the present contribution, primary data from for example the US' OFAC or a Chinese authority such as MOFCOM would likely have included a significant bias in favor of the respective parties' country. Observations beyond examining legislation, case law, policy and press releases or similar would also have proven challenging. More specifically, the specific methodological choices in the present paper, mainly and specifically, the choice of utilizing socio-legal research, seemed a very fitting choice. However, a range of other approaches could have been chosen, including, but not limited to, thematic analysis or content analysis. Nonetheless, as these approaches are not typically used for legislation and the analysis of case law, a socio-legal, and therethrough a doctrinal, approach was found fitting.

8.6 Possibilities for future research

The sanctions field is drastically expanding at the moment, especially due to the situation in Ukraine, but also as a result of the changing world order. Therefore, there will without a doubt be an increased academic focus in the coming years. For starters, an attempt to analyze the sanctions efforts made by the Western world towards Russia presently, and whether or not they prove to have the desired effect. With respect to secondary sanctions, it will be interesting to see the future of countermeasures towards the US – and perhaps towards Chinese efforts as well, if the current trends continue.

An aspect that is often disregarded or overlooked in the academic context, is the practicalities of balancing these conflicting sanctions regimes, which is the reality of MNCs. This is an aspect that the author of the present contribution would have liked to delve into and explore. However, due to the aforementioned conflicting regimes, as well as the, at times, confusing regulation and enforcement in the area, it is a topic corporations would be reluctant to share too many specifics about. For example, in Denmark, there is no legal requirement to conduct sanctions screenings or other checks of business partners and ultimate beneficiary owners. However, there is a requirement to avoid conducting business with sanctioned entities, which in reality means the company must somehow screen business partners in order to effectively fulfil this requirement. As such, there is certain levels of risk assessment – weighing out the risk of failing to comply with sanctions versus spending a large amount of money implementing a sanction screening program and conducting sanctions screenings continuously.

Further, at times MNCs are faced with deciding upon which sanctions regimes to comply with. For example, an EU MNC conducting business with an Iranian entity sanctioned extraterritorially by the US will have to decide whether to comply with the OFAC regime or the EU Blocking Statute. On one hand, OFAC has a history of fining much heavier than the EU and the mere risk of being excluded from the US financial system is a risk very few MNCs wish to take. On the other hand, that means purposely choosing not to comply with EU law. These dilemmas, which will only become increasingly difficult to navigate with the current trends, and although dealt with in the academic community, they arguably deserve far more attention.

9. CONCLUSION

This paper shows that the changing relationship between China and secondary sanctions is aligned with, and indicative of, an emergence of multipolarity. China is starting to mimic the extraterritorial application of foreign policy that the US has been notorious for, as well as retaliate against the US secondary sanctions both via legislative and political avenues. This clearly shows a shifting world order where the US has previously had monopoly on the ability to assert its dominance by such controversial means. However, with the diffusion of power, the ability to do so is both challenged and spreading. Secondary sanctions are indicative of the world order changing from unipolarity to multipolarity. Though, the changing world order is the larger context and is happening regardless of secondary sanctions. This is also clear by the fact that many other factors affect it, such as Russia's invasion of Ukraine. Nonetheless, economic warcraft, the increasing utilization of sanctions and the extraterritorial application of foreign policy, such as via secondary sanctions, are inherently integral parts of the emerging world order.

No single country, or small group of countries, is capable of dealing with the global challenges currently faced – whether it be climate change, refugee crisis, cyber-attacks, threats to culture and religion, cross-border economic crisis or terrorism. The contemporary world is a product of globalization, and in order to adequately respond to the issues at hand, global cooperation is needed. Power poles become problematic and conflict-ridden when asserting dominance by extraterritorially applying foreign policy and independently penalizing other countries and foreign entities financially, such as via secondary sanctions. Disrespecting sovereignty and disregarding collective decision-making leads to dissolution rather than unification. There is no doubt that emerging powers are moving towards polar positions and that the unipolar world deeply characterized by the Western world is coming to its end. The question therefore is, how do we embrace the shift? If there is collective consensus to move down a route of tolerance for diversity, embrace of change and multilateralism, cooperative multipolarity might just be waiting for us.

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