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International Finance and the Return of Geopolitics

*By Pierre-Hugues Verdier**

Abstract

The rise of great power competition is transforming international economic law as trade and investment patterns fragment along geopolitical lines and longstanding legal regimes come under stress. This Article argues that this "return of geopolitics" generates fundamental and pervasive challenges for the international financial governance regime. As states weaponize financial infrastructure, adopt security-based restrictions on capital flows, and attempt to direct funds away from their adversaries toward allies and strategic industries, their actions strain the regime's foundational norms, principles, and procedures. The trend threatens to undermine cooperation to protect global financial stability and address other common policy concerns raised by financial globalization.

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I. Introduction

Geopolitics is back, and it is reshaping international economic relations. Great power competition between China and the United States, conflicts in Ukraine and the Middle East, and the rise of new economic powers generate new trade and investment patterns, challenge established international regimes, and threaten fragmentation of the world economy. The World Trade Organization (WTO) recently warned that "trade is gradually becoming reoriented along geopolitical lines,"[1] a trend that could undermine global security, inhibit growth, worsen poverty, and obstruct action against climate change.[2] Likewise, foreign direct investment (FDI) is "increasingly concentrated among countries that are geopolitically aligned," with alarming consequences: lower global output, slower technology transfer, and greater vulnerability for developing economies.[3] *The Economist* warns that "[a] financial system that is more international than ever is at risk of breaking apart," as geopolitical tensions threaten to create "a world in which countries, investors and businesses must pick a bloc and never venture outside it."[4]

The impact of the "return of geopolitics"[5] on international trade and investment law has attracted considerable attention.[6] In stark contrast, its implications for international financial governance remain largely unexplored. This lack of attention may seem surprising given the economic stakes: gross foreign financial assets were estimated at $200 *trillion* in 2020, and international capital flows and holdings cut across geopolitical lines.[7] The reason that the

[1] World Trade Org., World Trade Report 2023: Re-globalization for a Secure, Inclusive and Sustainable Future 9 (2023).

[2] *Id.* at 11–15.

[3] Int'l Monetary Fund, World Economic Outlook: A Rocky Recovery 93–94 (2023).

[4] *Special Report on the Deglobalisation of Finance*, Economist (May 11, 2024).

[5] Walter Russell Mead, *The Return of Geopolitics: The Revenge of the Revisionist Powers*, 93 For. Aff. 69 (2014).

[6] *See, e.g.*, Anthea Roberts, Henrique Choer Moraes & Victor Ferguson, *Toward a Geoeconomic Order in International Trade and Investment*, 22 J. Int'l Econ. L. 655 (2019); Anthea Roberts & Nicolas Lamp, Six Faces of Globalization: Who Wins, Who Loses, and Why It Matters (2021); J. Benton Heath, *The New National Security Challenge to the Economic Order*, 129 Yale L.J. 1020 (2019); J. Benton Heath, *Making Sense of Security*, 116 AJIL 289 (2022); Kathleen Claussen, *Trade's Security Exceptionalism*, 72 Stan. L. Rev. 1097 (2020); Harlan Grant Cohen, *Nations and Markets*, 23 J. Int'l Econ. L. 793 (2020); Harlan Grant Cohen, *What Is International Trade Law For?*, 113 AJIL 326 (2019); Mona Pinchis-Paulsen, *Trade Multilateralism and U.S. National Security: The Making of the GATT Security Exceptions*, 41 Mich. J. Int'l L. 109 (2020).

[7] Sergio Florez-Orrego, Matteo Maggiori, Jesse Schreger, Zwien Sun & Serdil Tinda, *Global Capital Allocation*, 16 Ann. Rev. Econ. 623 (2024), *at* https://www.annualreviews.org/content/journals/10.1146/annurev-economics-081623-020427. Major recent advances in compiling and adjusting international financial statistics are generating a much more precise picture of international capital stocks and flows across different countries, regions, and types of financial instruments. *See* Antonio Coppola, Matteo Maggiori, Brent Neiman & Jesse Schreger, *Redrawing the Map of Global Capital Flows: The Role of Cross-Border Financing and Tax Havens*, 136 Q. J. Econ. 1499 (2021); Yanshuo Chen & Galina Hale, *International Capital Flows*, *in* Oxford Research Encyclopedia of Economics and Finance (2021), *at* https://oxfordre.com/economics/display/10.1093/acrefore/9780190625979.001.0001/acrefore-9780190625979-e-638; Robin Koepke & Simon Paetzold, *Capital Flow Data—A Guide for Empirical Analysis and Real-Time Tracking*, 29 Int'l J. Fin. & Econ. 311 (2024).

impact on finance has been less noticed may lie in the regime's distinctive features. Unlike trade and investment, the international finance (IF) regime does not rely on formal treaties, organizations, or courts, and thus imposes few hard legal constraints on state action. Its specialized regulatory bodies do not provide a visible stage to litigate geopolitical clashes, in contrast with WTO panels and investment tribunals.[8] The IF regime's core policy goals—such as financial stability, market integrity, and investor protection—appear technocratic and neutral, far removed from the turbulent world of global geopolitics.

On the contrary, this Article argues that geopolitical competition generates fundamental and pervasive challenges to the international financial governance regime. As tensions rise, major economic powers turn to geoeconomics—a phenomenon characterized by growing use of economic tools to advance geopolitical goals, a shift from a positive-sum to a zero-sum approach to international economic relations, weaponization of international economic networks, heightened concern with strategic vulnerabilities and resilience, and a growing divide between authoritarian and democratic states.[9] The international financial system's core functions— clearing and settling payments, pooling and transferring resources, managing risk, generating information, and shaping incentives—make it a critical battleground for geopolitical competition.[10] Powerful states have an array of tools to shape international finance to serve their geopolitical objectives, including legal frameworks and agencies that have traditionally focused on regulatory goals such as financial stability, market integrity, customer and investor protection, crime control, and protecting competition.[11] The introduction of geopolitics thus has the potential to transform the politics of international financial governance.[12]

This transformation is already underway. In recent years, driven by geopolitical objectives, powerful jurisdictions have weaponized international financial infrastructure, excluding their rivals from critical payment networks and markets. In response, targets seek to disconnect from these networks and develop alternatives, further fragmenting the international financial system.[13] States large and small have awakened to the strategic vulnerabilities created by international finance and taken measures to close their borders to flows of money, people, and information.[14] They have used their control over finance to redirect resources to allies,

[8] *See, e.g.,* Panel Report, China – Additional Duties on Certain Products from the United States, WTO Doc. WT/DS558/R (Aug. 16, 2023) (finding China's retaliatory tariffs on U.S. goods in breach of several GATT provisions); Panel Report, United States – Certain Measures on Steel and Aluminium Products, WTO Doc. WT/DS544/R (Dec. 9, 2022) (finding U.S. steel and aluminum tariffs in breach of the GATT and rejecting the United States' invocation of the Article XXI security exception); Panel Report, United States - Tariff Measures on Certain Goods from China, WTO Doc. WT/DS543/R (Sept. 15, 2020) (finding U.S. additional tariffs on Chinese goods in breach of the GATT and rejecting the United States' invocation of the Article XXI security exception); Panel Report, Saudi Arabia — Measures Concerning the Protection of Intellectual Property Rights, WTO Doc. WT/DS567/R (June 16, 2020) (Saudi Arabia's measures in connection with its blockade of Qatar); Panel Report, Russia – Measures Concerning Traffic in Transit, WTO Doc. WT/DS512/R (Apr. 5, 2019, adopted Apr. 26, 2019) (Russia's trade restrictions in connection with the conflict in Ukraine).

[9] *See* Section III.A *infra*.

[10] These functions are drawn from Robert C. Merton & Zvi Bodie, *A Conceptual Framework for Analyzing the Financial Environment*, *in* The Global Financial System: A Functional Perspective 3 (1995).

[11] *See* Section III.B *infra*.

[12] *See* Section III.C *infra*.

[13] *See* Section IV.A *infra*.

[14] *See* Section IV.B *infra*.

friends, and strategic industries, moving away from market-based capital allocation.[15] These developments contradict foundational norms, principles, and institutions of the international financial governance regime that has emerged since the 1970s: institutional informality, multilateralism and non-discrimination, and expert regulation.[16]

These challenges to the IF regime threaten to undermine the world's ability to manage the risks of financial globalization. As states use financial tools for geopolitical ends, they tend to compromise the independence of central banks and regulatory agencies, blur the line between traditional financial regulatory objectives and foreign policy, and undercut the foundations of informal cooperation among expert regulators. In some cases, geopolitical objectives may clash directly with traditional regulatory goals. More generally, the shift from an absolute-gains to a relative-gains logic shrinks the window for international cooperation to achieve common regulatory objectives, both traditional ones like financial stability and newer ones like climate change mitigation. Perhaps most worrisome, the turn to geopolitics may undercut effective international crisis management, as national officials become less willing to share sensitive information, coordinate their interventions, and refrain from opportunism.[17]

At a more fundamental level, the rise of geopolitics may transform the IF regime's structure and scope. Though the regime's collapse seems unlikely absent military conflict amongst the world's major geopolitical competitors, the regime could fragment and complexify as cooperation shifts from global to regional or alliance-based bodies freer to mix economic and geopolitical objectives. Another, perhaps more likely scenario, is that the IF regime could "muddle through" the rise of geopolitics, relying on its informality, flexibility, and secrecy to accommodate states' greater resort to geoeconomics while pursuing the regime's essential objectives and awaiting geopolitical *détente*. If so, the IF regime's preference for soft law and informal cooperation may emerge as an appealing, more robust alternative to the trade and investment regimes' highly legalized approach, which has struggled to accommodate geopolitical conflict. Even in this relatively optimistic scenario, however, the regime's ability to address risks to financial stability and other regulatory goals may erode substantially. A salient concern is that geopolitical interventions may drive international finance out of visible and regulated spaces into more opaque ones, shrinking the regime's effective reach and allowing new risks to grow unchecked.[18]

The fragmentation of international finance brought about by the rise of geopolitics also has important economic and security implications. A more fragmented international financial system might leave the world poorer and more unequal, though evidence on the impact of capital mobility on economic outcomes is relatively weak and conditional. In terms of security, greater geopolitical intervention in the international financial system may have a paradoxical effect: financial fragmentation may leave nations less resilient and secure by constricting their access to finance, fostering dependence on dominant states in their geopolitical bloc, and perhaps even by encouraging states vulnerable to financial isolation to resort to military force, cyberattacks, or other forms of interference.[19]

[15] *See* Section IV.C *infra*.

[16] *See* Part II *infra*.

[17] *See* Section V.A *infra*.

[18] *See* Section V.B *infra*.

[19] *See* Section V.C *infra*.

Part II of this Article sets the stage by reviewing the IF regime and its fundamental institutional features, norms, and principles. Section III.A introduces the impact of geopolitical conflict on international economic governance, drawing primarily on recent scholarship on geoeconomics and its impact on international trade and investment. Section III.B turns to international finance, showing how each of the financial system's fundamental economic functions has geopolitical implications and the multiple tools, including regulation, powerful states possess to control finance to serve their geopolitical goals. Section III.C elaborates on how, though the IF regime has always had a political dimension, geoeconomics alters the regime's politics in important and novel ways.

Part IV examines how geopolitics has already impacted international finance and its governance. It identifies three trends: weaponization of the international financial system; security-based constraints on international financial flows; and efforts to redirect capital to achieve geopolitical objectives, and explains how they undermine the principles, norms, and institutions of the IF regime. In doing so, Part IV brings together a growing but scattered body of scholarship on topics such as financial sanctions, the global role of the U.S. dollar, auditing of U.S.-listed Chinese firms, foreign investment screening mechanisms, overseas Chinese lending, central bank swap lines, and the European Union's (EU) equivalence regime, to show how they participate in an overall phenomenon—the expanding role of geopolitics in international finance—that is illuminated by the theoretical insights developed earlier.

Section V.A explains how the rise of geopolitics tends to undermine the IF regime's ability to foster international cooperation to achieve common regulatory objectives and to manage financial crises. Section V.B then examines how the rise of geopolitics may alter the structure and scope of the IF regime, either toward fragmentation and complexification or toward resilience and "muddling through." It shows how, even if the latter scenario prevails, the regime's ability to secure goals such as financial stability may be compromised and its effective scope circumscribed. Finally, Section V.C considers broader economic and security implications of the international financial system's growing fragmentation.

II. The International Financial Governance Regime

International regimes are conventionally defined as "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations."[20] As such, an international regime can consist of legalized norms and institutions, such as formal treaties and international organizations, or more informal components such as non-binding commitments, best practices, or transnational networks of public actors. The essence of an international regime lies in its function of facilitating policy coordination in an area of international relations, such as arms control, conservation of marine resources, or climate change.

Unlike many international regimes, including those that govern trade and investment, the international financial governance regime is not organized around formal treaties and organizations, nor were its core features negotiated explicitly by states. Instead, it grew organically, in parallel with the rapid globalization of financial markets that began in the 1970s, and it

[20] Stephen D. Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, 36 Int'l Org. 185, 186 (1982).

contains few binding rules or decision-making procedures. As such, it is somewhat more difficult to describe and delimit than these other regimes. For the purposes of this Article, the international financial governance regime may be defined as the set of principles, norms, rules, and decision-making procedures aimed at international coordination to address shared policy concerns that arise from cross-border flows of money, financial assets, and financial services. More specifically, the regime's principal aim is to identify and control various risks that arise from cross-border finance, including risks to financial stability, market integrity, and customer protection. The regime may also be conceptualized to include norms that govern infrastructure used for cross-border financial transactions, such as financial messaging, payments processing, clearing and settlement, financial benchmarks, and standardized contracts.[21]

Thus defined, the regime can be demarcated from related regimes that also affect international finance. The international monetary regime, embodied principally in the International Monetary Fund (IMF) Articles of Agreement, thus falls outside its scope. This is not to deny close links between the monetary system and international finance. The shift by advanced economies from fixed to floating exchange rates and the decline of capital controls after the 1970s were critical enabling conditions for financial globalization.[22] The IMF's global macroeconomic stability mandate also means that it has a keen interest in the quality of financial regulation.[23] Likewise, the international trade regime plays an enabling role in financial

[21] Because the regime as thus defined includes rules, norms, and decision-making procedures beyond those associated with "core" financial regulation by state actors (such as private standards for contracts and financial benchmarks and the practices of infrastructure providers), this Article uses the term "international financial governance" rather than the more common "international financial regulation." There is, however, substantial overlap, notably because the relevant non-state providers are ultimately subject to state regulation, as demonstrated by state-imposed reforms to LIBOR and other financial benchmarks following a manipulation scandal. *See* PIERRE-HUGUES VERDIER, GLOBAL BANKS ON TRIAL: U.S. PROSECUTIONS AND THE REMAKING OF INTERNATIONAL FINANCE 41–74 (2020); Pierre-Hugues Verdier, *Resilience and Change in Private Standard-Setting: The Case of LIBOR*, *in* THE EVOLUTION OF TRANSNATIONAL RULE-MAKERS THROUGH CRISES (Panagiotis Delimatsis, Stephanie Bijlmakers & M. Konrad Borowicz eds., 2023).

It is worth noting that this Article's characterization of international financial governance as a regime could be debated. For example, some might argue that it is better described as a "regime complex," composed of overlapping institutions and sets of rules without hierarchical ordering. On regime complexes, see Karen J. Alter & Kal Raustiala, *The Rise of International Regime Complexity*, 14 ANN. REV. L. & SOC. SCI. 329 (2018). This Article takes the view that international financial governance, as it has evolved from the 1970s to recent years, is better analyzed as an international regime, albeit a rather loose and weakly legalized one. Because its institutions and normative systems are functionally differentiated, there is relatively little of the overlap that characterizes regime complexes: it contains few rival institutions or rules competing to regulate the same areas. While hierarchy within the regime is fragile, it does exist, with the Group of 20 playing an overarching steering function for other institutions such as the FSB, specialized standard-setting bodies, the IMF, and the World Bank. Most contestation occurs not among rival international bodies but among powerful states trying to advance their preferences within the system. As will be described in this Part, international financial governance comprises distinctive and overarching norms, principles, and institutional features. Overall, it has sufficient coherence to qualify as a regime. As will be discussed later, however, the rise of geopolitics may weaken the regime's unifying features so that it fragments into a regime complex with more overlap, less hierarchy, and more institutional and normative rivalry. *See* Section V.B *infra*.

[22] *See* Pierre-Hugues Verdier, *The Political Economy of International Financial Regulation*, 88 IND. L.J. 1405, 1413–16 (2013). On the potential impact of geopolitics on the international monetary system, and particularly on the U.S. dollar, see Barry Eichengreen, *International Finance and Geopolitics*, 19 ASIAN ECON. POL'Y REV. 84 (2024).

[23] Regulatory failures are often associated with currency crises. This explains the IMF's role in some aspects of international financial governance, such as the Financial Sector Assessment Program, instituted after the Asian financial crisis. *See* CHRIS BRUMMER, SOFT LAW AND THE GLOBAL FINANCIAL SYSTEM: RULE MAKING IN THE 21ST CENTURY 93–98 (2d ed. 2015). Likewise, international monetary policy coordination among central bankers has a long history and has played a major role in the response to recent financial crises, but those meetings are

globalization, mostly through commitments to liberalize cross-border financial services under the General Agreement on Trade in Services (GATS) and preferential trade agreements.[24] Though multiple and complex links connect these regimes, and though they all impact international economic and financial conditions, their objectives, principles, norms, rules, and procedures are sufficiently distinct to sustain a reasonably clear demarcation.

The international financial governance regime is characterized by three fundamental features. The first and best-known is *institutional informality*: the principal standard-setting bodies are not treaty-based organizations but networks of national regulatory agencies that adopt soft law standards, recommendations, and best practices. The second consists of overarching norms of *multilateralism and non-discrimination*: in principle, most standard-setting bodies are open to all states, standards are meant to apply universally, and the regime incorporates equal treatment norms, though they are implicit rather than explicit. Finally, a foundational principle of *expert regulation* animates the regime. While it presupposes, and to an extent facilitates, financial liberalization and market-based capital allocation, it rests on the premise that international finance generates risks that must be addressed by effective cooperation among expert government agencies.

A. Institutional Informality

In sharp contrast to other areas of international concern, such as trade, investment, or climate change, most norms and rules that govern international finance consist of "soft law" generated by international standard-setting bodies such as the Basel Committee on Banking Supervision and the International Organization of Securities Commissions (IOSCO). These bodies began their lives as informal networks of national regulatory agencies, and although they now have more elaborate charters and broader memberships, they lack international legal personality or the authority to adopt binding norms or decisions. Instead, the standards they adopt typically rely for their legal force on their members' domestic rulemaking authority. In many instances, they consist of studies, recommendations, or best practices that lack any binding force vis-à-vis members or market actors.

The procedures by which these bodies issue standards and recommendations are also relatively informal. Their deliberations are confidential, outputs are typically adopted by consensus rather than vote, and—with limited budgets and personnel—standard-setters rely extensively on their members' capacity and expertise. To monitor implementation, they rely primarily on peer review. The Basel Committee and other standard-setters have sought to increase transparency, for instance by creating websites and adopting public notice-and-comment procedures for important standards.[25] After the global financial crisis, members of the Group of 20 (G-20) sought to rationalize the system by creating the Financial Stability Board (FSB), a "network of networks" tasked with coordinating financial standard-setting

not principally preoccupied with regulation. *See* Claudio Borio & Gianni Toniolo, *One Hundred and Thirty Years of Central Bank Cooperation: A BIS Perspective* (BIS Working Papers, No. 197, Feb. 2006).

[24] *See generally* Bart De Meester, Liberalization of Trade in Banking Services: An International and European Perspective (2014).

[25] *See, e.g.*, Michael S. Barr & Geoffrey P. Miller, *Global Administrative Law: The View from Basel*, 17 Eur. J. Int'l L. 15 (2006).

and financial stability oversight.[26] International financial institutions, such as the IMF and the World Bank, took on a more active role in monitoring implementation.[27] Nevertheless, the overall governance structure remains largely informal and decentralized.[28]

Debate persists on the origins and effectiveness of this informal regime. Functionalist explanations emphasize the benefits of informal governance: transaction costs are lower, standard-setters benefit from their members' collective expertise, and informal procedures and norms enable rapid regulatory responses to new market and technological challenges.[29] In this view, "global oversight enjoys respect, compliance, and an increasing degree of order."[30] Other explanations emphasize historical contingency. Treaties and organizations that manage the world economy, such as the General Agreement on Tariffs and Trade (GATT) and IMF Articles of Agreement, emerged at a critical historical juncture when major states were willing to create formal, legalized regimes. At that time, private international finance was a marginal policy concern.[31] Only later, as cross-border financial flows exploded, did national regulatory agencies face new policy challenges and attempt to address them through bottom-up regime-building. In contrast with functionalist explanations, historical explanations suggest that informal governance may be a second-best outcome, capable of addressing only some of the problems generated by international finance.[32]

Whatever the cause, distinctive patterns emerged in international financial governance. The first is a significant degree of insulation from overt political intervention. Unlike formal international organizations, where governments appoint agents and typically direct their votes, financial standard-setting bodies bring together national central banks and regulatory agencies. These bodies typically enjoy a degree of independence within national legal systems.[33] Their representatives are career central bankers and regulators, rather than diplomats or political appointees. The nature of their membership thus imparts upon standard-setting bodies a technocratic, rather than political, ethos. These bodies' narrow substantive mandates, such as banking, securities, or insurance regulation, reinforces this technocratic orientation by limiting opportunities for political linkages and logrolling across issue-areas, typical of broader organizations like the United Nations or WTO.

[26] David Zaring, The Globalized Governance of Finance 14–21 (2020); Michael S. Barr, *Who's in Charge of Global Finance*, 45 Geo. J. Int'l L. 971 (2014); Verdier, *supra* note 22, at 1459–63.

[27] Zaring, *supra* note 26, at 6.

[28] *See id*. at 7 ("Any effort to create a more formal treaty-based organization to ensure that financial regulation is accomplished globally and consistently has so far been eschewed in favor of an increasingly elaborate network."); *see also* David Zaring, *Finding Legal Principle in Global Financial Regulation*, 52 Va. J. Int'l L. 683, 713–14 (2012). As alluded to above, though national regulatory agencies, standard-setting bodies, the FSB, and G-20 are at the heart of the regime, it also includes numerous other participants such as self-regulatory organizations (e.g., the U.S. Financial Industry Regulatory Authority), non-governmental standard-setting bodies (e.g., the International Accounting Standards Board), infrastructure providers (e.g., the Society for Worldwide Interbank Financial Telecommunication (SWIFT)), industry associations (e.g., the British Bankers' Association, International Swaps and Derivatives Association, Securities Industry and Financial Markets Association), and even financial institutions themselves when they implement regimes such as anti-money laundering or tax reporting vis-à-vis their correspondents or customers.

[29] *See generally* Zaring, *supra* note 26; Brummer, *supra* note 23.

[30] Zaring, *supra* note 26, at 1.

[31] Verdier, *supra* note 22, at 1409–13.

[32] *Id.*

[33] *See* Brummer, *supra* note 23, at 25, 30.

Another distinctive feature of international financial governance is the preservation of national policy autonomy. Unlike the GATT or other WTO agreements, whose breach can lead to international dispute settlement and trade retaliation, international financial standards are non-binding and typically lack dispute resolution and enforcement mechanisms. Instead, compliance with these standards is assessed through peer review. This process requires willingness on the part of members to report on their own progress, answer questionnaires, participate in meetings to discuss accomplishments and challenges, and host foreign colleagues for peer review visits. The lack of formalized enforcement mechanisms means that standard-setters have limited capacity to apply external pressure on members. The result is a system that requires a meaningful degree of collaboration and trust among officials.[34] In turn, this presupposes good faith: members must be confident that their colleagues see the world through similar eyes and pursue common technocratic objectives, such as financial stability, rather than economic or political gains for their own nation at others' expense.

B. Multilateralism and Non-discrimination

Apart from decision-making procedures, international regimes consist of rules, which are "specific prescriptions or proscriptions for action" and norms, which are "standards of behavior defined in terms of rights and obligations."[35] Although the rules and standards generated by financial standard-setting bodies are not legally binding, the volume, range, and detail of their output is impressive. The FSB maintains a compendium of standards that contains hundreds of entries, ranging from well-known documents like the Basel Committee's accords on bank capital requirements, its *Core Principles for Effective Banking Supervision*, the FSB's *Key Attributes of Effective Resolution Regimes for Financial Institutions*, IOSCO's *Multilateral Memorandum of Understanding* (MMOU), and the International Association of Insurance Supervisors' (IAIS) *Insurance Core Principles*, to much more specific standards relating to, among others, cryptoassets, climate-related risks, Islamic finance, money market funds, and environmental, social, and governance (ESG) ratings.[36]

A more difficult question is whether, apart from this profusion of specific rules and standards, the IF regime also comprises general norms of behavior. Unlike trade or investment, the regime lacks explicit and legally enforceable general norms such as the most-favored-nation clause (MFN), national treatment (NT), or fair and equitable treatment. Thus, states generally remain legally free to discriminate among their partners and to favor domestic firms.[37] Yet, scholars recognize that despite lacking such treaty obligations, international

[34] Zaring, *supra* note 28, at 712. ("Peer review . . . encourages regulators to learn from one another, and in this way, it incentivizes the search for best practices that is a popular goal of good governance mavens.").

[35] Krasner, *supra* note 20, at 186.

[36] Financial Stability Board, *The Compendium of Standards*, *at* https://www.fsb.org/work-of-the-fsb/about-the-compendium-of-standards (last updated Sept. 30, 2024).

[37] MFN and NT obligations apply to cross-border provisions of certain financial services pursuant to international trade agreements such as the GATS. However, coverage is limited to specific sectoral commitments and subject to important exceptions, notably the GATS's prudential carve-out. There have been very few GATS challenges to regulatory measures affecting financial services, and financial policymakers generally appear to assume that the prudential carve-out's broad language would preclude virtually all such challenges. *See* GATS Annex on Financial Services, Art. 2, *at* https://www.wto.org/english/res_e/publications_e/ai17_e/gats_annfinancialservices_jur.pdf. The WTO decisions arising from Panama's challenge to Argentina's measures affecting cross-border financial services (Panel Report, Argentina – Measures Relating to Trade in Goods and Services, WTO Doc. WT/DS453/R (Sept. 30, 2015);

financial regulation rests on a set of implicit norms, "rules of the road through which financial policymaking is now realized."[38] The most salient are MFN and NT norms analogous to those found in international trade and investment. Together, these two implicit norms embody the regime's orientation toward multilateralism and openness.

According to Zaring, these norms are embedded in international financial bodies' practice of developing uniform international regulatory standards and promoting their universal adoption. This practice has two crucial implications. First, it means that "the regulatory regime offered . . . applies to all members."[39] If a country adopts and complies with international standards, its firms should be granted access to others' markets on a non-discriminatory basis. The practice is "rooted in an aversion to the types of side deals . . . that the MFN principle in trade was designed to prohibit."[40] By the same token, foreign firms that comply with international standards should be granted the same privileges as domestic firms—an implicit NT principle.[41] Indeed, as Zaring shows, the goal of creating a "level playing field" is ubiquitous in international financial regulators' rhetoric.[42] Multilateralism is also reflected in the system's institutional evolution, as standard-setting bodies like IOSCO, IAIS, and—to a lesser

Appellate Body Report, Argentina – Measures Relating to Trade in Goods and Services, WTO Doc. WT/DS453/AB/R (April 14, 2016)) suggest a somewhat narrower interpretation of the prudential carve-out, tied to traditional prudential regulatory objectives, that may open the way to challenges to geoeconomic measures. Such measures would also likely be difficult to justify under the GATS's national security clause (Art. XIV*bis*) given recent WTO decisions indicating that member states must meet an objective test to rely on one of Art. XIV*bis*(b)'s three prongs. Nevertheless, geoeconomic measures affecting trade in financial services do not appear to have been challenged under the GATS as geopolitical tensions have risen, perhaps because the WTO Appellate Body's current paralysis would preclude a final, binding decision. Other bilateral or regional agreements incorporate specific commitments on financial services, including MFN and NT clauses. *See, e.g.*, The United States-Mexico-Canada Agreement, U.S.-Mex.-Can., Ch. 17, agreed to July 1, 2020, *at* https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/17-Financial-Services.pdf.

[38] Zaring, *supra* note 28, at 687.

[39] *Id.* at 706. In Zaring's words, the practice "suggests a broad commitment to the principle that the same regulatory offer be available to each of the network countries." *Id.* at 707; *see also* ZARING, *supra* note 26, at 24 ("IOSCO, for example, requires all of its members to offer the same quality of enforcement cooperation to all of its other members through its multilateral memorandum of understanding on enforcement.").

[40] Zaring, *supra* note 28, at 706; *see also* ZARING, *supra* note 26, at 23 ("Each of these institutions has tried to stop its members from negotiating side deals favoring particular foreign regulators or banks, partly through their peer-review processes, partly through tradition."). The MFN principle "reduce[s] the complexity of rule navigation among . . . various jurisdictions." *Id.* The formulation of uniform standards also accords with international financial regulation's "developmental" orientation, which aims to "elevate the practices of many regulators, as well as preclude side deals with foreign counterparts." *Id.* at 24. At a deeper level, financial policymakers' adoption of an implicit MFN principle may be driven by considerations similar to those that motivated its inclusion in the international trade regime, namely economic efficiency and avoiding fragmentation of the world economy into rival geopolitical blocs. *See* MICHAEL TREBILCOCK, ROBERT HOWSE & ANTONIA ELIASON, THE REGULATION OF INTERNATIONAL TRADE 55–57 (4th ed. 2012).

[41] Zaring, *supra* note 28, at 704; BRUMMER, *supra* note 23, at 36 (describing how by accessing a country's financial markets, "foreign firms become subject to local laws and . . . are generally afforded national treatment: they are treated no differently from local firms and must comply with the same rules as their counterparts."); *see also* Chris Brummer, *Territoriality as a Regulatory Technique: Notes from the Financial Crisis*, 79 U. CIN. L. REV. 499, 504 (2011). *See* ZARING, *supra* note 26, at 21 ("The goal [of making rules more consistent] is partly driven by an interest in efficiency that will be familiar to trade negotiators. Common regulatory standards make it easier for businesses to operate across borders."); Jeremy C. Kress, *Domesticating Foreign Finance*, 73 FLA. L. REV. 951, 1002 (2021) ("By establishing an expectation of nondiscrimination . . . the national treatment principle aims to deter supervisory favoritism, ensure competitive equity between foreign and domestic firms, and preserve the benefits of cross-border banking."). For this reason, NT has been of particular interest to developed home states whose financial firms wish to access foreign markets. ZARING, *supra* note 26, at 22.

[42] ZARING, *supra* note 26, at 21.

extent—the Basel Committee became more inclusive over time, and political leadership shifted from the Group of 7 (G-7) to the broader G-20, which includes leading developing states.[43]

These norms also manifest themselves in the practices of national regulators, who generally do not condition market access on bilateral deals but on meeting uniform standards. For example, to establish a U.S. presence, a foreign bank must demonstrate that it is "subject to comprehensive supervision or regulation on a consolidated basis . . . in its home country."[44] In making this determination, the Federal Reserve has looked at whether the bank's home state subscribes to Basel standards, and at IMF reports on their implementation. Under this regime, banks from China, among others, have been allowed to enter U.S. markets.[45] Likewise, the Securities and Exchange Commission (SEC) applies uniform registration and disclosure standards to foreign private issuers that issue or list securities in the United States, regardless of their country of origin. The NT principle is also found in national regulatory systems. For example, U.S. law incorporates a longstanding commitment to "parity of treatment between foreign and domestic banks in like circumstances."[46]

Thus, despite the lack of legally binding MFN or NT obligations, the IF regime incorporates general norms of behavior that reflect an ethos of multilateralism and non-discrimination. The implicit MFN norm precludes preferential treatment of select partners and discourages fragmentation. The implicit NT norm precludes discriminatory regulation that would close domestic markets to foreign firms. Like in trade and investment, it thus promotes liberalization. At the same time, it also protects members' regulatory objectives by ensuring that foreign firms comply with appropriate standards when they enter a host state's market. The Basel Committee's injunction that regulators should "require the local operations of foreign banks to be conducted to the same standards as those required of domestic banks"[47] responds not just to the risk that host regulators might set discriminatorily high standards, but also that they might neglect oversight of foreign banks active in their territory.[48] This dual impact of these implicit norms of behavior hints at the more fundamental principles that underlie the regime.[49]

[43] *See* Verdier, *supra* note 22, at 1459–63.

[44] 12 U.S.C. § 3105(d)(2)(A).

[45] *See, e.g.*, Board of Governors of the Federal Reserve System, Industrial and Commercial Bank of China Ltd., Board Order No. 2012-4 (May 9, 2012).

[46] S. REP. NO. 95-1073, at 2 (1978), *as reprinted in* 1978 USCCAN 1421, 1422 (cited in Kress, *supra* note 41, at 966.) *See also* 12 U.S.C. §§ 1843(l)(3), 5325(b)(2)(A), 5365(b)(2)(A) (requiring the Federal Reserve to give "due regard to the principle of national treatment and equality of competitive opportunity" in regulating foreign banks and non-bank financial companies.) For a detailed discussion of national treatment in U.S. banking law, see *id.* at 1001–06.

[47] Basel C'ee on Banking Supervision, *Core Principles for Effective Banking Supervision* 37 (2012).

[48] This appears clearly from the history of international banking standards, especially after the collapse of BCCI, an international bank involved in widespread criminality and that had managed to establish operations in dozens of jurisdictions without adequate regulation and supervision by either the home or host countries. Among other reforms, BCCI's collapse prompted a universal requirement that, as a condition for access, "[a]ll international banking groups and international banks . . . be supervised by a home country authority that capably performs consolidated supervision." Basel C'ee on Banking Supervision, Minimum Standards for the Supervision of International Banking Groups and their Cross-Border Establishments 3 (1992).

[49] Given these norms' implicit and non-binding nature, it is unsurprising that their implementation is far from comprehensive. Like the trade regime, the IF regime tolerates some degree of deeper bilateral or regional integration. For example, the SEC allows Canadian issuers to access U.S. securities markets using their home disclosure

C. *Expert Regulation*

Beyond its specific decision-making procedures, rules, and norms, an international regime comprises principles, which are "beliefs of fact, causation, and rectitude."[50] For example, "a liberal international regime for trade is based on a set of neoclassical economic principles that demonstrate that global utility is maximized by the free flow of goods."[51] It also rests on a set of other beliefs, some normative (free trade is inherently peaceful) and others positive (without cooperation, states tend to adopt mutually destructive protectionist policies). The regime's specific features flow from these principles: a structure for negotiating tariff commitments, overarching anti-discrimination norms, and binding dispute resolution. Principles, however, do more than guide the regime's details: they provide coherence to the regime and allow it to adapt and endure. This is why, although rules and decision-making procedures can change within a regime, "[c]hanges in principles and norms are changes in the regime itself."[52]

What principles animate international financial governance? Because the regime lacks a formal treaty framework, organizational hierarchy, or canonical statements of purpose, these principles must be inferred from its more specific features and its historical context.

As noted above, the IF regime supports liberalization of international financial flows. By creating uniform regulatory standards and fostering an ethos of non-discrimination, it eliminates obstacles to cross-border finance. This function, however, is less central to the IF regime than to the trade regime. Unlike the latter, the former is not structured as a vehicle to negotiate and enforce reciprocal market access commitments, a function to which it would be ill-suited.[53] In sharp contrast to the successive rounds of GATT negotiations that liberalized world trade, financial globalization originated in causes external to the IF regime: technological change; the collapse of the Bretton Woods fixed exchange rates system; and a widespread policy shift toward open capital accounts.[54] The regime thus emerged against a

forms, an advantage unavailable to other foreign issuers. *See* Pierre-Hugues Verdier, *Mutual Recognition in International Finance*, 52 HARV. INT'L L.J. 55 (2011). Other exceptions pre-date the modern IF regime, and their persistence may be motivated by prudential considerations. Thus, countries often require foreign bank branches to maintain bonded assets in their jurisdiction, and foreign banks to ring-fence their domestic operations. HAL S. SCOTT & ANNA GELPERN, INTERNATIONAL FINANCE: TRANSACTIONS, POLICY, AND REGULATION 192, 208–09 (24th ed. 2023). Many countries also restrict foreign ownership of banks and other financial institutions. *See* JAMES R. BARTH, GERARD CAPRIO JR. & ROSS LEVINE, RETHINKING BANK REGULATION: TILL ANGELS GOVERN 111–15 (2006). Perhaps surprisingly, countries also sometimes grant foreign firms better-than-national treatment. These exceptions generally favor liberalization by alleviating the burdens that would arise from duplication of home and host state rules. Thus, SEC rules for foreign private issuers exempt them from some requirements that apply to domestic issuers, such as preparing their financial statements in accordance with U.S. Generally Accepted Accounting Principles (GAAP) and disclosing individual executive compensation.

[50] Krasner, *supra* note 20, at 186.

[51] STEPHEN D. KRASNER, STRUCTURAL CONFLICT: THE THIRD WORLD AGAINST GLOBAL LIBERALISM 4 (1985).

[52] Krasner, *supra* note 20, at 188 (emphasis removed).

[53] Because obstacles to cross-border finance do not typically take the form of traditional trade barriers, a trade-like negotiation structure would be inapposite. The IF regime's soft law standards, peer review, and lack of dispute resolution mechanisms would also be poorly suited to detecting protectionist measures and enforcing market access commitments and non-discrimination rules.

[54] MICHAEL MUSSA, GIOVANNI DELL'ARICCIA, BARRY J. EICHENGREEN & ENRICA DETRAGIACHE, CAPITAL ACCOUNT LIBERALIZATION: THEORETICAL AND PRACTICAL ASPECTS 7–9 (1998). During that period, many jurisdictions eliminated capital controls, encouraged by organizations such as the IMF, the World Bank, the Organization for Economic Cooperation and Development (OECD), and the European Union. *Id.* Domestic financial liberalization also contributed, replacing state-owned or highly regulated firms with market-oriented actors that sought access to international finance. *Id.* at 9–10. Treaty commitments to eliminate some explicit barriers to foreign

background of rapid financial globalization. Indeed, the system presupposes financial globalization, without which it would lack a rationale; its standards often facilitate cross-border market integration; and most of its practitioners likely endorse financial openness.

The IF regime's core objective, however, has been to manage financial globalization by means of cooperation among expert national regulatory agencies. National officials constructed the regime to address the challenges the rise of cross-border finance posed to their domestic regulatory mandates.[55] The early history of the regime makes this orientation clear: cooperation emerged on a "problem-driven schedule" as regulators gathered to solve "specific cross-border problems or crises" such as bank failures or securities fraud.[56] These ad hoc efforts eventually grew into more prescriptive standards, more detailed cooperation arrangements, and more formal standard-setting procedures. The fundamental goal, however, remained the same: national regulatory agencies sought to address new problems that arose from financial globalization and threatened to undermine their domestic regulatory mandates. They acted collectively to preserve the effectiveness of national financial regulation.

Thus, the policy objectives pursued by the IF regime are essentially the same as those found in national financial regulation worldwide. They include financial stability, market integrity, investor and customer protection, crime prevention, and preserving competition.[57] For example, standards such as the Basel Concordat, Basel capital accords, and the FSB's Key Attributes, all aim at preserving financial stability by preventing bank failures and facilitating effective resolution of failed institutions. The IF regime advances customer and investor protection through initiatives such as the IOSCO MMOU, which institutes mutual assistance in investigating cross-border fraud and other securities law violations. International standards governing financial benchmarks, securities disclosure, or ESG ratings, promote market integrity. Anti-money laundering and terrorist financing standards aim to prevent financial crime and facilitate law enforcement.

The regime's starting point is the reality of financial globalization, which it takes for granted but also—at least implicitly—regards as desirable. It espouses the standard economic view that a market-based financial system produces collective gains by allocating capital to its most efficient uses, fostering economic development, improving risk allocation, and mitigating incentive problems.[58] In this vision, the role of regulation is to address market failures that could prevent achievement of these benefits. In the international context, where cross-border finance threatens to undermine national regulation, effective international cooperation is required. Thus, the IF regime ultimately rests on a logic of absolute gains: a well-regulated, market-based international financial system benefits all. The role of national regulators acting together is to coordinate their action to sustain these gains.

financial services providers also fostered liberalization. For an overview of GATS provisions and instruments on trade in financial services, see DE MEESTER, *supra* note 24, at 61–77.

[55] *See* Verdier, *supra* note 22, at 1416–22.

[56] ZARING, *supra* note 26, at 14.

[57] On the fundamental objectives of financial regulation, see, e.g., CHARLES GOODHART, PHILIPP HARTMANN, DAVID T. LLEWELLYN, LILIANA ROJAS-SUAREZ & STEVEN WEISBROD, FINANCIAL REGULATION: WHY, HOW AND WHERE NOW? 2–9 (1998); see also MICHAEL S. BARR, HOWELL E. JACKSON & MARGARET E. TAHYAR, FINANCIAL REGULATION: LAW AND POLICY 80–84 (3d ed. 2021).

[58] *See* Merton & Bodie, *supra* note 10, at 9–10.

The IF regime's institutional features reflect its technocratic orientation. The main actors are central banks and regulatory agencies, which generally benefit from independence in pursuing their mandates. As a result, international finance bodies can pool their expertise to develop the best technical solutions to cross-border problems without political interference.[59] This orientation toward technocratic goals and political neutrality extends beyond standard-setters to other actors of international finance, such as private service providers.[60] SWIFT, the world's leading financial messaging system, calls itself "a neutral utility with a global systemic character" that "always act[s] in the interests of the entire member community and in keeping with our mission of supporting the resilience and integrity of the global financial system."[61] Global banks have also traditionally taken pride in serving clients in numerous jurisdictions regardless of political differences.[62] The Federal Reserve Bank of New York, which holds U.S. dollar accounts and gold reserves for numerous countries, tried to insulate these from legal process and political interference.[63] These institutions all played their part in maintaining a market-based, rather than politically governed, international financial system.

* * * *

In sum, the IF regime as it evolved from the 1970s to the present day is characterized by several features. At the most fundamental level, it rests on a principle of expert regulation: its goal is to manage policy challenges generated by cross-border finance through cooperation among expert national regulatory agencies, against a background of liberalization and financial globalization. It incorporates implicit norms of multilateralism and openness that parallel those found in trade and investment and shape the regime's many specialized rules and standards. The regime's core organization and decision-making procedures reinforce its technocratic orientation: institutional informality, peer review, soft law norms, domestic implementation, agency independence, and political neutrality.

III. Geopolitics, Geoeconomics, and International Finance

How can we expect the rise of geopolitical competition to affect international finance and its regulation? In international trade and investment, the notion of geoeconomics has provided a lens through which scholars have analyzed the impact of geopolitics. This Part

[59] *See* Brummer, *supra* note 23, at 26 ("Independence, made possible through legislative grants of administrative authority, thus facilitates more technocratic and unbiased exercises of oversight and supervision.").

[60] *See* J. Benton Heath, *Neutrality and Governance in a Weaponized World*, 118 AJIL 566, 572 (2024) ("The United States and its allies initially adopted a liberal approach to this new world of wires, premised on open access, open information flows, and the delegation of governance authority to private actors.").

[61] Swift, *Swift and Sanctions* (May 7, 2024), *at* https://www.swift.com/about-us/legal/compliance-0/swift-and-sanctions. *See* Henry Farrell & Abraham Newman, Underground Empire: How America Weaponized the World Economy 25–28 (2023) (describing SWIFT's origins in international banks' preferences for a neutral alternative to Citibank's MARTI system.)

[62] Thus, before the recent wave of U.S. sanctions enforcement, European banks went to great lengths to service countries such as Cuba, Libya, and Sudan, among others. *See* Verdier, *supra* note 21, at 124–37.

[63] Political neutrality is also embedded in the structure of formal international financial organizations. From its inception, the Bank for International Settlements, central banker to the world's central banks, "was expected to perform its services in a neutral and technical manner." Daniel D. Bradlow, The Law of International Financial Institutions 19 (2023). The World Bank's founding treaty explicitly provides that "only economic considerations shall be relevant to [its] decisions." Articles of Agreement of the International Bank for Reconstruction and Development, Art. IV:10, *opened for signature* Dec. 27, 1945, 60 Stat. 1440, 2 UNTS 134.

draws on this scholarship to identify the principal ways in which increased geopolitical competition affects the objectives states pursue in international economic relations and the tools they use. It then turns to these concepts' application to international finance. It argues that the international financial system's central relevance to the achievement of states' geopolitical goals generates strong incentives for states to intervene in finance and that powerful states have multiple opportunities and tools to do so. Thus, theory suggests that the rise of geopolitical competition generates pressures that may transform the politics of international financial governance and challenge many aspects of the existing regime.

A. Geopolitical Competition and the Turn to Geoeconomics

Like many terms that gain popularity in policy debate, "geoeconomics" is imprecise, and commentators use it in several ways.[64] In an influential book, Robert Blackwill and Jennifer Harris define it as "the systematic use of economic instruments to accomplish geopolitical objectives."[65] In contrast with traditional economic approaches, geoeconomics "view[s] the economic actions and options of a given state as embedded within larger realities of state power."[66] In such an account, economic instruments such as trade, investment, aid, money, and energy, become tools of state power, used to advance non-economic foreign policy goals.[67] Examples abound: Russia's threats to cut off Europe's gas supply to dissuade EU and North Atlantic Treaty Organization (NATO) expansion, its offers of financial aid to Greece and Cyprus aimed at dividing the EU, China's extensive lending in Africa and Latin America, and India's development of regional economic ties to counterbalance Chinese influence.[68]

Although there is no bright-line distinction between economic and geopolitical goals, Blackwill and Harris contend that the latter differ in fundamental ways. According to economists' "positive-sum logic,"[69] international economic policy should aim to maximize economic welfare and be insulated from extraneous foreign policy goals.[70] In sharp contrast, "[t]he logic of geopolitics is traditionally zero-sum."[71] States compete for authority and

[64] For a short survey of previous uses and definitions of the term, see ROBERT D. BLACKWILL & JENNIFER M. HARRIS, WAR BY OTHER MEANS: GEOECONOMICS AND STATECRAFT 19–20 (2016).

[65] *Id.* at 1. Blackwill & Harris's extended definition also includes "[t]he use of economic instruments to promote and defend national interests" and "the effects of other nations' economic actions on a country's geopolitical goals." *Id.* at 9, 20. Their focus, however, is on the narrower concept. *Id.* at 21. This definition is more general than those used by Anthea Roberts and her coauthors, who focus almost exclusively on U.S.-China rivalry. *See, e.g.*, Roberts, Choer Moraes & Ferguson, *supra* note 6, at 662 ("A central driver of the reconfiguration of economics and security in the Geoeconomic Order is the growing geopolitical rivalry created by the emergence of China as both an economic and security competitor of the USA."); ROBERTS & LAMP, *supra* note 6, at 123 (asserting that "the geoeconomic narrative" is premised on "Sino-American great-power rivalry"). As will be elaborated below, this Article's contention is that the impact of geoeconomics on international finance is felt well beyond U.S.-China rivalry, and it accordingly uses the broader Blackwill-Harris definition. For a theoretical model of economic coercion by a hegemon, see Christopher Clayton, Matteo Maggiori & Jesse Schreger, *A Framework for Geoeconomics* (Nat'l Bureau of Econ. Res., Working Paper No. 31852 (2023)), *at* https://www.nber.org/papers/w31852 (revised June 2024).

[66] BLACKWILL & HARRIS, *supra* note 64, at 24.

[67] *Id.* at 49–92.

[68] *Id.* at 4–5.

[69] *Id.* at 6.

[70] *Id.* at 6–7.

[71] *Id.* at 24.

power, and one state's gain is another state's loss. Thus, when economic tools are turned to geopolitical ends, the logic governing their use shifts radically. In assessing policy options, states look beyond economic costs and benefits. A state may choose to pursue an economically destructive policy—such as cutting energy exports to its largest customer—to achieve a geopolitical goal—such as dissuading it from supporting its opponent in a war. Indeed, "when put to geopolitical use, economic instruments can produce outcomes that are every bit as powerful and as zero-sum as those resulting from traditional military showings of state power."[72]

At its heart, Blackwill and Harris's book was a call for the United States to abandon its reluctance to deploy economic tools for geopolitical ends. States around the world, including Russia and China, they contended, "now routinely look to geoeconomic means, often as a first resort, and often to undermine American power and influence."[73] Since then, the U.S. government has answered the call, leveraging the country's economic might to advance its security interests. Europe, another longstanding champion of a liberal international economic order, has also begun to shift its approach. In a widely publicized speech, Josep Borrell, the EU's chief diplomat, declared that in "a competitive world where everything is being weaponised," he concluded, Europe must eliminate "silos," act faster, and link its economic and security policies.[74] The catalyst for this shift was Russia's full-scale invasion of Ukraine, a direct threat to Europe's security.

Anthea Roberts, Henrique Choer Moraes, and Victor Ferguson elaborate on the rise of geoeconomics and its implications for the international trade and investment order.[75] They contend that the "Neoliberal Order" that prevailed after the end of the Cold War, and whose rules were based on "an 'economic' mindset . . . primarily concerned with maximising economic gains for states" is giving way to a "Geoeconomic Order."[76] Like Blackwell and Harris, Roberts and her coauthors identify the critical change as "a shift in focus from absolute gains (based on the assumption of a positive-sum game) to relative gains (based on the concern that one party has gained disproportionately or that one party's gain amounts to another party's loss, i.e., a zero-sum game)."[77] This shift arises from changes in the balance of geopolitical power, most notably the rise of China, that elevate security concerns to center stage.[78]

The rise of geoeconomics has several more specific implications for state behavior in international economic relations. First, as Henry Farrell and Abraham Newman have described, powerful states increasingly "weaponize interdependence," a phenomenon in which "states with political authority over the central nodes in the international networked structures . . . can weaponize networks to gather information or choke off economic and information flows,

[72] *Id.* at 25.

[73] *Id.* at 1.

[74] EU Ambassadors Annual Conference 2022, Opening Speech by High Representative Josep Borrell (Oct. 10, 2022), *at* https://www.eeas.europa.eu/eeas/eu-ambassadors-annual-conference-2022-opening-speech-high-representative-josep-borrell_en. On Europe's shift from "security to commerce" to geoeconomics, see generally FARRELL & NEWMAN, *supra* note 61, at 111–44.

[75] Roberts, Choer Moraes & Ferguson, *supra* note 6.

[76] *Id.* at 656, 658.

[77] *Id.* at 659; *see also* ROBERTS & LAMP, *supra* note 6, at 123.

[78] Roberts, Choer Moraes & Ferguson, *supra* note 6, at 657; *see also* ROBERTS & LAMP, *supra* note 6, at 123.

discover and exploit vulnerabilities, compel policy change, and deter unwanted actions."[79] Second, as states become more concerned with geopolitical competition and relative gains, they realize that "interdependence . . . can also generate strategic vulnerabilities,"[80] not just because other states might weaponize networks, but also because their state has grown dependent on global supply chains, lost industries deemed essential for its security, or simply fallen behind in economic or technological competition. This realization, in turn, generates calls for "greater resilience, including through increased self-reliance."[81]

The turn to geoeconomics affects the international trade and investment order in several ways. From a limited and mostly unused exception to the order, security becomes a crucial battleground as "states are increasingly relying on claims of national security in order to avoid the application of international . . . obligations and to limit or oust judicial review."[82] Geoeconomics reverses the trend toward multilateralism, legalization, and judicialization that has prevailed since the 1990s, notably with the creation of the WTO and the development of the investment protection regime. Faced with fundamental security concerns and worried about relative gains, great powers find it harder to agree on common rules or to trust third-party decisionmakers.[83] To the extent they engage with the regime, major powers try to secure acceptance of their preferred rules, those that privilege their own "style of play" and hinder the adversary. If they cannot secure their preferred outcomes in the multilateral regime, they turn to like-minded states and cooperate on a limited basis, generating "sectors of influence" and fragmenting the system.[84]

Finally, the rise of geopolitical competition has thrown into question the ability of states with different political regimes to cooperate on economic matters. Today's geopolitical cleavage is often described as a clash between democracies and autocracies, each embracing a radically different set of norms, values, and ideologies—including opposing conceptions of international law.[85] In the economic realm, the WTO model has struggled to respond to China's distinctive model of state capitalism, which contradicts its liberal economic premises.[86] U.S. and Chinese models of technological competition clash, compromising attempts to develop common rules.[87] Authoritarian regimes' greater willingness and ability to control information flows and strictly curtail independent institutions and civil society also clash with a liberal economic regime's demands for transparency and the rule of law. At the ideological level, the notion that international economic institutions and markets can remain neutral comes under increasing pressure as geopolitical competition takes moral and existential overtones.[88]

Since the authors above wrote, geoeconomics have become ever more ubiquitous in international politics. A major catalyst was Russia's full-scale invasion of Ukraine in 2022. If, as

[79] Henry Farrell & Abraham L. Newman, *Weaponized Interdependence: How Global Economic Networks Shape State Coercion*, 44 INT'L SECURITY 42, 45 (2019); *see also* FARRELL & NEWMAN, *supra* note 61.

[80] Roberts, Choer Moraes & Ferguson, *supra* note 6, at 659.

[81] *Id.* at 660; *see also* ROBERTS & LAMP, *supra* note 6, at 123, 131–33.

[82] Roberts, Choer Moraes & Ferguson, *supra* note 6, at 660; *see also* Heath, *supra* note 6; Claussen, *supra* note 6.

[83] Roberts, Choer Moraes & Ferguson, *supra* note 6, at 670–73.

[84] *Id.* at 673–75.

[85] *See* TOM GINSBURG, DEMOCRACIES AND INTERNATIONAL LAW (2021).

[86] *See* Mark Wu, *The "China, Inc." Challenge to Global Trade Governance*, 57 HARV. INT'L L.J. 261 (2016).

[87] *See* Roberts, Choer Moraes & Ferguson, *supra* note 6, at 666–69.

[88] *See* Heath, *supra* note 60.

recently as 2021, "it remain[ed] unclear what a 'geoeconomic EU' would look like or what would be the 'European Way' when it comes to geoeconomic issues,"[89] Europe has now ramped up its sanctions regime, adopted new instruments to screen foreign investment and resist foreign economic coercion, and reduced its dependence on Russian energy. The United States has shown little appetite to reinvigorate the multilateral trade and investment system, instead ramping up its use of tariffs, sanctions, and export controls against China. China's use of trade and investment tools to advance its political goals also continues. In short, "[t]he world has seen a stunning rise in the willingness of great powers to use their trade and financial relationships for geopolitical ends."[90]

B. Geopolitics and the International Financial System

The resurgence of geopolitical competition and the rise of geoeconomics have already transformed international trade and investment. How do these developments affect the international financial system and its regulation?

At the macroeconomic level, one connection between finance and geopolitics has long attracted attention: the relationship between a nation's external position (i.e., its current account balance and foreign assets holdings) and its geopolitical autonomy.[91] As China ran large trade surpluses beginning in the 1990s, it rapidly accumulated the largest foreign reserves in history, eventually peaking at about $3 trillion dollars in 2011.[92] Much of these reserves consisted of U.S. Treasury and Agency securities, raising geopolitical concerns in both countries: What if China dumped its U.S. assets during a conflict, or even preemptively, to compromise the United States' ability to fund its military dominance? On the other hand, what if the United States defaulted, or froze Chinese-held U.S. assets? Larry Summers first identified this "balance of financial terror" in 2004. It loomed large during the 2008 financial crisis, and despite a decline in Chinese U.S. dollar holdings, it continues to inform strategic thinking about a potential U.S.-China clash over Taiwan.[93]

This issue, while salient, is far from the only connection between geopolitics and international finance. These links run much deeper and implicate multiple aspects of international finance and its regulation. To start, consider the fundamental economic functions of the international financial system. In a classic paper, Zvi Bodie and Robert Merton state that "the primary function of any financial system is to facilitate the allocation and deployment of economic resources, both across borders and across time, in an uncertain environment."[94] This primary function breaks down into several more specific ones, including: "clearing and

[89] ROBERTS & LAMP, *supra* note 6, at 141.

[90] Christopher Clayton, Matteo Maggiori & Jesse Schreger, *The Political Economy of Geoeconomic Power*, AM. ECON. ASS'N PROC. (2025).

[91] Brad Setser, *Power and Financial Interdependence* 6 (IFRI Papers, May 2024).

[92] *See* ZONGYUAN ZOE LIU, SOVEREIGN FUNDS: HOW THE COMMUNIST PARTY OF CHINA FINANCES ITS GLOBAL AMBITIONS 153 (2023); *see also* Setser, *supra* note 91.

[93] Setser, *supra* note 91.

[94] Merton & Bodie, *supra* note 10, at 7. *See also* World Bank Group, Global Financial Development Report, Background: Financial Development (accessed May 7, 2024), *at* https://www.worldbank.org/en/publication/gfdr/gfdr-2016/background/financial-development ("The five key functions of a financial system are: (i) producing information ex ante about possible investments and allocate capital; (ii) monitoring investments and exerting corporate governance after providing finance; (iii) facilitating the trading, diversification, and management of risk; (iv) mobilizing and pooling savings; and (v) easing the exchange of goods and services.").

settling payments," "pooling resources . . . [and] transferring [them] across time and space," and "managing risk . . . providing information . . . [and] dealing with incentive problems."[95]

Each of these functions has clear geopolitical implications. Their achievement, who achieves them, and the ways in which they are achieved, affect the strengths, vulnerabilities, and strategic options available to states. At the domestic level, clearing and settlement of payments is a critical function: disrupting a country's payment system could paralyze its economy. This provides both an offensive opportunity for adversaries and a defensive fear: the integrity of a state's payment system must be protected. At the international level, money is the lifeblood of international trade and investment: access to cross-border payment systems affects a country's ability to achieve both economic and political aims. As will be seen, this reality has become very salient in the realm of financial sanctions, which aim to exclude certain actors and nations from international payments. Both domestically and internationally, payment systems are also a vital source of security-relevant information that can be monitored to detect and combat threats such as crime, terrorism, espionage, or foreign interference.[96]

Likewise, how economic resources are pooled, who manages them, and where they are allocated, are concerns of vital strategic importance. In wartime, states took direct control of banking and financial systems to allocate resources to defense production. In peacetime, the ability to shape the pooling and allocation of capital can serve numerous geopolitical objectives. Nations may want to steer resources to industries they believe essential to their security, or to gain leadership in strategically important global industries. Even when they stop short of directly allocating capital, nations may want to insulate the process from foreign interference, for example by restricting foreign ownership of financial intermediaries. At the international level, capital allocation can play a vital strategic role: nations may steer investment to allies to encourage "friendshoring" or build up a network of client states, help their friends combat financial crises, and support their allies' defense efforts. Conversely, they may want to prevent capital from flowing to antagonists.

The financial system's risk-allocating, information-generating, and incentive-setting functions also implicate geopolitical concerns. In practice, these functions encompass "producing information ex ante about possible investments . . . monitoring investments and exerting corporate governance . . . [and] facilitating the trading, diversification, and management of risk."[97] They require transparency: accurate information about securities issuers, for example, must be available. This is why securities regulation involves mandatory disclosure of issuers' financial condition, business lines and prospects, and risk factors. Efficient markets also require third parties to generate and circulate information: an ecosystem of analysts, rating agencies, and market participants.[98] These

[95] *Id.* at 12–16. The paper describes these functions as follows: "A financial system provides ways of clearing and settling payments to facilitate the exchange of goods, services, and assets . . . [it] provides a mechanism for the pooling of funds to undertake large-scale indivisible enterprise or for the subdividing of shares in enterprises to facilitate diversification . . . [and] ways to transfer economic resources through time, across geographic regions, and among industries . . . [it] provides ways to manage uncertainty and control risk . . . price information that helps coordinate decentralized decision-making in various sectors of the economy . . . [and] ways to deal with the incentive problems when one party to a financial transaction has information that the other party does not, or when one party is an agent for another." *Id. See also* BARR, JACKSON & TAHYAR, *supra* note 57, at 9–10.

[96] *See* JUAN C. ZARATE, TREASURY'S WAR: THE UNLEASHING OF A NEW ERA OF FINANCIAL WARFARE (2013).

[97] World Bank Group, *supra* note 94.

[98] *See* Ronald J. Gilson & Reinier H. Kraakman, *The Mechanisms of Market Efficiency*, 70 VA. L. REV. 549 (1984).

functions also require investors to monitor and control their investments, including through enforceable legal rights.[99] These desiderata can clash with strategic and security concerns: nations may prefer to restrict information flows, maintain control over critical industries, and deprive investors of legal recourses over capital allocation decisions driven by geopolitical objectives. These clashes may be more acute in political regimes that restrict information flows and lack independent judiciaries.

Beyond its relevance to states' geopolitical objectives, other characteristics of the international financial system make it a potential battleground for competition and conflict. Financial liberalization has prompted the growth of global infrastructure whose "asymmetric network structure" gives some states outsized capacity to gain strategic advantage, as illustrated by SWIFT sanctions.[100] The United States has the world's largest and deepest financial markets, which makes exclusion costly, and a legal system that can impose large costs on private actors to align their actions with U.S. interests.[101] China, for its part, has the world's largest foreign exchange reserves, which can be deployed in multiple ways to advance geopolitical goals. Its political system, large state-owned financial sector, and security apparatus also give it greater ability to steer the behavior of regulators and firms. These different tools available to states may dictate different geoeconomic strategies.[102] At the same time, large classes of states—developing countries, but also advanced mid-size economies—may lack much in any capacity to use finance to advance their goals. As geopolitical competition becomes more salient, so will these differences in the "structural features—or geoeconomic endowments—that dictate how effective a country is likely to be in the use of geoeconomic tools."[103]

Finally, states have powerful tools to reshape finance to serve their geopolitical goals. Chief among these are existing national financial laws and institutions, which typically give regulatory agencies considerable discretion to set and implement policy. For example, in the United States, the SEC, the Commodity Futures Trading Commission (CFTC), and banking regulators can adopt binding rules on numerous aspects of U.S. securities and banking markets. They also have vast supervision and enforcement powers that can be used to shape the behavior of regulated financial institutions and other market participants, ranging from formal enforcement action to behind-the-scenes "moral suasion."[104] These tools have traditionally been used to pursue traditional regulatory objectives like financial stability, investor protection, and market integrity. But as Blackwill and Harris note, "[i]f a sharpened brand of financial and monetary geopolitics does resurface, it is doubtful that the current norms—unwritten rules that keep the work of Western foreign ministries comfortably distant from that of

[99] One of the benefits of the financial system is to incentivize better management, but this requires effective investor rights and, ideally, an active market for corporate control. Investors must have recourse against fraud, tunneling, or market manipulation, whether it occurs domestically or across borders.

[100] Farrell & Newman, *supra* note 79, at 45.

[101] *See* Verdier, *supra* note 21, at 26–33.

[102] *See* BLACKWILL & HARRIS, *supra* note 64, at 27 (distinguishing positive and coercive uses of geoeconomic leverage).

[103] *Id.*

[104] *See* DAVID W. PERKINS, CONG. RES. SERV., R46648, BANK SUPERVISION BY FEDERAL REGULATORS: OVERVIEW AND POLICY ISSUES (Dec. 28, 2020). On the importance of regulatory capacity for sanctions implementation, see Edoardo Saravalle, *Recasting Sanctions and Anti-Money Laundering: From National Security to Unilateral Financial Regulation (Note)*, 2022 COLUM. BUS. L. REV. 550, 596–99 (2022).

finance ministries and central banks will serve either side well."[105] In the aftermath of the financial crisis, politicians in multiple countries asserted greater control over financial regulation.[106] These reforms did not directly aim to inject geopolitics into financial regulation, but they may have prepared the ground for greater intervention in the service of geopolitical objectives.

C. The Changing Politics of International Finance

The rise of geopolitical competition, by generating incentives for states to intervene in international finance, sets the stage for what could be a major shift in international financial governance. As seen above, scholarship on geoeconomics and the functions of the international financial system suggests that, as states become more concerned with geopolitical rivalry, their interventions will be characterized by increasing use of economic tools for non-economic foreign policy goals, a shift from positive-sum cooperation to zero-sum competition, weaponization of financial networks and markets, heightened concern with strategic vulnerabilities and resilience, and a growing divide between authoritarian and democratic states. As these trends materialize, the politics of international financial governance will change, as states deploy an array of tools to turn international finance to their geopolitical ends.

This claim should not be misunderstood to imply that there was a time "before politics" in international finance, such that the rise of geopolitics could be seen as breaching a previously impermeable barrier. International financial governance has never been apolitical. As Eric Helleiner documented more than three decades ago, policy decisions by states—notably to adopt a permissive approach to the growth of the Eurodollar market, to gradually abolish capital controls, and to act to prevent and contain financial crises—played a central role in the reemergence of private international finance.[107] Likewise, key international regulatory initiatives had their origins in political bargaining. Thomas Oatley and Robert Nabors showed how the United States and United Kingdom, fearing a competitive disadvantage for their banks after the 1980s Latin American debt crisis, pressured Japan to adopt uniform bank capital standards.[108] Since then, the Basel Committee and other bodies have frequently been riven by policy clashes among powerful states trying to secure adoption of standards that advance their preferred policy objectives or favor their own economies.[109] This phenomenon persists today with Transatlantic debate over implementation of the "Basel III Endgame."

[105] BLACKWILL & HARRIS, *supra* note 64, at 75.

[106] *See* BRUMMER, *supra* note 23, at 31; Stavros Gadinis, *From Independence to Politics in Financial Regulation*, 101 CAL. L. REV. 327 (2013); Michael Salib & Christina Parajon Skinner, *Executive Override of Central Banks: A Comparison of the Legal Frameworks in the United States and the United Kingdom*, 108 GEO. L.J. 905 (2020).

[107] *See* ERIC HELLEINER, STATES AND THE REEMERGENCE OF GLOBAL FINANCE: FROM BRETTON WOODS TO THE 1990S 8–12 (1994).

[108] *See* Thomas Oatley & Robert Nabors, *Redistributive Cooperation: Market Failure, Wealth Transfers, and the Basle Accord*, 52 INT'L ORG. 35 (1998).

[109] *See* Pierre-Hugues Verdier, *Transnational Regulatory Networks and Their Limits*, 34 YALE J. INT'L L. 113 (2009). In addition, powerful states have long leveraged the importance of access to their markets, as well as extraterritorial enforcement tools, to export their preferred standards regardless of their adoption by international standard-setting bodies. *See, e.g.*, Pierre-Hugues Verdier, *The New Financial Extraterritoriality*, 87 GEO. WASH. L. REV. 239 (2019); BRUMMER, *supra* note 23, at 45–50; DANIEL W. DREZNER, ALL POLITICS IS GLOBAL: EXPLAINING INTERNATIONAL REGULATORY REGIMES (2007); Beth A. Simmons, *The International Politics of Harmonization: The Case of Capital Market Regulation*, 55 INT'L ORG. 589 (2001). In international financial standard-setting,

In recent years, states have also clashed over enforcement policy. As the United States imposed massive fines and extensive compliance requirements on large foreign banks, their home states reacted with anger, complaining that these unilateral actions threatened their financial stability, undermined their policy autonomy, and despoiled their shareholders. In a famous episode in 2014, President Hollande of France intervened directly with President Obama at a state dinner to protect BNP Paribas against massive fines for sanctions violations.[110] The British government also pleaded for the U.S. Department of Justice to refrain from punitive fines against UK banks.[111] U.S. efforts to compel Swiss banks to disclose information about U.S. account holders led to years-long negotiations at the highest levels.[112]

Thus, international finance and its governance have long been intertwined with politics, with no impermeable wall of separation. The claim made here not that geopolitical competition is politicizing a previously apolitical system, but that it is introducing, on a large scale, a particular form of political intervention from which the IF regime had largely been insulated.

While the regime accommodated a substantial element of political negotiation and conflict, these usually took the form of distributive and enforcement conflicts. Participants in the Basel Committee might jostle over bank capital requirements for home mortgages or corporate equity because they disagreed on the risk these assets posed, or simply because their respective banks invested more in one or the other. They might quarrel over bank fines for money laundering because they envisioned a different balance between financial stability and crime prevention, or simply because of lobbying by their banks' shareholders. Sometimes, for similar reasons, states took advantage of the lack of enforcement to depart from aspects of international standards they disliked. When the stakes were high enough, a dispute might escalate into a diplomatic dispute to be handled by politicians.

However, these debates over the choice of substantive standards, the distribution of gains, and compliance ultimately took place in the context of cooperative efforts to achieve common regulatory goals. Expert regulators and financial policy officials dominated decision making and resisted the intrusion of non-economic foreign policy goals. States and policymakers generally respected the neutrality of international financial infrastructure and networks, expressed only muted concern for strategic vulnerabilities and other non-economic concerns (with the important exception of terrorist financing after 2001), and paid little attention to differences in political systems.[113] In all these respects, geopolitical conflict and the rise of

actors sometimes privilege other economic interests over regulatory objectives. For example, Basel capital rules have been criticized for favoring sovereign debt, residential mortgages, and other categories of assets to encourage banks to hold them. Likewise, aspects of financial regulation have long had distributive aims, such as ensuring equitable access to financial services. Customer protection may also have a distributive aspect, although the usual rationale is to correct market failures, such as asymmetric information, and preventing exploitation of consumers' bounded rationality.

[110] *See* VERDIER, *supra* note 21, at 134–37.

[111] *Id.*

[112] *Id.*

[113] Another way to put this point might be that insulating the regime from non-economic policy interventions and articulating it around informal institutions, non-discrimination, and expert governance was itself a political choice, albeit one that was rarely explicitly articulated. An interesting question, which cannot be fully addressed in this Article, is the relationship between these features of the IF regime and the ideological commitments associated with neoliberalism. As noted above, Roberts, Choer Moraes, and Ferguson identify the pre-2008 period of international economic governance as a "Neoliberal Era" that involved, among others, "encouraging . . . deregulation, liberalization, and privatization." Roberts, Choer Moraes & Ferguson, *supra* note 6, at 656; *see also* GARY GERSTLE, THE RISE AND FALL OF THE NEOLIBERAL ORDER: AMERICA AND THE WORLD IN THE FREE MARKET ERA 2 (2022)

geoeconomics point to a substantial shift by creating the conditions for interventions that contradict the regime's explicit and implicit premises. Thus, while the intrusion of politics into international financial governance is not new, the rise of geopolitical competition has the potential to transform the nature of the regime's politics.[114]

IV. The Impact of Geopolitical Competition on International Finance

As states ramp up their use of finance to advance geopolitical objectives, their actions are likely to clash with the IF regime's fundamental norms and principles, generating new challenges that may undermine the regime or transform it.

This Part shows that these clashes have begun. Geopolitical competition is already reshaping international finance and its regulation, and three major trends reveal that impact. First, powerful states are weaponizing the international financial system, using their control over vital nodes to advance geopolitical goals. In response, their opponents attempt to reduce their dependence on the system and to develop alternatives. Second, states are erecting new barriers to cross-border finance driven by security concerns. Third, states increasingly strive to reorient financial flows to advance geopolitical objectives, such as favoring military allies, reshoring critical industries, or gaining technological advantage.

(characterizing the Neoliberal Order as "grounded in the belief that market forces had to be liberated from government regulatory controls that were stymieing growth, innovation, and freedom"). The IF regime, created primarily by national regulatory agencies aiming to preserve the effectiveness of domestic regulation in the face of new threats generated by financial globalization, does not fit such descriptions easily. Recent authors have proposed more nuanced characterizations of neoliberalism based on an analysis of the ideological commitments of its principal proponents, notably Friedrich Hayek, Milton Friedman, and James Buchanan. *See* Kevin Vallier, *Neoliberalism*, *in* Stanford Encyclopedia of Philosophy (2021). Such authors describe neoliberals as centrally concerned with "the problem of how to identify the factors indispensable to the maintenance of functioning markets" (Thomas Biebricher, The Political Theory of Neoliberalism 26 (2018)) and with "finding the right state and the right law to serve the market order" (Quinn Slobodian, Globalists: The End of Empire and the Birth of Neoliberalism 87 (2018)). One might be tempted to classify the IF regime's commitments as part and parcel of the neoliberal institutional framework designed to sustain the market order. But such an approach is hard to reconcile with leading neoliberals' well-known hostility to most forms of economic regulation and deep skepticism of the sort of market failure rationales that underpin financial regulation, such as bank capital requirements, mandatory disclosure and auditing, customer protection regimes, insider trading prohibitions, and tax information sharing. At most, one might say that the IF regime emerged against the background of an international financial system that incorporated several policies favored by neoliberals—such as floating exchange rates, substantial capital mobility, market-based capital allocation, and central bank independence—and strived to achieve common regulatory objectives within such a system rather than deploying state control to reverse or inhibit financial globalization. It is also worth noting that, while the 2008 financial crisis is often seen as a turning point in the demise of neoliberalism, it resulted in a massive expansion of financial regulation both domestically (such as with the adoption of the U.S. Dodd-Frank Act) and internationally (with the creation of the Financial Stability Board and the adoption of numerous new international standards, including strengthened bank capital requirements), in response to widespread demand from politicians and democratic constituencies. This expansion of government interference in the market was a setback for neoliberalism, but a boon to the IF regime as defined here.

[114] The international financial system's relative insulation from geopolitics has antecedents in the liberal period of the late nineteenth century, in which, according to historian Nicholas Mulder, "[r]are cases of politically motivated financial restrictions, such as Bismarck's 1887 loan ban . . . against Russia, proved the general rule that geopolitics and market regulation usually remained separate." Nicholas Mulder, The Economic Weapon: The Rise of Sanctions as a Tool of Modern War 17 (2022). To be sure, even in modern globalization era, the IF regime's insulation from non-economic objectives was never complete. For example, states have sometimes offered incentives for others to use their currencies or banks. *See, e.g.*, Daniel McDowell, Bucking the Buck: US Financial Sanctions and the International Backlash Against the Dollar 14 (2023) (describing agreements by Saudi Arabia and Germany to use U.S. dollars in return for military support).

It is difficult, perhaps impossible, to fully document the impact of geopolitics on international finance—not least because "[o]ften . . . evidence of geoeconomic behavior is . . . circumstantial . . . especially where it is coercive."[115] Nevertheless, the examples described in this Part amply illustrate the nature and scale of the challenge to international financial governance. They involve today's leading economic powers, and they relate to major areas of financial regulation. These developments challenge the basic norms and principles on which the IF regime is founded: institutional informality, insulation from politics, multilateralism, openness, liberalization, and technocratic management.

A. Weaponizing Financial Interdependence

The most visible way in which international finance is being harnessed in the service of geopolitics is financial sanctions. In the past two decades, economic sanctions have become vital tools of U.S. and European foreign policy, and many of these sanctions target finance. In response to Iran's nuclear program, the United States sanctioned the country's banks, cutting them off from U.S. dollar payments and freezing their assets.[116] It also threatened third-country banks with secondary sanctions if they continued dealing with Iran. The EU excluded Iranian banks from SWIFT, the premier global interbank messaging service.[117] Russia's annexation of Crimea and its later full-scale invasion of Ukraine prompted unprecedented expansion of financial sanctions. The United States, Europe, and their allies froze Russian assets, including much of Russia's central bank reserves. They targeted Russian banks by excluding them from SWIFT, cutting off their access to correspondent accounts, and, in some cases, imposing full blocking sanctions. They also banned many new investments in Russia and restricted offerings and trading of securities of sanctioned Russian entities.[118]

The ability of leading financial jurisdictions, primarily the United States and Europe, to enforce financial sanctions relies not only on the importance of their markets but, more uniquely, on their authority over critical components of the international financial infrastructure. Financial sanctions are thus a core instance of "weaponized interdependence," a pattern in which "states with political authority over the central nodes in the international networked structures through which money, goods, and information travel are uniquely positioned to impose costs on others."[119] These states can leverage both "panopticon" and "chokepoint" effects, extracting information from the networks they control and threatening to exclude

[115] Blackwill & Harris, *supra* note 64, at 11.

[116] *See* Verdier, *supra* note 21, at 118–20.

[117] *Id.* at 120–22.

[118] For overviews of U.S. financial sanctions on Russia, see Kristen E. Eichensehr, Contemporary Practice of the United States, 116 AJIL 614 (2022); Christine Abely, The Russia Sanctions 27–39 (2023). The Global Financial Sanctions Database, last updated in 2023, confirms that the use of sanctions has escalated substantially in recent years. In its principal researchers' words, "there was a dramatic increase in the imposition of sanctions during the 2019–2022 period. Specifically, 2021 boasts the largest number of new sanctions. . . . By 2022, the number of active sanctions also reached its historical maximum since 1950." Constantinos Syropoulos, Gabriel J. Felbermayr, Aleksandra Kirilakha, Erdal Yacin & Yoto V. Yotov, *The Global Sanctions Data Base–Release 3: COVID-19, Russia, and Multilateral Sanctions*, 32 Rev. Int'l Econ. 12, 14 (2023). On the growing use of economic and financial sanctions by important non-Western powers, including India, China, and Russia, see Research Handbook on Unilateral and Extraterritorial Sanctions, Chs. 2, 4–6 (Charlotte Beaucillon ed., 2021).

[119] Farrell & Newman, *supra* note 79, at 45. One of Farrell and Newman's core examples of weaponized interdependence is SWIFT exclusion, which they discuss at length. *See id.* at 65–70.

adversaries.[120] Apart from network centrality and market size, these states also rely on exceptional levels of regulatory and enforcement capacity to make their sanctions effective.[121] In practice, the ability to weaponize financial interdependence to advance geopolitical goals is inherently restricted to very few states.

U.S. and European policies that weaponize the financial system are typically implemented by national security officials using national security tools, such as the U.S. International Emergency Economic Powers Act (IEEPA) and EU sanctions regulations. Nevertheless, these policies intersect with the IF regime in several ways, all of which potentially contradict its norms, principles, and decision-making procedures.

First, by their nature, financial sanctions depart from non-discrimination norms: because some nations are geopolitical adversaries, they are excluded from critical financial systems available to a nation's own firms and to its allies. Exclusion from these systems and other financial sanctions, such as asset freezes and prohibitions on specified transactions, also shut off cross-border trade and investment. Indeed, that is typically their ultimate objective: financial sanctions do not restrict financial flows for their own sake, but to affect the real economy and degrade an adversary's military capabilities. For example, U.S. financial sanctions impaired Iran's ability to export oil, discouraged third-party investment, and damaged its internal economy.[122] Financial sanctions thus also clash with the IF regime's orientation toward liberalization and market-based capital allocation.

Second, financial sanctions blur the line between financial regulation and national security, undermining the IF regime's principles of regulatory independence and technocratic management. Though the primary actors are national security officials, financial regulatory agencies also play a crucial role in implementing financial sanctions. Under U.S. law, banking regulators supervise banks' anti-money laundering and sanctions programs to ensure their effectiveness, requiring banks to spend hundreds of billions of dollars in estimated compliance costs. These agencies and prosecutors routinely impose enormous fines to compel U.S. and foreign banks to apply U.S. sanctions, and sometimes mandate specific measures such as hiring more sanctions and anti-money laundering personnel, upgrading governance, and appointing independent monitors.[123] In some cases, the commitments they extract go beyond legal obligations. In settling U.S. criminal charges, HSBC agreed to implement U.S. sanctions in all currencies and at all its worldwide affiliates, even where not formally required by U.S. sanctions laws.[124] The European Central Bank, the central actor in Eurozone banking regulation, also played a crucial role in designing and implementing European sanctions on Russia.[125]

The fact that financial regulators have become deeply implicated in implementing financial sanctions should come as no surprise, because sanctions have increasingly become regulatory in intent and effect. Their aim is not just to create immediate carrots and sticks, but to regulate global finance to deter certain activities for security or geopolitical reasons. In Edoardo

[120] *See id.* at 54–58.

[121] *See* Saravalle, *supra* note 104, at 596–603.

[122] *See* VERDIER, *supra* note 21, at 117–23.

[123] *See id.* at 124–37.

[124] *See id.* at 133–34.

[125] *See* Lucia Quaglia & Amy Verdun, *Weaponisation of Finance: The Role of European Central Banks and Financial Sanctions Against Russia*, 46 W. EUR. POL. 872 (2023).

Saravalle's words, "sanctions measures are ultimately just financial regulations, 'rules for where money can and cannot flow,' except that in the case of sanctions the rules dictate that money should not go into Iran as opposed to dictating that money should not go to undercapitalized banks."[126] This blurring of the lines challenges the regime's technocratic orientation, which supposes a clear demarcation between financial regulatory goals—correcting market failures—and other objectives, such as national security, which fall outside the purview of financial regulators and their legal authorities. In doing so, it introduces a critical source of divergence between the interests of different national regulators, potentially undermining international cooperation mechanisms.[127]

At the same time, the weaponization of international finance challenges the principle of neutrality that transnational infrastructures, such as SWIFT and the global correspondent banking network, have traditionally observed.[128] SWIFT may continue to insist that it is neutral, but its exclusion of Iranian and Russian banks under U.S. and EU pressure shows the world otherwise. Likewise, while global banks might prefer to serve customers everywhere regardless of their political differences, the threat of U.S. enforcement has forced them to abandon entire countries and regions and to implement U.S. sanctions across their global operations. The notion that international financial infrastructure is politically neutral, to the extent it ever prevailed, is dying, and with it any expectation that access to critical messaging, payments, and other systems will be based solely on traditional regulatory considerations—such as financial stability or crime control—rather than geopolitical ones.

Finally, weaponization of the global financial system motivates targets to reduce their exposure to interdependence. In a widely publicized 2016 speech, U.S. Treasury Secretary Jacob Lew warned that U.S. overuse of financial sanctions could threaten U.S. dollar dominance, echoing concerns voiced by many commentators.[129] While the U.S. dollar remains by far the leading trade and reserve currency, financial sanctions have prompted targets to seek alternatives. In a recent book, Daniel McDowell shows that Russia and Turkey have strived to reduce their dependence on the dollar by shifting their central bank reserves to other currencies, buying gold, and encouraging non-dollar trade settlement.[130] Potential competitors have deployed efforts to make their currencies more attractive.[131] China developed the Cross-Border Interbank Payment System (CIPS), a messaging, clearing and settlement system for international renminbi payments.[132] Although these efforts have only met with limited success, the proliferation of U.S. sanctions may contribute to de-dollarization.[133] More generally, the weaponization of finance generates incentives for states to exit existing networks and

[126] Saravalle, *supra* note 104, at 590–91.

[127] *See* Section V.A *infra*.

[128] *See* notes 61–63 *supra* and corresponding text.

[129] Jack Lew, T*he Evolution of Sanctions and Lessons for the Future, Carnegie Endowment for International Peace*, Carnegie Endowment Int'l Peace (Mar. 30, 2016), *at* https://carnegieendowment.org/2016/03/30/u.s.-treasury-secretary-jacob-j.-lew-on-evolution-of-sanctions-and-lessons-for-future-event-5191. *See* Verdier, *supra* note 21, at 184–87.

[130] McDowell, *supra* note 114, at 5–7; *see also* Abely, *supra* note 118, at 33–35.

[131] McDowell, *supra* note 114, at 127–40.

[132] *See id.* at 141–56; *see also* Felix Chang, *Clearing the Way to Renminbi Domination: CIPS, Antitrust, and Currency Competition*, 51 Fla. St. U. L. Rev. 457 (2024).

[133] McDowell, *supra* note 114, at 5–7.

to develop alternatives, fragmenting the international financial system and undermining the IF regime's premises.

B. *Restricting Cross-Border Finance*

As geopolitical tensions rise, states become more attuned to the vulnerabilities generated by interdependence and adopt measures to buttress their economic security. These measures include reducing reliance on the U.S. dollar and global payment systems, but there are many other ways in which financial openness may generate perceived security threats. In recent years, all three major economic and financial powers have adopted measures to restrict cross-border finance to protect security and geopolitical interests.

The most visible example is China, which has taken several steps to protect its security against perceived threats from the financial sector, reversing decades of reform. In the 1990s, as part of broader market-oriented economic reforms, the country began allowing foreign investors to invest in Chinese securities, listed several companies on foreign stock exchanges, and overhauled its banking system by injecting new capital, shedding non-performing loans, seeking partnerships with foreign firms, and listing bank shares through initial public offerings (IPOs).[134] China also modernized its financial regulation system by creating professionalized agencies, the China Banking Regulatory Commission (CBRC) and China Securities Regulatory Commission (CSRC), which joined international standard-setting bodies and began implementing their standards.[135] China also rejoined the IMF and the World Bank and joined the WTO, making significant commitments on market access for financial services.[136] This approach, along with China's economic boom, succeeded in attracting large inflows of foreign capital.

Despite these reforms, China has long been attuned to the risks of financial openness, and carefully managed liberalization to control perceived vulnerabilities. At the macroeconomic level, the Asian financial crisis's impact on neighboring economies alerted China's leadership to the economic and sovereignty risks of capital flight, and generated policies aimed at accumulating large foreign exchange reserves and maintaining tight capital controls. The crisis also "led the CPC leadership for the first time to consider financial security a core element of China's national security."[137] As a result, leaders prioritized two objectives: "tightening financial regulations to strengthen financial security, and resisting foreign pressure to open up China's financial markets prematurely."[138] Thus, China has been keen to insulate strategic financial firms and markets from foreign influence: large state-controlled banks and securities firms continue to dominate these sectors, and state-owned enterprises (SOEs) continue to provide most listings on major Chinese stock markets.[139] China also long prevented foreign credit cards and other payment processors from accessing its market, preferring homegrown networks like UnionPay.[140] Incidents such as U.S. sanctions on Hong Kong officials and

[134] LIU, *supra* note 92, at 48–49, 80–85; SCOTT & GELPERN, *supra* note 48, at 1376–423.
[135] LIU, *supra* note 92, at 49.
[136] *Id.* at 49, 81.
[137] *Id.* at 12.
[138] *Id.* at 53.
[139] BLACKWILL & HARRIS, *supra* note 64, at 54.
[140] *See* Doug Palmer & Frank Tang, *China Slow-Walks Opening Country to U.S. Credit Card Companies*, POLITICO (Apr. 2, 2019), *at* https://www.politico.com/story/2019/04/02/china-us-credit-card-companies-1309803.

Huawei further pushed "the Chinese government [to try] to insulate itself from the global financial infrastructure."[141]

In recent years, the clash between financial openness and security concerns has intensified, as illustrated by a salient episode: the U.S.-China dispute concerning audits of Chinese firms listed on U.S. stock exchanges. In the 1990s and 2000s, many Chinese firms listed their shares on U.S. exchanges, including not only large SOEs and private companies, but also many smaller technology firms.[142] Under U.S. law, auditors that prepare financial statements for U.S.-listed firms are subject to oversight by the SEC and the U.S. Public Company Auditing Oversight Board (PCAOB), including periodic and "surprise" inspections, review of audit papers and other documents, and interviews with audit personnel.[143] U.S.-listed foreign firms are deemed to consent to production of this information as part of their auditor's inspection.[144] Many foreign regulators have concluded cooperation agreements under which PCAOB relies, in whole or in part, on local auditors and their regulation.[145]

China, by contrast, has taken a dim view of foreign inspections of Chinese auditing firms. While it has strived to develop a professional domestic auditing industry, its plans explicitly favored "those accounting firms . . . beneficial 'to protecting the safety of national economic information,'"[146] and it did not create a separate accounting oversight body like PCAOB.[147] The Chinese government also resisted penetration of its market by the "Big Four" international auditing firms, adopting localization measures that limit the number of foreign partners in their local affiliates and require managing partners to be Chinese nationals.[148] More to the point, the Chinese government also strictly limits cross-border information flows. Multiple, overlapping, and stringent Chinese laws limit access by PCAOB to audit documents, including a national security law that prohibits transferring any state secret—a broad and vague term that can be applied retroactively.[149] Chinese law also prohibits foreign regulators from conducting inspections or investigations in China.[150]

These restrictions set the stage for a clash after a wave of accounting scandals hit smaller U.S.-listed Chinese companies in the early 2010s.[151] As the PCAOB ramped up its inspections of China-based auditors, they refused to cooperate, invoking Chinese secrecy laws.[152] In 2013, the PCAOB and Chinese authorities entered into a memorandum of understanding (MOU) intended to facilitate inspections, but PCAOB continued to face many obstacles

[141] Farrell & Newman, *supra* note 61, at 107–08.

[142] Robin Hui Huang, *The U.S.-China Audit Oversight Dispute: Causes, Solutions, and Implications for Hong Kong*, 54 Int'l Lawyer 151, 170–72 (2021); Jesse M. Fried & Tamar Groswald Ozery, *The Holding Foreign Companies Accountable (HFCA) Act: A Critique*, 14 Harv. Bus. L. Rev. 257, 262–64 (2024).

[143] Huang, *supra* note 142, at 155–58.

[144] *See id.* at 157.

[145] *Id.* at 161–63.

[146] *Id.* at 164.

[147] *See id.* at 164–65.

[148] *See id.* at 164.

[149] *See id.* at 167–70.

[150] *Id.* at 167. *See also* Pub. Co. Acct. Oversight Bd., HCFAA Determination Report 6 (PCAOB Release No. 104-HFCAA-2021-001) (Dec. 16, 2021) [hereinafter HCFAA Determination No. 1].

[151] *See* Fried & Groswald Ozery, *supra* note 142, at 265–69.

[152] Huang, *supra* note 142, at 172–73.

and eventually concluded that the MOU was ineffective.[153] As a result of this stalemate, the PCAOB and U.S. exchanges restricted new listings from non-cooperative jurisdictions, and in 2020, the U.S. Congress required U.S.-listed firms from non-cooperative jurisdictions to disclose government control and threatened them with delisting after three years.[154] PCAOB soon made jurisdiction-wide findings that it was unable to inspect or investigate Chinese and Hong Kong firms, starting the countdown to mandatory delisting.[155] These actions appear to have prompted progress: PCAOB and Chinese authorities concluded a new agreement in 2022, after which PCAOB successfully concluded trial inspections of two audit firms and rescinded its prior findings.[156] Since then, PCAOB has investigated additional audit firms and imposed substantial penalties.[157]

Despite the apparent resolution of the PCAOB audit dispute, the more fundamental problem remains and will likely continue to fuel tensions. As Huang notes, "China's overall policy objective . . . has always been . . . maintaining national control on matters within its borders."[158] This objective has led to broad national security constraints on information flows, resistance to foreign oversight, and a new hostility to foreign exchange listings of important Chinese companies. Shortly after its 2021 NYSE IPO, ride-sharing firm DiDi was targeted by privacy enforcement actions that removed its app from all Chinese app stores; the company soon delisted from the New York Stock Exchange (NYSE).[159] Alibaba, whose 2014 NYSE IPO was the world's largest at the time, was later targeted by investigations as its founder Jack Ma fell out of favor.[160] In 2021, the government introduced restrictions on new

[153] *See id.* at 176–77.

[154] *Id.* at 177–79. Holding Foreign Companies Accountable Act, Pub. L. No. 166-222 (2020).

[155] HCFAA Determination No. 1, *supra* note 150. In particular, the PCAOB found that in an earlier pilot inspection program it conducted, "PRC authorities withheld and redacted, based on concerns that the documents contained sensitive information or state secrets, certain work papers that the PCAOB's inspection team needed to conclude its inspection . . . [and] have consistently sought to limit the PCAOB's ability to select audit engagements for inspection, particularly with respect to audits of issuers that are state-owned enterprises or large technology-related companies that PRC authorities have described to the PCAOB as sensitive." *Id.* at 8. With respect to investigations, restrictions have been even stricter, as Chinese authorities have withheld documents, "the CSRC and the MOF have never authorized the PCAOB to take testimony from mainland China or Hong Kong firms or their associated persons," and "[t]he Enforcement MOU . . . has not been an effective instrument for the cross-border cooperation required to perform PCAOB investigations." *Id.* at 11–12. These failures, among other impacts, "ha[ve] nullified the Board's selection of potential violations to be investigated," a selection normally made by "prioritiz[ing] those investigations that are most likely to maximize investor protection, enforce accountability, and deter improper conduct." *Id.* at 12.

[156] *See* Pub. Co. Acct. Oversight Bd., HCFAA Determination Report (PCAOB Release No. 104-HFCAA-2022-001) (Dec. 15, 2022) [hereinafter HCFAA Determination No. 2]. According to PCAOB, the new agreement gives it "sole discretion to select the firms and audit engagements to be inspected and the potential violations to be investigated," includes "specific procedures for PCAOB inspectors and investigators to view complete audit documentation with all information included," and gives PCAOB "direct access to interview and take testimony from all relevant audit personnel." *Id.* at 6. PCAOB further found that "[t]o date, the Agreement's prescriptive framework has worked as intended." *Id.* at 8.

[157] *See* Pub. Co. Acct. Oversight Bd., Press Release, Fact Sheet: PCAOB Imposes Historic Sanctions on China-Based Audit Firms (Nov. 30, 2023).

[158] Huang, *supra* note 142, at 188.

[159] Liu, *supra* note 92, at 134. *See also* U.S.-China Econ. & Sec. Rev. Comm'n, Chinese Companies Listed on U.S. Stock Exchanges 6–7 (Jan. 9, 2023).

[160] *See* Raymond Zhong, *China Fines Alibaba $2.8 Billion in Landmark Antitrust Case*, N.Y. Times (Sept. 1, 2021), *at* https://www.nytimes.com/2021/04/09/technology/china-alibaba-monopoly-fine.html.

foreign listings for companies in sensitive sectors,[161] and in 2022, five Chinese SOEs with a market capitalization of over $340 billion delisted from the NYSE.[162] The U.S.-China Economic and Security Review Commission (USCESRC) opined that "China's Ministry of Finance likely compelled these SOEs to delist to shield information deemed sensitive by the [Chinese Communist Party (CCP)] from U.S. regulators ahead of the framework agreement on audit inspections."[163]

Even after these delistings, scholars fear that "there is a substantial likelihood that China will at some point refuse to fulfill [its audit access] commitments, at least in respect to certain firms . . . delisting will ensue and U.S. investors will be harmed."[164] Other foreign service providers in China that support cross-border finance have also been targeted. The government raided foreign due diligence and corporate advisory firms and detained employees, in moves interpreted as retaliation for U.S. export controls targeting China's semiconductors industry.[165] China also adopted a new espionage law that "has alarmed foreign businesses because normal business activities could expose executives and employees at foreign firms to be marked as a spy."[166] Several of the world's largest corporate law firms have exited the Chinese market.[167] The government has even reportedly cracked down on financial bloggers.[168]

Apart from these developments, broader manifestations of the decline of transparency and reversal of rule of law reforms raise concerns for foreign investors in China. According to researchers, millions of judgments have disappeared from Chinese online databases, reflecting the government's desire to restrict information on a range of issues.[169] Recognition and enforcement in China of foreign judgments against foreign-listed Chinese companies for securities violations also encounter substantial obstacles, compromising the ability of foreign

[161] *See China Tightens Scrutiny of Offshore Listings in Certain Sectors*, REUTERS (Dec. 27, 2021), *at* https://www.reuters.com/world/china/china-tightens-scrutiny-offshore-listings-sectors-off-limits-foreign-investment-2021-12-27; *see also* U.S.-China Econ. & Sec. Rev. Comm'n, *supra* note 159, at 8. *See also* Fried & Groswald Ozery, *supra* note 142, at 260–62 (describing efforts by China's government to tighten control over U.S.-listed Chinese companies through various recent reforms.).

[162] U.S.-China Econ. & Sec. Rev. Comm'n, *supra* note 159, at 4.

[163] *Id.* Fried and Groswald Ozery attribute several Chinese SOE delistings to "compliance with Executive Orders designating them as 'Communist Chinese Military Companies' and banning investment activity in their securities" Fried & Groswald Ozery, *supra* note 142, at 263 n. 25. On these executive orders, *see* notes 180–182 *infra* and corresponding text. In any event, as of 2023, "[n]o Chinese SOEs currently trade on major U.S. exchanges." *Id.* at 263.

[164] *Id.* at 259.

[165] Demetri Sevastopulo, Ryan McMorrow & Leo Lewis, *Chinese Police Question Employees at Bain's Shanghai Office*, FIN. TIMES (Apr. 26, 2023).

[166] Daisuke Wakabayashi & Keith Bradsher, *U.S. Consulting Firm Is the Latest Target of a Chinese Crackdown*, N.Y. TIMES (Apr. 27, 2023), *at* https://www.nytimes.com/2023/04/27/business/bain-china.html. The same article reported that "[m]any global companies operating in China are trying to wall off their computer systems outside China to limit potential losses of trade secrets and other valuable data." *Id.*

[167] Thomas Hale, Chan Ho-him & Joe Leahy, *Exodus of US Law Firms from Shanghai Accelerates*, FIN. TIMES (May 30, 2024); *see also* Chan Ho-him, Kaye Wiggins & Suzi Ring, *Latham & Watkins Cuts Off Its Hong Kong Lawyers from International Databases*, FIN. TIMES (Feb. 12, 2024).

[168] Edward White & Hudson Lockett, *Beijing Blocks Financial Bloggers as Recovery Falters*, FIN. TIMES (June 28, 2023).

[169] *See* Benjamin Liebman L. Liebman, Rachel E. Stern, Xiaohan Wu & Margaret E. Roberts, *Rolling Back Transparency in China's Courts*, 123 COLUM. L. REV. 2407 (2023).

investors to enforce their rights through litigation.[170] The Chinese government has also allegedly used cyberattacks to interfere with foreign acquisitions of domestic firms and sustain control over markets.[171] Overall, the picture that emerges is one of growing obstacles to cross-border finance, driven largely by national security concerns.

In contrast with China, the United States and Europe have long been champions of international financial integration, with essentially open capital accounts, large and liquid financial markets, and competitive financial institutions eager to expand across borders. Nevertheless, the rise of geopolitical competition has also prompted them to erect new barriers to financial flows. Western governments worry about China's strategy of using overseas acquisitions to acquire critical resources and technologies. In response to this "transacting" approach, the United States and Europe have adopted a defensive stance that includes "shielding," that is, "protecting domestic technological knowledge from taking and transacting by a competitor."[172]

The principal legal tool for this purpose has been stricter security-based controls on foreign direct investment. The United States has long exercised such control through the Committee on Foreign Investment in the United States (CFIUS), which can review and block inbound acquisitions on security grounds. In 2018, Congress expanded CFIUS's authority, and recently "CFIUS has substantially increased its scrutiny of filings, stepped up its compliance and enforcement monitoring and expanded its review of 'non-notified' transactions."[173] CFIUS review, which is "cloaked in secrecy," has expanded to transactions with more tenuous links to national security and to indirect and non-controlling investments, a phenomenon that has been called "national security creep."[174]

Europe, while traditionally less inclined to restrict inbound investment, has followed suit. At first, since Europe largely lacked formal investment control systems, these measures took the form of informal actions. Thus, in 2018, the German government used a state-owned bank to prevent Chinese takeover of an electricity distributor.[175] But Europe is increasingly turning to formal investment review mechanisms. In 2019, the EU adopted a regulation to coordinate investment review, and by 2021, eighteen member states had adopted or expanded CFIUS-like screening procedures.[176] According to researchers, the rise of CFIUS-like processes coincides with a substantial decrease in Chinese investments in the United States and Europe.[177] The expansion of investment review is not limited to the United States or Europe. Indeed, the U.S. government actively promotes adoption of CFIUS-like

[170] *See* Robin Hui Huang & Weixia Gu, *China's Recognition and Enforcement of Foreign Securities Judgments Against Overseas-Listed Chinese Companies*, 26 J. INT'L ECON. L. 577 (2023).

[171] *See* BLACKWILL & HARRIS, *supra* note 64, at 63.

[172] Roberts, Choer Moraes & Ferguson, *supra* note 6, at 666–67.

[173] Paul Weiss, *2023 Year in Review: CFIUS, Outbound Investments and Export Controls* (Dec. 21, 2023); *see also* CATHLEEN D. CIMINO-ISAACS & KAREN M. SUTTER, CONG. RES. SERV., IF10177, THE COMMITTEE ON FOREIGN INVESTMENT IN THE UNITED STATES (2024).

[174] Kristen E. Eichensehr & Cathy Hwang, *National Security Creep in Corporate Transactions*, 123 COLUM. L. REV. 549, 551–52 (2023).

[175] *See* ROBERTS & LAMP, *supra* note 6, at 139. Germany already had an investment review law, and it lowered its threshold in 2018. *See also* LIU, *supra* note 92, at 207–13.

[176] *See* Eichensehr & Hwang, *supra* note 174, at 571–73.

[177] *See* ROBERTS & LAMP, *supra* note 6, at 140.

processes, and several countries have moved ahead in recent years.[178] The United Kingdom, Australia, Canada, Japan, and New Zealand have adopted similar models.[179]

The recent escalation of geopolitical tensions has also led the United States to adopt new and largely unprecedented restrictions on outbound investment and U.S. trading of foreign securities, as the country tries to impair industries seen as security threats. In 2021, the Trump administration issued an executive order that denounced the ability of Chinese military-linked companies to "raise capital by selling securities to United States investors that trade on public exchanges both here and abroad, lobbying United States index providers and funds to include these securities in market offerings, and engaging in other acts to ensure access to United States capital."[180] The executive order prohibited U.S. persons from transacting in publicly traded securities of identified Chinese military companies. In practice, it required U.S. investors to divest from several important Chinese communications and transportation companies.[181] The Biden administration expanded restrictions with executive orders targeting not only Chinese defense and surveillance firms, but also semiconductors, microelectronics, quantum technologies, and artificial intelligence.[182] Europe is also considering adopting outbound investment restrictions "for the first time in the Union's history."[183]

Although these are the most explicit outbound investment restrictions imposed to date, other sanctions programs also restrict financial transactions. For example, sanctions on Russia include prohibitions on acquiring or trading in debt and equity securities of banks and other designated entities.[184] Even outside the realm of sanctions, national security and geopolitical competition are making their way into debates on financial regulation. In a recent article on U.S. regulation of foreign banks, a scholar invokes national security concerns such as money laundering and sanctions evasion to argue that foreign banks should be required to form U.S. subsidiaries rather than continue operating through branches—even though that move would increase costs for foreign banks, reduce cross-border access to financial services, and possibly invite retaliation.[185]

In sum, efforts to restrict cross-border finance due to geopolitical concerns are on the rise, and they clash with the fundamental norms and principles of the IF regime. By their nature, these measures almost always discriminate—*de jure* or *de facto*—among foreign countries by targeting adversaries. They also often favor more secure domestic firms and networks over foreign providers. These manifest departures from non-discrimination norms underline the lack of binding obligations in international financial governance: unlike under the WTO regime, no legal recourse is available, even in theory. It also underlines the lack of any mechanism, such as an explicit security exception, to provide a framework for balancing

[178] *See* Eichensehr & Hwang, *supra* note 174, at 571.

[179] *Id.* at 573–78.

[180] Exec. Order No. 13959, 85 Fed. Reg. 73185 (Nov. 12, 2020).

[181] *See* Fried & Groswald Ozery, *supra* note 142, at 263 n. 25. *See also* Ana Swanson, *Trump Bars Investment in Chinese Firms With Military Ties*, N.Y. TIMES (June 3, 2021), *at* https://www.nytimes.com/2020/11/12/business/economy/trump-china-investment-ban.html.

[182] Exec. Order No. 14032, 86 Fed. Reg. 30145 (June 3, 2021); Exec. Order No. 14105, 88 Fed. Reg. 54867 (Aug. 9, 2023).

[183] *See* Cleary Gottlieb, *EU Takes Time to Ready Outbound Investment Control Toolkit* (Feb. 1, 2024).

[184] *See* ABELY, *supra* note 118; Don S. De Amicis & David P. Stewart, *Sanctions on Steroids: The Ukraine/Russia-Related Sanctions*, 48 N.C. J. INT'L L. 379 (2023).

[185] *See* Kress, *supra* note 41, at 997–1001.

security considerations against the system's basic norms. Apart from the limited market access obligations states may have under the GATS or other trade or investment agreements, the erection by states of new barriers to cross-border finance is largely unchecked.

Likewise, attempts to control information flows and limit foreign involvement in corporate governance based on geopolitical considerations also clash with the system's premises. A financial system based on liberalization, market-based capital allocation, and efficient incentives requires the generation and dissemination of information and the availability of governance opportunities and legal remedies to foreign firms and investors. These desiderata clash with states' efforts to control financial information for security purposes. The rise of such measures—which include restrictions on access to audit papers, but also prohibitions on foreign control of sensitive information and data localization requirements—also create a wedge between authoritarian and democratic states, hindering liberalization and regulatory cooperation across different regime types.

C. Reorienting Financial Flows

Another potential geoeconomic use of finance consists of reorienting financial flows to promote geopolitical goals: attracting and strengthening political and military allies, developing or "reshoring" strategic industries and resources, and using finance as a bargaining chip in negotiations on other issues. As seen above, states have multiple tools to influence capital allocation and face growing calls to strengthen their economic security. It is thus unsurprising that all three of the world's major economies have, in different ways, incorporated geopolitical considerations into their management of the financial system.

In this area, China's practice has been most visible and salient, as it has pursued multiple initiatives to use its vast financial resources to advance geopolitical goals. Perhaps most striking is China's rapid expansion of its overseas lending. Recent research revealed that "China has become the world's largest *official* creditor, surpassing the outstanding claims of the World Bank, of the IMF, or of all 22 Paris Club governments combined."[186] More than four-fifths of developing and emerging countries had received Chinese official funding.[187] The Export-Import Bank of China (Exim Bank) and China Development Bank (CDB) accounted for most of the lending.[188] Many Chinese official loans contain unusual and onerous terms, such as strict confidentiality obligations, pledges of revenues, and constraints on Paris Club restructurings. Several contracts also feature "novel terms . . . [that] can amplify the lender's influence over the debtor's economic and foreign policies," such as cross-defaults triggered by termination of diplomatic relations with China or other actions against Chinese interests, and protections against broadly defined policy changes by the debtor.[189]

[186] Sebastian Horn, Carmen M. Reinhart & Christoph Trebesch, *China's Overseas Lending*, 133 J. INT'L ECON. 103539, 11–12 (2021) (emphasis in original); *see also* AXEL DREHER, ANDREAS FUCHS, BRADLEY PARKS, AUSTIN STRANGE & MICHAEL J. TIERNEY, BANKING ON BEIJING 1 (2022) ("Beijing . . . has established itself as the lender of first resort for many low-income and middle-income countries.").

[187] *See* Horn, Reinhart & Trebesch, *supra* note 186, at 9.

[188] *Id.* at 14.

[189] Anna Gelpern, Sebastian Horn, Scott Morris, Brad Parks & Christoph Trebesch, *How China Lends: A Rare Look into 100 Debt Contracts with Foreign Governments*, 38 ECON. POL'Y 345, 350–53 (2023). These practices tend to confirm that Chinese overseas lending is not driven primarily by market incentives—the "search for yield"—but by geopolitical considerations. *See* Horn, Reinhart & Trebesch, *supra* note 186, at 3; *see also* DREHER, FUCHS,

In addition to bolstering official lending through CDB and Exim Bank, the Chinese government has also transferred hundreds of billions of dollars from its foreign exchange reserves to new entities such as the China Investment Corporation (CIC), the Silk Road Fund, and several new funds affiliated with the State Administration of Foreign Exchange (SAFE), which "have become essential tools of China's economic statecraft."[190] According to Zoe Zongyuan Liu, China's sovereign funds are its answer to U.S. dollar dominance—they "have transformed China's comparative advantage in international trade into strategic investments that have grown China's national competitive advantage and geoeconomic capacity."[191] Their "shared mission . . . is to serve the state's prioritized agenda: first, ensure domestic financial stability; second, develop China's industrial capacity by securing essential resources and technology; and third, increase China's long-term global capacity to respond to geopolitical conflict with geoeconomic reprisals."[192]

In some cases, China has reportedly used financial incentives as direct quid pro quo for political advantage, such as support for its positions on Taiwan's status or on maritime disputes in the South China Sea.[193] Because such overt actions raised criticism and undermined the funds' market credibility, China has become more cautious to avoid "crass geoeconomic power plays."[194] Nevertheless, according to Liu, its sovereign wealth funds serve multiple geopolitical goals. They fund overseas acquisitions of critical natural resources and technologies and help Chinese companies fend off foreign takeover attempts.[195] They also provide crucial financing for the Belt and Road Initiative (BRI), "President Xi's signature project . . . widely viewed as aiming to project Beijing's influence across the Eurasia continent and reduce China's vulnerability to global strategic chokepoints . . . dominated by the United States."[196] They help promote internationalization of the renminbi.[197] They also exercise more subtle influence, acting as "noncoercive means for the state to advance its strategic interests . . . by establishing connections to influential foreign actors and gaining access to global networks of sophisticated investors and political elites [and by] participat[ing] in multilateral institutions that sets standards for global financial governance."[198] China appears willing to tolerate below-market returns on these assets because of the offsetting geopolitical benefits.[199]

China's interventions in international finance are not limited to overseas lending and investment. Chinese law and practice provide multiple mechanisms by which the Party-

PARKS, STRANGE & TIERNEY, *supra* note 186, at 6 (arguing that Beijing uses foreign lending for both commercial and geopolitical objectives and customizes lending instruments accordingly.)

[190] LIU, *supra* note 92, at 11.

[191] *Id.* at 197.

[192] *Id.* at 16–17.

[193] *See* BLACKWILL & HARRIS, *supra* note 64, at 56; LIU, *supra* note 92, at 182–84; ROBERTS & LAMP, *supra* note 6, at 132–33; DREHER, FUCHS, PARKS, STRANGE & TIERNEY, *supra* note 186, at 9–14.

[194] LIU, *supra* note 92, at 200.

[195] *Id.* at 23. For details of CIC's investments in overseas natural resources, BRI infrastructure projects, and critical domestic industries such as the Internet and semiconductors, see *id.* at 119–35.

[196] LIU, *supra* note 92, at 197. On these entities' BRI financing, see *id.* at 154–57, 160–75.

[197] *Id.* at 162.

[198] *Id.* at 10. *See, e.g.*, Axel Dreher et al., *African Leaders and the Geography of China's Foreign Assistance*, 140 J. DEV. ECON. 44 (2019) (finding evidence that Chinese aid is channeled to birth regions of African leaders facing elections.). *See also* Clayton, Maggiori & Schreger, *supra* note 65 (arguing that China's economic benefits from BRI lending cannot be assessed in isolation from political concessions and other benefits it can extract).

[199] *See* LIU, *supra* note 92, at 143–44.

state can direct the actions of market participants, including social responsibility obligations, board appointments, firm-level Party committees, ideological messaging, and legal and Party discipline.[200] China's state-owned banks, though ostensibly managed on market-based principles, have served as conduits for loans to finance natural resources projects and corporate expansion overseas, and continue to give preferential loans to strategically important SOEs.[201] China's efforts to develop its securities markets also has a geopolitical dimension, as the country deploys both sticks and carrots to "lure its major entrepreneurial tech companies with overseas listings to its domestic market."[202] Dagong, China's leading credit rating agency, was criticized for geopolitical bias, favoring key Chinese allies or suppliers and downgrading U.S. allies. It failed in its attempt to gain international recognition and after a wave of domestic bond defaults, the state penalized Dagong and eventually took it over.[203]

In the past decade, China's Party-state has further blurred the line between regulation and politics. The most salient episode was the stock market crash of 2015, during which a "national team" of institutional investors intervened to stabilize the market by buying massive amounts of shares.[204] Strikingly, financial regulatory agencies took an active part in this effort to uphold the government's promise to set a floor on market prices. The CSRC suspended all IPOs, prohibited large shareholders from selling stock for six months, allowed investors to borrow against their homes to buy stocks, encouraged large brokerages to buy stocks, and collaborated with the police to investigate "malicious short selling."[205] The CBRC authorized banks to extend margin loans and Central Huijin, the fund that owns the state's stakes in China's largest banks, intervened to support their share prices.[206] The government also expanded the powers of local government pension funds to invest in stocks.[207]

More recently, China's leadership has further systematized these efforts to assert political control over the country's financial system. In 2023, it created a powerful, Party-led Central Financial Commission to oversee financial regulation and merged banking, insurance, and some securities regulation into a new "super-regulator," effectively marginalizing the traditionally "reformist and modernizing" People's Bank of China and the CSRC.[208] These moves were accompanied by a broad ideological statement that "made clear that [the Party] expected banks, pension funds, insurers and other financial organizations . . . to follow Marxist principles and pay obedience to Mr. Xi."[209] To all appearances, China's approach to

[200] *See* Fried & Groswald Ozery, *supra* note 142, at 285–92.

[201] LIU, *supra* note 92, at 170–75.

[202] Fried & Groswald Ozery, *supra* note 142, at 273.

[203] Chunping Bush, *The Rise and Fall of Dagong Global Credit Rating Agency: A Geopolitical Challenge for the Rating Industry*, 7 J. FIN. REGULATION 319 (2021).

[204] LIU, *supra* note 92, at 17, 157–58.

[205] U.S.-China Econ. & Sec. Rev. Comm'n, Issue Brief: China's Stock Market Collapse and Government's Response 3 (July 13, 2015); *Chinese Police Visits Regulator, to Probe "Malicious" Short-Selling*, REUTERS (July 8, 2015), *at* https://www.reuters.com/article/business/chinese-police-visits-regulator-to-probe-malicious-short-selling-idUSKCN0PJ08C.

[206] LIU, *supra* note 92, at 141.

[207] U.S.-China Econ. & Sec. Rev. Comm'n, *supra* note 205.

[208] *See* Cheng Leng, *China Signals Tighter Communist Party Control of Financial Sector*, FIN. TIMES (Oct. 31, 2023); Cheng Leng & Sun Yu, *China Sidelines Its Once Venerated Central Bank*, FIN. TIMES (Dec. 25, 2023); *China's Securities Regulator, Central Bank Cut Staff Pay Budgets*, REUTERS (May 15, 2023).

[209] Keith Bradsher & Joy Dong, *Xi Jinping Is Asserting Tighter Control of Finance in China*, N.Y. TIMES (Dec. 5, 2023), *at* https://www.nytimes.com/2023/12/05/business/china-finance-xi-jinping.html.

finance is moving away from Western-inspired technocratic model toward direct Party control, not just through regulation but through a full array of authoritarian tools, including Party discipline, surveillance, and arrests of both market participants and regulators, as well as direct state shareholdings in virtually all major banks and financial firms.[210]

Because of the United States' longstanding commitment to market-based capital allocation, U.S. government efforts to direct financial flows to advance its geopolitical interests have historically been less salient. To be sure, the United States remains an important official lender, and financial aid is often tied to geopolitical considerations, but these channels are institutionally separate from the central bank and financial regulators and dwarfed by U.S private finance.[211] Nevertheless, recent research attracts attention to more subtle ways in which U.S. foreign policy influences how it allocates international financial stability support, especially through central bank swap lines. These arrangements are hardly novel: the Federal Reserve has periodically established bilateral swap lines with foreign central banks at least since the 1960s.[212] In 2007, they quickly reemerged as "the [Federal Open Market Committee (FOMC)] reestablished its swap lines and provided dollar liquidity on an unprecedented scale."[213] These facilities—which totaled $620 billion—allowed foreign central banks to support their banks as they faced severe U.S. dollar liquidity strains.[214] Although some were later terminated, they were revived during the COVID-19 crisis.[215]

Since the global financial crisis, the Federal Reserve has thus taken on the role of "global lender-of-last-resort,"[216] a critical source of global financial stability support.[217] But U.S. dollar swap lines are not universally available: the Federal Reserve has extended them only to a select club of foreign central banks. During the financial crisis, it first granted swap lines to the European Central Bank and the Swiss National Bank, then expanded them to other advanced economies: Australia, Canada, Denmark, Japan, New Zealand, Norway, Sweden, and the United Kingdom.[218] For the first time, it also extended swap lines to major emerging

[210] Meg Rithmire, Remarks at Peterson Inst. Int'l Econ. Online Panel, China's Overhaul of Its Financial Supervisory Architecture (Feb. 6, 2024), *at* https://www.piie.com/events/2024/chinas-overhaul-its-financial-supervisory-architecture.

[211] According to the OECD's preliminary statistics, the United States was the organization's largest official development assistance provider, with $66 billion in 2023. Org. for Econ. Coop. & Dev., Preliminary 2023 ODA Statistics (Apr. 16, 2024), *at* https://public.flourish.studio/story/2315218. By way of (very rough) comparison, overall gross financial outflows from the United States in the same year were $966 billion. Bureau of Econ. Analysis, U.S. International Transactions, 4th Quarter and Year 2023 (Mar. 21, 2024), *at* https://www.bea.gov/news/2024/us-international-transactions-4th-quarter-and-year-2023.

[212] For an excellent history, see Michael D. Bordo, Owen F. Humpage & Anna J. Schwartz, *The Evolution of the Federal Reserve Swap Lines since 1962*, 63 IMF ECON. REV. 353 (2015).

[213] *Id.* at 366.

[214] *See id.* at 366–67. Usage of the lines peaked at $598 billion. *See* Mark Choi, Linda S. Goldberg, Robert I. Lerman & Fabiola Ravazzolo, *The Fed's Central Bank Swap Lines and Fima Repo Facility* 5, 28 ECON. POL'Y REV. 93 (2022), *at* https://www.ssrn.com/abstract=4155548.

[215] *See* Choi, Goldberg, Lerman & Ravazzolo, *supra* note 214.

[216] Bordo, Humpage & Schwartz, *supra* note 212, at 366.

[217] For a review of research on the role and effectiveness of swap lines in containing financial crises, see John Michael Cassetta, *The Geopolitics of Swap Lines* 8–13 (Harv. Kennedy School, M-RCBG Associate Working Paper Series, Paper No. 181, Apr. 2022) (concluding that "the evidence is strong that swap lines—by increasing dollar supply, backstopping the offshore dollar market, and their signal effect—calmed global markets and supported U.S. domestic and foreign economic conditions").

[218] *Id.* at 18.

economies: Brazil, Mexico, Singapore, and South Korea (the "EME-4").[219] It reportedly declined requests from several countries, including India, Indonesia, and Turkey.[220] After the crisis, standing swap lines were restricted to a core of five central banks, but during the COVID-19 epidemic, the Federal Reserve reinstated support to the group of fourteen.[221]

This selectivity has raised the question of whether, and to what extent, geopolitical considerations play a role in the choice of swap line recipients. While the Federal Reserve "ha[s] substantial discretion over which central banks received a swap,"[222] it maintains that its decisions are motivated by "global funding needs" and an array of economic factors, such as "the economic and financial mass of the country's economy, a record of sound economic management, and the probability that the swap line would make an economic difference."[223] There is empirical support for the Federal Reserve's position: studies find that the grant of a swap line to a country during the crisis was predicted by greater dollar shortages[224] and exposure of U.S. banks to that country's financial system.[225] This evidence is consistent with a technocratic view of the Fed's role as global lender of last resort.

However, there also is evidence that geopolitical concerns influence the Federal Reserve's choices. For instance, Aditi Sahasrabudde argues that "the FOMC's stated selection criteria do not adequately explain its choices."[226] Brazil received a swap despite not meeting the Fed's economic management criteria, while India did not despite greater U.S. exposure to its financial system.[227] Sahasrabudde finds that the United States was more likely to extend swap lines to emerging economies that "shared its policy preference for greater financial openness" and to those that both had gained a greater voice in global economic governance through the G-20 and supported U.S. positions.[228] Other studies have found that U.S. military allies were more likely to receive COVID-19 swap lines[229] and that the extension of swap lines is correlated

[219] *Id.*

[220] *See* Aditi Sahasrabuddhe, *Drawing the Line: The Politics of Federal Currency Swaps in the Global Financial Crisis*, 26 REV. INT'L POL. ECON. 461, 464 (2019).

[221] *See* Choi, Goldberg, Lerman & Ravazzolo, *supra* note 214, at 5. Usage of these lines peaked at $449 billion. *Id.*

[222] Sahasrabuddhe, *supra* note 220, at 463; *see also* Daniel D. Bradlow & Stephen Kim Park, *A Global Leviathan Emerges: The Federal Reserve, COVID-19, and International Law*, 114 AJIL 657, 662 (2020).

[223] U.S. GOV'T ACCOUNTABILITY OFF., GAO-11-696, FEDERAL RESERVE SYSTEM: OPPORTUNITIES EXIST TO STRENGTHEN POLICIES AND PROCESSES FOR MANAGING EMERGENCY ASSISTANCE 118 (2011) (citing an internal Federal Reserve memorandum); *see also* Cassetta, *supra* note 217, at 17–29 (concluding, based on a review of FOMC meeting transcripts, that the Federal Reserve did not explicitly consider U.S. geopolitical interests in its decisions on swap lines.).

[224] Richhild Moessner & William A. Allen, *Central Bank Co-operation and International Liquidity in the Financial Crisis of 2008–2009* (BIS Working Papers, No. 310, 2010), *at* http://www.ssrn.com/abstract=1631791.

[225] Joshua Aizenman & Gurnain Kaur Pasricha, *Selective Swap Arrangements and the Global Financial Crisis: Analysis and Interpretation*, 19 INT'L REV. ECON. & FIN. 353 (2010); J. Lawrence Broz, *The Politics of Rescuing the World's Financial System: The Federal Reserve as a Global Lender of Last Resort*, 13 KOREAN J. INT'L STUD. 323 (2015).

[226] Sahasrabuddhe, *supra* note 220, at 465.

[227] *See id.* at 471–72, 474–76.

[228] *Id.* at 462; *see also* Hyoung-kyu Chey, *Why Did the US Federal Reserve Unprecedentedly Offer Swap Lines to Emerging Market Economies during the Global Financial Crisis? Can We Expect Them Again in the Future?* (Nat'l Graduate Inst. Pol'y Stud. Discussion Papers, Paper No. 11-18, 2012), *at* https://econpapers.repec.org/paper/ngidpaper/11-18.htm.

[229] Joshua Aizenman, Hiro Ito & Gurnain Kaur Pasricha, *Central Bank Swap Arrangements in the COVID-19 Crisis*, 122 J. INT'L MONEY & FIN. 102555 (2022).

with ideological alignment with the United States.[230] Also looming in the background are broader geopolitical objectives associated with swap lines, such as sustaining U.S. dollar dominance and the advantages it confers.[231]

Europe, the world's other major economic power and another longstanding supporter of market-based international finance, is also turning its financial might to geopolitical ends. Over the past three decades, the European Union gradually integrated national financial systems into a single market in financial services, an effort that accelerated after the subprime and euro crises.[232] Today, Europe has largely caught up with its rivals in financial regulatory capacity, with Union-wide regulation of banking, securities, investment funds, and insurance.[233] The euro is also the second most widely held reserve currency, and Europe is home to some of the world's largest and most globalized financial institutions. It thus has considerable clout in international finance.

Historically, Europe's practice has been to separate economic and geopolitical issues, using its global influence to set the rules for international trade and finance in ways that served its economic interests—a phenomenon that has become known as the "Brussels Effect."[234] In recent years, however, the EU's approach has shifted toward "increasing . . . geoeconomic use of the single market for financial services."[235] As seen above, increasing EU regulatory capacity was key to Europe's adoption and implementation of sanctions against Russia following its invasion of Ukraine.[236] Without doubt, this episode was the most striking instance where "the EU purposefully deployed its Single Market in financial services for foreign policy (security-related) purposes."[237] EU sanctions drew on its authority over banking, capital markets, insurance, and even cryptocurrencies.[238] It also blocked Russian Central Bank assets worth € 210 billion.[239]

[230] Cassetta, *supra* note 217.

[231] *See id.* at 15–16. The United States' geopolitical competitors have also expanded their swap line networks. China, in particular, has built "[i]n terms of geographical reach . . . by far the largest swap network of any central bank worldwide" (Horn, Reinhart & Trebesch, *supra* note 186, at 17.) The Chinese government has strived to leverage that network to serve its geopolitical interests and to promote the renminbi as a dollar alternative for trade settlement. *See* McDowell, *supra* note 114, at 109–11; Daniel McDowell, *The (Ineffective) Financial Statecraft of China's Bilateral Swap Agreements*, 50 Dev. & Change 122 (2019); Leslie Elliott Armijo & Saori N. Katada, *Theorizing the Financial Statecraft of Emerging Powers*, 20 New. Pol. Econ. 42 (2015). European policymakers also see swap lines as a way to "enhance the euro's international role." Cassetta, *supra* note 217, at 16.

[232] *See* Elliot Posner & Nicolas Véron, *The EU and Financial Regulation: Power without Purpose?*, 17 J. Eur. Pub. Pol'y 400 (2010).

[233] *See id.*; Elliot Posner & Lucia Quaglia, *Financial Regulatory Conundrums in the North Atlantic*, 63 Eur. J. Pol. Res. 682 (2023).

[234] *See* Anu Bradford, The Brussels Effect: How the European Union Rules the World (2020). Even in the 2010s, this preference remained apparent in Transatlantic disputes on hedge funds and derivatives regulation, where Europe sought rules that would protect its regulatory goals and favor its firms, rather than linking such negotiations with security or other geopolitical issues. *See* Lucia Quaglia & Amy Verdun, *The Geoeconomics of the Single Market for Financial Services*, 62 J. Common Mkt. Stud. 1046, 1051 (2024); Posner and Véron, *supra* note 232.

[235] Lucia Quaglia & Amy Verdun, *The Increasing Geoeconomic Usage of the Single Market for Financial Services*, 24 EconPol F. 23, 23 (2023).

[236] *See* Section IV.A *supra*.

[237] Quaglia & Verdun, *supra* note 234, at 1056.

[238] *See id.* at 1055–56 (summarizing EU financial sanctions on Russia). *See also* Eur. Council, EU Sanctions Against Russia Explained (Dec. 16, 2024), *at* https://www.consilium.europa.eu/en/policies/sanctions-against-russia/sanctions-against-russia-explained.

[239] European Council, *supra* note 238.

Europe's geopolitical use of finance goes beyond sanctions. Increasingly, the EU uses access to its financial markets as a tool to advance non-economic objectives. A key component of Europe's arsenal is equivalence clauses, provisions in several post-crisis EU financial regulations under which foreign firms can gain market access if the EC determines that "the third country's regulatory and supervisory framework delivers equivalent outcomes as compared to the relevant EU framework."[240] On their face, equivalence determinations pursue traditional regulatory goals: the EU describes them as "a regulatory instrument . . . which aims to deliver prudential benefits to market participants and to preserve the EU financial stability, market integrity, investor protection, and a level-playing field in the EU single market."[241] Equivalence clauses "encourage third countries to change their domestic rules so as to make them equivalent to EU rules,"[242] consistent with the Brussels effect.

Because the EC has considerable discretion in making equivalence determinations, however, these can also be turned to geopolitical ends.[243] According to British observers, this is what transpired during negotiations over financial market access for UK firms after Brexit. As a non-member state, the United Kingdom would lose the benefit of intra-EU passporting for banks, securities firms, and many other financial services providers, and sought an alternative. The stakes were high: the "financial services sector is of vital importance to the UK economy as a whole, employing 2.3 million people and making up 10% of total UK tax receipts," and Europe accounts for 37 percent of its exports.[244] The EU, however, insisted that "the four freedoms were indivisible and that there would not be a special deal for finance."[245] If the UK left Europe and abandoned free movement of people, it could not "cherry-pick" free movement of capital, and would be treated as a third country under EU financial rules.[246]

The United Kingdom thus found itself applying for EU equivalence decisions, which proved not to be forthcoming. A House of Lords report complained that the EU's approach was "political rather than technical and that the UK [was] being held to a higher standard than other countries."[247] It pointed out that the United States, Switzerland, and Singapore, and several other countries benefited from multiple equivalence determinations, despite the UK regulatory regime being considerably more like Europe's given the country's past implementation of EU rules.[248] Lord Hill, a former EU commissioner in charge of equivalence

[240] Eur. Comm'n Financial Services Press Release, Commission Sets Out Its Equivalence Policy with Non-EU Countries (July 28, 2019). On the EU equivalence regime, see generally Francesco Pennesi, *Equivalence in the Area of Financial Services: An Effective Instrument to Protect EU Financial Stability in Global Capital Markets?*, 58 COMMON MKT. L. REV. (2021).

[241] Eur. Comm'n Financial Services Press Release, *supra* note 240. *See also* Lucia Quaglia, *The Politics of "Third Country Equivalence" in Post-Crisis Financial Services Regulation in the European Union*, 38 W. EUR. POL. 167 (2015) (describing how internal EU debates on pre-Brexit equivalence decisions centered on balancing financial stability and market access liberalization.); Pennesi, *supra* note 240, at 41 (describing equivalence as "a mechanism to protect EU financial stability").

[242] Quaglia & Verdun, *supra* note 234, at 1050; *see also* Johannes Jarlebring, *"Regime Vetting": A Technique to Exercise EU Market Power*, 29 J. EUR. PUB. POL'Y 530 (2022); Stefano Pagliari, *A Wall Around Europe? The European Regulatory Response to the Global Financial Crisis and the Turn in Transatlantic Relations*, 35 J. EUR. INTEGRATION 391 (2012).

[243] On the discretion embedded in mutual recognition and equivalence decisions, see Verdier, *supra* note 49.

[244] House of Lords Eur. Aff. Comm., The UK-EU Relationship in Financial Services 3 (June 23, 2022).

[245] Quaglia & Verdun, *supra* note 234, at 1052.

[246] *Id.*

[247] House of Lords Eur. Aff. Comm., *supra* note 244, at 3; *see also* Quaglia & Verdun, *supra* note 235, at 24–25.

[248] House of Lords Eur. Aff. Comm., *supra* note 244, at 3, 24.

determinations, commented: "I naively started off thinking there must be some kind of technical process . . . . Then you realise very quickly, of course, that it is just a political process and the answer fits the politics."[249] The clear implication was that, at least in British eyes, the EU's denial of access was based on political goals extraneous to financial regulation.

European authorities have not denied that geopolitical goals may play a role in equivalence determinations.[250] To be sure, traditional regulatory goals, such as fears that the United Kingdom might deregulate finance to gain a competitive advantage, may have motivated the EU. Some European countries were also eager to entice London's firms to their financial centers, an economic objective.[251] But geopolitical goals were also at stake. European leaders argued that the EU should not be dependent on a non-member state for critical financial services,[252] a view linked with Europe's drive for economic security and "open strategic autonomy."[253] The EU may also have sought to preserve a bargaining chip in broader negotiations. British observers blamed delays in concluding a regulatory MOU on financial services on "the dispute over the implementation of the Protocol on Ireland/Northern Ireland."[254] The EU may also have been influenced by internal political conflict.[255] Even though market access would have been beneficial for many EU financial firms, they "were told not to campaign publicly for a special deal for finance," underlining the primacy of political over economic interests and of relative over absolute gains.[256]

In different forms and to different degrees, all three major financial powers thus have taken steps to shape international financial flows to advance geopolitical goals. By favoring certain nations over others as destinations for capital or financial services and by favoring domestic industries, these efforts clash with the IF regime's non-discrimination norms. Yet, not all these measures are necessarily perceived as breaching commitments to multilateralism and openness. Using a nation's own assets for geopolitical purposes, such as by channeling official lending to favored states or projects, is consistent with longstanding practice. Likewise, foreign investment screening tools like the United States' CFIUS appear widely accepted. In other words, such tools may fall outside the IF regime's scope. Again, however, the clash with geoeconomics underlines the regime's lack of precise rules to define its scope of application, in contrast with the trade and investment regimes.

Moreover, where states use regulatory tools and agencies to achieve geopolitical goals, a direct clash arises with the IF regime's principle of expert regulation. As will be discussed

[249] *Id.* at 21.

[250] The EC itself has stated that "the EU will consider equivalence [decisions] when they are in the EU's interest." *Id.* at 21.

[251] *See* Quaglia & Verdun, *supra* note 234, at 1053.

[252] House of Lords Eur. Aff. Comm., *supra* note 244, at 23. *But see* Scott James & Lucia Quaglia, *Brexit and the Political Economy of Euro-Denominated Clearing*, 28 REV. INT'L POL. ECON. 505 (2021) (describing internal EU debate and abandonment of proposals to mandate central counterparty clearing relocation from London).

[253] House of Lords Eur. Aff. Comm., *supra* note 244, at 24–25, 48–49.

[254] *Id.* at 30.

[255] According to Quaglia and Verdun, internal political considerations included "keeping the Single Market intact and maintaining clearly demarcated inside/outside borders of the EU polity." Quaglia & Verdun, *supra* note 234, at 1054. In other words, the EU may have wanted to deter other members from threatening to leave or seeking special deals for remaining in the Union. EU leaders may also have seen Brexit as "but one manifestation of a wider challenge that was generated by the spread of populism, Euroscepticism, sovereignism and nativism at the domestic level." *Id.* at 1052.

[256] *Id.* at 1053–54.

below, introducing geopolitics into the financial regulatory process may undermine the informal governance structures on which the regime is based. In addition, regardless of the tools used, efforts to reshape financial flows for geopolitical ends conflict with the assumptions of market-based capital allocation and liberalization that underlie the regime. If done with moderation, the result may be no more than an episodic trade-off between economic efficiency and geopolitical aspirations. But as these measures proliferate, they raise the question whether a regime based on such premises can remain relevant in a world where practice shifts toward state-directed capital allocation in pursuit of geopolitical ends. In effect, measures to restrict financial flows for security reasons and to reorient them to pursue geopolitical goals contract both the domain of private international finance that expert regulators traditionally oversee and the policy choices available to them in exercising their authority.

* * * *

As this Part has shown, the return of geopolitics generates numerous tensions that threaten to distort or undermine the IF regime. These clashes have been less visible than in international trade and investment. Because the regime lacks legally binding general rules of behavior and a dispute resolution system, infringements of its norms and principles do not typically lead to litigation. By the same token, the IF regime's lack of an explicit security exception deprives it of a locus for debate on how security objectives should be balanced with the regime's core economic objectives.[257] The lack of a WTO-like reporting system for most restrictions that affect international finance, as well as the regime's informal and secretive nature, also limit transparency. But the clashes between geopolitics and international financial governance are no less real for being less visible.

V. Geopolitics and the Future of International Financial Governance

Parts III and IV have shown how the rise of geopolitics changes the nature of state interventions in international finance, and begun to show how it challenges the IF regime's fundamental normative and institutional premises. This Part argues that geopolitical interventions in finance and its governance tend to undermine the regime's foundations and, ultimately, its ability to generate international cooperation toward shared regulatory goals, including critical ones like financial stability and crisis management. It then examines how the turn to geopolitics may affect the IF regime's overall structure and scope, outlining two main possibilities: fragmentation or resilience, and their implications. Finally, it examines some broader economic and security implications of growing fragmentation of international finance prompted by the return of geopolitics.

A. International Regulatory Cooperation

As described in Part II, the IF regime relies primarily on informal arrangements and soft law norms. It contemplates consensus-based, technocratic cooperation among expert regulators to develop standards that are then implemented domestically by members. These standards advance common regulatory goals, such as financial stability, market integrity, customer and

[257] This issue has been the subject of voluminous debate in trade and investment, see, e.g., Heath, *supra* note 6; Claussen, *supra* note 6; Pinchis-Paulsen, *supra* note 6; Cohen, *supra* note 6.

investor protection, crime control, and competition. The effectiveness of these arrangements rests on critical premises, which include the participants' institutional independence, their relative insulation from politics, mutual trust, and free and candid exchange of information. The increasing role of geopolitics in international finance threatens these premises and therefore could undermine the regime's ability to sustain cooperation.

First, growing use of financial tools for geopolitical ends tends to curtail the independence of central banks and regulatory agencies and to shift their priorities. These institutions must now play a supporting role in achieving geopolitical goals set by the executive branch, and may have to do so at the expense of traditional regulatory mandates. In some cases, geopolitical imperatives may clash directly with conventional regulatory goals—consider, for instance, measures to encourage domestic banks to make risky loans to geopolitically favored partners (thus generating financial stability risks) or that generate domestic monopolies for inefficient but secure payment providers (thus impairing competition and efficiency).[258] As central banks and regulators turn away from common regulatory goals toward state-specific geopolitical objectives, the space for international cooperation shrinks. In addition, as the line between regulatory and geopolitical objectives becomes increasingly blurred, regulators may become suspicious of each other's motives. These developments may undermine the mutual trust essential for deliberating on common standards, communicating about market developments and concerns, and conducting effective peer review.[259]

Growing geoeconomic interventions in international finance also underscore a reality that the IF regime has traditionally sought to downplay: vast disparities in power and resources among its participants. To be sure, important financial jurisdictions like the United States and Europe have long played a disproportionate role in shaping international financial governance. However, the regime's emphasis on multilateralism, consensus decision making, expertise, and common technical problems de-emphasized this reality and attracted a wide range of states to participate. As geopolitical objectives become more salient, so does some states' greater capacity to impose their policies on others. They may do so within the regime, or by bypassing it altogether, exercising their power directly upon market participants or financial infrastructure. In turn, such actions may erode the incentives less powerful states have to participate in the regime and to concede some of their own preferences to achieve common goals.

At a more fundamental level, the shift by powerful states from an absolute-gains to a relative-gains logic in international economic relations undermines the cooperative rationale that underlies the IF regime. The regime aims at fostering orderly international finance to maximize the collective benefits of market-based capital allocation while minimizing the

[258] This sort of clash is not inevitable, because financial regulation is far from the only tool—and often not the best tool—to achieve geopolitical objectives. For example, governments aiming to redirect capital can do so through taxes, subsidies, or foreign assistance. But as seen above, instances in which states use financial regulation to advance geopolitical goals are multiplying.

[259] Even when regulatory agencies attempt to advance their mission, their efforts may be stifled by competition with national security agencies. Thus, scholars have pointed out that even after the U.S.-China agreement on audits of U.S.-listed firms, "The limitations on information sharing with foreigners ("secrecy rules") are administered and enforced by overlapping bureaucracies, many of which have no incentive to provide permission." Fried & Groswald Ozery, *supra* note 142, at 271–72. They may also lose some of their influence. For example, recent Chinese reforms to financial regulation are expected to "diminish the PBoC's clout over domestic policymaking as well as its role as a communication channel with global regulators and markets." Leng & Yu, *supra* note 208.

costs of market and regulatory failures. If its theoretical and factual premises are correct, all participants should benefit, though the gains may not be evenly distributed. But as states adopt a relative-gains logic, they may fear that their adversaries gain more from cooperation than themselves, undermining their motivation to participate. More generally, states may conclude that financial globalization itself, much like trade liberalization, has empowered their adversaries and should be reversed.[260] The more background norms of international economic relations shift toward economic nationalism, protectionism, security-based economic policies, and state-directed capital allocation, the smaller the role the IF regime can play.

To what extent has the return of geopolitics in fact compromised international cooperation? Because most international financial governance—such as standard-setting and peer review—takes place behind closed doors, the impact of geopolitics is difficult to substantiate comprehensively. But anecdotal evidence suggests that it is hindering cooperation. At the top, geopolitical tensions have nearly paralyzed the G-20, which is supposed to set the global regulatory agenda.[261] Attention to regulatory issues like financial stability and consumer protection has waned considerably, and the post-crisis flood of initiatives has slowed to a trickle. The FSB's agenda now largely focuses on studying emerging issues such as artificial intelligence, climate-related disclosures, and asset tokenization, rather than adopting new standards.[262] The impact of geopolitical competition hits at a time when the global regulatory agenda was already slowing down. For instance, strong political opposition in the United States to the "Basel III Endgame" has led to its postponement, which led the EU in turn to delay implementation to avoid putting its banks at a competitive disadvantage.[263]

Beyond affecting the rulemaking and implementation agenda, geopolitical competition may threaten another core function of the IF regime: crisis management. Because financial crises tend to escalate quickly and unpredictably and to cross national boundaries, managing them requires international cooperation. Without it, interventions by officials in one jurisdiction may complicate others' efforts, accelerate the crisis's international spread, and increase its overall economic and social costs. However, effective cooperation to manage financial crises is no easy task. Officials in affected states must be willing to share sensitive information, develop plans to act in concert, and trust others to refrain from acting opportunistically to shift the burden onto them. One of the IF regime's main benefits has historically been to cultivate ongoing relationships among the world's financial regulators—an environment of transparency, mutual trust and respect, and shared expertise—that would facilitate quick, decisive, and coordinated action when faced with emergencies.[264]

[260] On distributive obstacles to cooperation, see Pierre-Hugues Verdier, *Transnational Enforcement Leadership and the World Police Paradox*, 64 VA. J. INT'L L. 239, 273–75 (2024). In addition, the backlash against international finance could dovetail with post-financial crisis concerns about its role in fostering domestic inequality.

[261] *See* Katie Rogers, *G20 Declaration Omits Criticism of Russia, but Notes Ukrainians' "Suffering,"* N.Y. TIMES (Sept. 9, 2023), *at* https://www.nytimes.com/2023/09/09/world/asia/g20-biden-russia-ukraine-war.html.

[262] G-7/G-20, Annexes to 1st G20 Finance Ministers and Central Bank Governors Meeting (Feb. 28, 2024), *at* https://g7g20-documents.org/database/document/2024-g20-brazil-finance-track-ministers-annex-annexes-to-1st-g20-finance-ministers-and-central-bank-governors-meeting. It is instructive to compare this with ambitious expectations from a decade ago regarding the issues the system could tackle: "universal bank tax, compensation restrictions, activity limitations on 'utility banks,' and increased macroprudential coordination." Zaring, *supra* note 28, at 698.

[263] *See* Paola Tamma, Joshua Franklin & Stefania Palma, *EU To Delay Basel Banking Reforms as US Revisits Plans*, FIN. TIMES (June 18, 2024), *at* https://www.ft.com/content/465d9c7e-0f2f-4ee9-8feb-9a386156e0b5.

[264] On the IF regime's role in crisis response, see ZARING, *supra* note 26, at 151–61.

Can this environment survive the return of geopolitics? As the IMF has warned, geopolitical conflicts—such as over Ukraine or Taiwan—can generate financial stability threats that require crisis planning and management by regulators.[265] It is hard to imagine governments cooperating effectively across geopolitical divides in such circumstances. Even short of open conflict, geopolitical tensions may undermine the regime's ability to handle crises. As noted above, the U.S. Federal Reserve plays a critical role as global lender of last resort, sustaining global financial stability via its central bank U.S. dollar swap lines. But if their allocation is dictated by geopolitics, will dollars be available to contain the next crisis? As one commentator put it, "[s]hould a country with sufficient economic mass and holdings of U.S. assets, but which was not a traditional U.S. ally, experience turmoil, how would U.S. policy respond?"[266] More generally, the trends described above—compromised independence, blurring of regulatory and foreign policy goals, and distrust between democracies and autocracies—tend to undermine the transparency and mutual trust essential for crisis management.

Geopolitical interference is not limited to multilateral regulatory cooperation bodies. The rise of China as the world's largest official creditor, and its insistence to exclude its claims from established restructuring processes like the Paris Club, are complicating debt relief efforts. Some commentators fear that this development understates the debt burden of highly indebted countries and the frequency and scale of distress, and may undermine the—already fragile—restructuring process that has emerged in recent decades under the auspices of the IMF, the Paris Club, and bondholder committees.[267] After Russia's invasion of Ukraine, the Financial Action Task Force (FATF), the world's anti-money laundering cooperation body, suspended Russia's membership, underlining the tension between regulatory cooperation and geopolitics.[268] Geopolitical tensions also interfere with bilateral cooperation between regulators: although China would prefer a system in which the United States defers to Chinese

[265] *See* Int'l Monetary Fund, Global Financial Stability Report: Safeguarding Financial Stability amid High Inflation and Geopolitical Risks 81–101 (2023).

[266] Cassetta, *supra* note 217, at 4; *see also id.* at 14–15, 43.

[267] There is now a voluminous literature across law, economics, and political science on the pattern and impacts of Chinese lending to the developing world. Multiple scholars have pointed to the lack of comprehensive data and assembled datasets of Chinese loans and restructurings by aggregating public sources. *See, e.g.*, Horn, Reinhart & Trebesch, *supra* note 186; Gelpern, Horn, Morris, Parks & Trebesch, *supra* note 189; Dreher, Fuchs, Parks, Strange & Tierney, *supra* note 186; Sebastian Horn, Carmen M. Reinhart & Christoph Trebesch, *Hidden Defaults*, 112 AEA Papers & Proceedings 531 (2022); Gatien Bon & Gong Cheng, *China's Debt Relief Actions Overseas and Macroeconomic Implications* (2020), *at* https://econpapers.repec.org/paper/halwpaper/hal-04159688.htm. The lack of sovereign debt transparency can interfere with debt sustainability assessments and restructuring efforts, a problem that is not limited to Chinese debt and may be exacerbated as geopolitically motivated lending proliferates. On the challenges of sovereign debt transparency, see Stephen Kim Park & Tim R. Samples, *Distrust, Disorder, and the New Governance of Sovereign Debt*, 62 Harv. Int'l L.J. 175 (2021); Stephen Kim Park & Tim R. Samples, *Promises and Perils of Sovereign Debt Transparency*, 49 Yale J. Int'l L. 1 (2024). Beyond transparency issues, some commentators charge China with purposefully engaging in "debt trap diplomacy" at its debtors' expense, while other cast doubt on this hypothesis and note that many Chinese practices resemble those of other official and commercial lenders. *See* Gelpern, Horn, Morris, Parks & Trebesch, *supra* note 189, at 348; Deborah Brautigam, *China and Zambia: Creating a Sovereign Debt Crisis*, 98 Int'l Aff. 1347 (2022); Gatien Bon & Gong Cheng, *Understanding China's Role in Recent Debt Relief Operations: A Case Study Analysis*, 166 Int'l Econ. 23 (2021); Shahar Hameiri & Lee Jones, *China, International Competition and the Stalemate in Sovereign Debt Restructuring: Beyond Geopolitics*, 100 Int'l Aff. 691 (2024).

[268] *See* Abely, *supra* note 118, at 39.

audit oversight, "these concessions will need a level of mutual trust and understanding between the two sides, which it is now seriously short of."[269]

Ultimately, an international regime is defined by its central objective of fostering policy coordination to achieve common goals. Despite geopolitical tensions, many areas remain in which collective action to regulate finance can generate joint benefits, some of which may be critical global public goods. The traditional goals of financial regulation—protecting financial stability, combating fraud and market manipulation, protecting investors and customers, combating tax evasion and money laundering, and preserving competition in the financial sector—all require coordinated global efforts. The same is true of newer policy concerns that implicate finance, such as managing climate change, cryptoassets, or artificial intelligence. The crucial question will be whether, and to what extent, collective governance in pursuit of these goals can coexist with geopolitical tensions and growing geoeconomic use of international finance. Though this question cannot answered uniformly across the IF regime, the rise of geopolitics provides ample reason to fear a decline in international cooperation even in respect of critical and widely-shared policy objectives. In the worst-case scenario—such as a global financial crisis—the consequences could be disastrous.

B. The IF Regime's Structure and Scope

Beyond its impact on cooperation within the regime, another important question is whether and how the rise of geopolitical competition will affect the regime's fundamental features. How can the regime's decision-making procedures, norms, and principles adapt to an age of geoeconomics? Will the changes be so deep as to amount to a change of regime, or will these fundamental features endure?

One possibility is that the regime could undergo radical change. The new reality of weaponization, security-based barriers to financial flows, and state-led capital allocation could become so dominant that the IF regime collapses or is reduced to practical irrelevance. In that world, the logic of zero-sum competition would displace the pursuit of joint gains to such an extent that global cooperation in finance would become negligible. This could happen because of military conflict among great powers. In this scenario, the IF regime would go into permanent or temporary eclipse, its revival dependent on geopolitical developments external to international finance and its regulation.

In the absence of open conflict, another—perhaps more likely—pattern of change would consist of regime weakening, fragmentation, and complexification. In this pattern, the trends identified above weaken the regime. The scope of feasible cooperation shrinks, so that fewer standards are adopted or updated. Those standards states do agree upon become easier to bend or ignore, especially by powerful states pursuing geopolitical goals. The regime's multilateral decision-making fora, not only specialized standard-setters but especially global coordinating bodies like the G-20 and the FSB, become less active and relevant. Cooperation shifts to regional or alliance-based bodies, where like-minded members pursue policies that further blur the lines between finance and geopolitics. When China created the Asian Infrastructure Investment Bank, there was much talk of the rise of an alternative Chinese

[269] Huang, *supra* note 142, at 189.

international financial architecture.[270] Though these concerns may have been premature, fragmentation may accelerate as China, Russia, and other rivals now strive to create alternative institutions and infrastructure. Western states, for their part, may retreat to sympathetic forums such as the G-7, the OECD, and the FATF, and attempt to reassert the relevance of the IMF and World Bank.

In that scenario, the regime both fragments and complexifies: existing bodies continue to function and follow the same principles and norms, but states supplement them with alternative arrangements geared to pursue geopolitical ends. The result may be that international financial governance disaggregates from a unitary regime to a "regime complex" comprised of rival institutions, without clear hierarchical relationships, which compete to shape international financial policies.[271] Because the complex's cleavages would be founded on rivalry among geopolitical groups of states, multilateral bodies would likely play a much reduced role. What continuing influence global bodies would exercise is difficult to predict, but it would depend on how powerful states balance geopolitical goals and financial regulatory cooperation—a trade-off that might shift over time. The regime's ability to achieve common goals on a global level, such as financial stability and climate change mitigation, would be substantially impaired.

Another, somewhat more optimistic scenario, is that the IF regime might "muddle through" the rise of geopolitics, adapting to accommodate states' greater resort to geoeconomics while pursuing the regime's essential objectives.[272] In some respects, the regime may be better equipped for resilience to geopolitical competition than the trade and investment regimes. After all, flexibility has long been among the most heralded features of the regime's soft law approach to international cooperation. As Brummer notes, "[b]y adopting informal rules of organization, participants retain the flexibility to convene quickly in order to create and reform institutions to meet new and unexpected challenges."[273] Moreover, because participants are not legally bound by international standards and because these standards typically incorporate substantial flexibility, the regime may avoid the sort of open confrontation over breaches that has paralyzed the WTO system. This flexibility also means that, unlike in the investment regime, states can gain little by way of expanded policy autonomy by withdrawing from established agreements or threatening to do so. The IF regime's secrecy and lack of formalized and public dispute resolution procedures may further allow participants to accommodate departures motivated by geopolitical factors while signaling informally where the limits lie.

[270] *See, e.g.*, Robert Wihtol, *Beijing's Challenge to the Global Financial Architecture*, 2 GEO. J. ASIAN AFF. (2015); Peter Drysdale, Adam Triggs & Jiao Wang, *China's New Role in the International Financial Architecture*, 12 ASIAN ECON. POL'Y REV. 258 (2017); Takatoshi Ito, *Changing International Financial Architecture: Growing Chinese Influence?*, 13 ASIAN ECON. POL'Y REV. 192 (2018).

[271] On regime complexes, see Alter & Raustiala, *supra* note 21.

[272] The geopolitical conditions under which this scenario may unfold broadly correspond to the "status-quo scenario" envisioned by Eichengreen for the international monetary system's future as a function of U.S.-China relations. In that scenario, "tensions between the U.S. and China over Taiwan, semiconductors and human rights continue to simmer," as do tariffs, export controls, and some targeted sanctions, but "trade between the two countries . . . continue[s], and they will remain one another's number one or two leading trading partners." Eichengreen, *supra* note 22, at 86. On the contrary, a "complete economic and financial rupture between China and the United States" (*id.*) would make the former scenarios more likely.

[273] BRUMMER, *supra* note 23, at 66; *see also* ZARING, *supra* note 26, at 31–32.

In other words, the regime's distinctive institutional informality might facilitate the development of a *modus vivendi* in which participants balance greater pressure to advance geopolitical aims with the need to sustain cooperation to secure financial stability and other common regulatory objectives. If they succeed in doing so, the IF regime's soft law approach may emerge as an appealing, more robust alternative to deeper legalization in the trade and investment regimes. Instead of struggling with the arduous—perhaps impossible—task of crafting explicit, legalized security exceptions enforceable by third-party dispute settlement and with which members are willing to comply, the IF regime would rely on the numerous loci of flexibility and discretion afforded by its soft law standards and peer review mechanisms to accommodate the rise of geopolitics. In that way, the regime could endure and achieve some of its goals until geopolitical tensions ease.

A critical precondition for this scenario is a willingness on the part of powerful states to preserve at least some of the core institutional framework for financial regulation, such as the relative independence of financial regulatory agencies, expert staffing, and limited intervention by foreign policy officials in financial matters. Because the principle of expert regulation defines the regime, it cannot change radically without effectively shifting to a new regime. Even without displacing this core principle, however, the IF regime may change in significant ways. Implicit non-discrimination norms may be ignored to such an extent that they can no longer be considered part of the regime. The regime's ambitions and its actual reach may shrink to common regulatory goals that do not conflict with powerful states' geopolitical goals. In this world, we would also likely observe more widespread non-compliance. The regime would become less relevant to outcomes such as cross-border capital allocation, which would be reshaped by unilateral state action. Risks to financial stability and other common regulatory goals would also be more likely to emerge unchecked.

In this respect, a significant and worrisome concern relates to the regime's effective scope. As a consequence of greater geoeconomic interventions, international finance may migrate out of visible and regulated spaces to increasingly opaque and untamed ones, outside the international regulatory perimeter.[274] Examples of this phenomenon already abound. For instance, recent scholarship shows how financial sanctions have diverted bank flows and deposits out of established financial centers toward tax havens and secrecy jurisdictions, even for non-target states.[275] Because these jurisdictions are less transparent, have fewer regulatory resources, and may not follow international standards, this shift may threaten financial stability and other common regulatory goals.

Likewise, the weaponization of financial infrastructure has motivated states to shift their assets and activities to less transparent messaging and payments systems that may not abide by international standards meant to protect financial stability or prevent money laundering.[276]

[274] By analogy, a major financial regulatory policy concern after the financial crisis was that financial intermediation had migrated out of the formal banking system to the more opaque and less regulated "shadow banking system," requiring policymakers to adopt reforms to bring risky activities within the "regulatory perimeter." *See* Nicholas K. Tabor, Katherine E. Di Lucido & Jeffery Y. Zhang, *A Brief History of the U.S. Regulatory Perimeter* (Fed. Res. Fin. & Econ. Discussion Series 2021-051, 2021).

[275] *See* Abraham L. Newman & Qi Zhang, *Secondary Effects of Financial Sanctions: Bank Compliance and Economic Isolation of Non-target States*, 31 REV. INT'L POL. ECON. 995 (2023); Kerim Can Kavakli, Giovanna Marcolongo & Diego Zambiasi, *Sanction Evasion Through Tax Havens* (Bocconi Working Paper No. 212, Nov. 2023).

[276] On the regulation of such systems, see FINANCIAL MARKET INFRASTRUCTURES: LAW AND REGULATION (Jens-Hinrich Binder & Paolo Saguato eds., 2022).

As part of efforts to impose a price cap on Russian oil exports, Western nations have prohibited insurers from covering ships that transport oil at a price above the cap. Instead, operators of Russia's growing "shadow fleet" have turned to a Russian insurer that may be unwilling or unable to cover the environmental damage of a major oil spill.[277] The rise of non-transparent Chinese lending has made it harder to measure the debt burden of developing countries and to assess the risks embedded in lending contracts, and may complicate crisis management.[278] As was the case with the U.S. "shadow banking system" before the global financial crisis, the growth of a "shadow international financial system" means that significant risks to financial stability and other common regulatory goals might grow unchecked.

C. Global Economic and Security Implications

The rise of geopolitics is reshaping international financial governance in ways that favor fragmentation of the international financial system. For example, swap lines, equivalence determinations, and investment prohibitions encourage financial flows and services to shift away from geopolitical adversaries toward partners. As powerful states weaponize financial interdependence and redirect financial flows to advance geopolitical ends, the cumulative impact is to fragment international finance along geopolitical lines. In addition, market participants, aware of growing geopolitical risks, may increasingly choose to prioritize safer financial relationships. That trend is already apparent in trade, as trade flows are reshaped along "geopolitical 'blocs.'"[279] Likewise, foreign direct investment is increasingly correlated with measures of geopolitical alignment among nations.[280] For portfolio investment, which accounts for most of international capital flows, a similar trend can be expected. Thus, the IMF's 2023 World Economic Outlook reports that, after 2001, advanced economies' portfolio exposures to ideologically distant countries grew steadily, suggesting that "a rise in political tensions could trigger a significant reallocation of capital at the global level."[281]

What implications does the fragmentation of international finance have for economic welfare and international security? Perhaps surprisingly, the economic consequences are uncertain. In theory, reallocation of capital flows along geopolitical lines should harm economic welfare, as it undermines the international financial system's conventional economic function to channel savings to their most efficient uses. Likewise, restrictions on cross-border financial services and geopolitical preferences should also harm welfare by preventing competition by efficient foreign providers. Fragmentation of the international financial infrastructure also threatens to destroy economies generated by global networks such as SWIFT and U.S. dollar correspondent banking. If these conjectures are correct, the consequences of fragmentation would be slower economic growth and lower aggregate welfare.[282]

[277] *See* Chris Cook & David Sheppard, *Russian "Dark Fleet" Lacks Disaster Insurance, Leaks Suggest*, FIN. TIMES (Mar. 15, 2024), *at* https://www.ft.com/content/71ec7810-2761-45ea-91fb-45044d0143a5.

[278] *See* notes 186–199 *supra* and corresponding text.

[279] World Trade Org., *supra* note 1, at 32; *see also* Michael Blanga-Gubbay & Stela Rubínová, *Is the Global Economy Fragmenting?* (WTO Staff Working Papers, Paper No. ERSD-2023-10, 2024).

[280] "FDI flowing to and from emerging and developing economies is substantially lower for more geopolitically distant partners . . . [and] this sensitivity to geopolitical distance increased in 2018–21 compared with the period 2009–18." World Trade Org., *supra* note 1, at 32 (citing IMF 2023).

[281] Int'l Monetary Fund, *supra* note 3, at 109.

[282] *See* World Trade Org., *supra* note 1 for an analogous argument about trade.

However, this assessment is complicated by theoretical and empirical uncertainty regarding the welfare effects of international capital flows. There is evidence that foreign direct investment flows enhance economic growth, mostly through indirect effects like technology transfers, increased competition, and greater demand for local suppliers.[283] Thus, the IMF estimates that FDI fragmentation could reduce global output by two percent, with the impact concentrated in emerging and developing economies.[284] For portfolio investment, by contrast, the evidence is more ambiguous. International capital flows have both benefits and costs, the latter of which include an increased likelihood of financial crises, especially if liberalization occurs without domestic institutional preconditions.[285] Some studies also associate capital account liberalization with negative outcomes such as greater domestic inequality.[286] Thus, the welfare impact of financial fragmentation is more difficult to predict. However, state measures motivated by geopolitical ends are unlikely to be well-suited to address the economic costs of liberalization, such as instability, inequality, and regulatory failures—indeed, they seem at least as likely to worsen them. Financial fragmentation's economic impact is likely to be negative.

Apart from its economic impact, financial fragmentation along geopolitical lines also has security implications. At first glance, these implications might appear positive. After all, the typical goal of geoeconomic interventions is to trade off some efficiency to increase a state's economic security. But reality is likely to be more complex. Financial fragmentation may turn out to be a race to the bottom, as each state seeks to improve its security at others' expense, leaving all states worse off. More specifically, there are at least two channels through which financial fragmentation can undermine security. First, individual nations may find their security threatened by lack of access to international finance. For example, they may be unable to raise funds to respond to crises or natural disasters, or they may become overly dependent for capital on powerful partners within their bloc. Second, isolated and rival financial and trade blocs may be more likely to go to war. After all, the experience of the 1930s loomed large in the minds of the Bretton Woods negotiators, and even today, the WTO argues that "[f]ragmentation tends to reduce security and increase the likelihood of conflict."[287]

[283] Int'l Monetary Fund, *supra* note 3, at 99–101; *see also* World Trade Org., *supra* note 1, at 76.

[284] Int'l Monetary Fund, *supra* note 3, at 94.

[285] *See* Int'l Monetary Fund, The Liberalization and Management of Capital Flows: An Institutional View 10–13 (2012). *See also* Chen & Hale, *supra* note 7.

[286] *See, e.g.*, Xiang Li & Dan Su, *Does Capital Account Liberalization Affect Income Inequality?*, 83 OXFORD BULL. ECON. & STAT. 377 (2021); Davide Furceri & Prakash Loungani, *The Distributional Effects of Capital Account Liberalization*, 130 J. DEV. ECON. 127 (2018); Silke Bumann & Robert Lensink, *Capital Account Liberalization and Income Inequality*, 61 J. INT'L MONEY & FIN. 143 (2016).

[287] World Trade Org., *supra* note 1, at 47. The passage continues: "Policies that contribute to fragmentation are difficult to implement and unlikely to achieve their goals. Alliances can be volatile and geopolitical crises are hard to predict. Even if reducing the number of trading partners reduces exposure to geopolitical risks, it raises exposure to other risks such as natural disasters." At worst, greater geopolitical intervention in the international financial system to isolate adversaries might even encourage forcible territorial expansion. A prominent recent history of economic sanctions argues that sanctions imposed in the 1930s stimulated fears of economic isolation in Germany, Italy, and Japan, and that "their search for immunity against blockade strengthened their inclination toward territorial conquest." MULDER, *supra* note 114, at 227. *See also* Farrell & Newman, *supra* note 61, at 204 (hypothesizing that one possible Chinese response to greater U.S.-led economic restrictions could be "military aggression, securing its interests through force and territorial gain").

VI. Conclusion

The rise of geopolitical competition poses fundamental challenges to the international regime that has emerged to manage financial globalization in the past half-century. These challenges threaten to weaken cooperation on global financial stability and other critical policy concerns and might undermine the regime's fundamental structure. This Article has taken the first step in identifying the nature and implications of the turn to geoeconomics for international finance, analyzing its principal manifestations in light of theoretical accounts of geoeconomics, the functions of the international financial system, and the IF regime's fundamental institutions, norms, and principles. In doing so, it has brought together a growing but scattered body of scholarship across law, economics, and political science.

The rise of geopolitics and its impact on international finance is a complex phenomenon, which is only beginning to unfold and on which research remains limited. Thus, many questions remain to be addressed by researchers. Among potential avenues for further research, salient questions include: How do the regime's actors and institutions—including national regulatory agencies, global bodies, and market participants—respond to the rise of geopolitics? How does geopolitics affect different cooperation arrangements such as the G-20, the FSB, peer review procedures, MOUs, colleges of supervisors, and equivalence regimes? How does it impact states other than great economic powers—large emerging markets, developing countries, least developed economies, and mid-sized advanced economies—and what role can they play in the IF regime under these circumstances?[288] How does the rise of geopolitics affect specific areas of financial regulation, such as bank capital and resolution, securities enforcement, money laundering, insurance, or financial infrastructures?

Ultimately, the most important question may be what opportunities for international regulatory cooperation remain in a geopolitically fragmented world, and what the IF regime can still do to help achieve them. Can it advance global financial stability, climate change mitigation, and orderly crisis response despite, or apart from, geopolitical tensions? If so, will cooperation mechanisms need to change fundamentally from those that have prevailed since the origins of modern international finance? The answers to these questions will have profound implications for the world economy in the coming years.

[288] For example, some earlier commentators have argued that geopolitical competition could lead to an "age of choice" for developing countries. *See* Hameiri & Jones, *supra* note 267.