# Why China Established the Asia Infrastructure Investment Bank

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**ABSTRACT**

*On January 16, 2016, China officially opened the Asia Infrastructure Investment Bank (AIIB) for business, representing what might be a seismic shift in economic power from the United States to China. The AIIB creates a challenge to the U.S.-dominated World Bank and International Monetary Fund (IMF), two venerable international financial institutions created at the end of World War II. The World Bank lends money to developing countries to promote economic development, but these loans come with conditions called the Washington Consensus—a set of policies designed to promote the use of private markets, protect the environment, protect human and workers' rights, and foster non-corruption in government, among other values.*

*Unlike the United States, China believes in a doctrine of non-interference with the internal affairs of other countries. China's stance led the United States to argue that the AIIB would not tie its loans to responsible social policies. Not only did the United States refuse to join the AIIB, but the United States also attempted to dissuade its closest allies from joining. Despite U.S. entreaties, however, all of the United States' closest allies (except Japan) joined the AIIB, causing a political embarrassment for the United States.*

*While the United States has been the underwriter of the world's financial system for at least the past seven decades, the rise of the AIIB could be the first indication that China will succeed in its quest to displace the United States as the final arbiter of the rules of international trade and finance in the twenty-first century.*

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## I. INTRODUCTION

On January 16, 2016, the Board of Governors of the Asia Infrastructure Investment Bank (AIIB) officially convened, with great fanfare, for the first time at its permanent headquarters in Beijing and declared the bank opened for business.[1] The Board officially elected Jin

1. *Inaugural Meeting of the AIIB's Board of Governors* ASIAN INFRASTRUCTURE INVESTMENT BANK (Jan. 18, 2016), http://www.aiib.org/html/2016/NEWS_0117/85.html (last visited Oct. 12, 2016) [https://perma.cc/6BQS-RLYX] (archived Sept. 18, 2016).

Liqun,[2] a former Chinese finance minister,[3] as president of the AIIB[4]—an outcome that was foreordained, since China is the driving force behind the AIIB.[5] Not only did China first propose the AIIB in October 2013, but China has contributed the largest share of the $100 billion initial capital of the AIIB, giving China the largest voting block and an effective veto power over the decisions of the AIIB.[6] Also unsurprising was the absence of the United States from the ceremonies, as the United States had strongly opposed the formation of the AIIB from the time that China's President Xi Jinping first announced China's plans to establish the AIIB in the fall of 2013.[7] Not only had the United

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2. *See id*. The Board of Governors is comprised of a representative from each of the member countries and is the highest governing body of the AIIB. ASIAN INFRASTRUCTURE INVESTMENT BANK, ARTICLES OF AGREEMENT OF THE ASIAN INFRASTRUCTURE INVESTMENT BANK 13, http://www.aiib.org/uploadfile/2015/0814/20150814022158430.pdf (last visited Nov. 1, 2016) [https://perma.cc/JZU6-E4ZU] (archived Sept. 18, 2016) [hereinafter *AIIB Articles of Agreement*]. At the January 16, 2016 meeting, thirty elected representatives served as governors from each of the current members of the AIIB. Twenty-seven other countries were present as observers in completing the process of formally joining the AIIB. *Inaugural Meeting of the AIIB's Board of Governors*, *supra* note 1. On the next day, January 17, 2015, the AIIB Board of Directors met for the first time. The Board of Governors elects the directors and is allowed to delegate the running of the day-to-day operation of the AIIB to the Board of Directors. *AIIB Articles of Agreement, supra* note 2, at 1. The Board of Directors consists of twelve directors and is chaired by Jin Liqun, the president of the AIIB. *Inaugural Meeting of the Board of Directors*, ASIAN INFRASTRUCTURE INVESTMENT BANK, http://www.aiib.org/html/2016/NEWS_0118/86.html (last visited Oct. 12, 2016) [https://perma.cc/Q2YG-YWNZ] (archived Sept. 18, 2016). For a further discussion of the governance structure of the AIIB, see *infra* Part IV.A.

3. *AIIB President*, ASIAN INFRASTRUCTURE INVESTMENT BANK, http://www.aiib.org/html/aboutus/President/ (last visited Oct. 12, 2016) [https://perma.cc/MWM2-ZCV4] (archived Sept. 18, 2016).

4. *Id*.

5. Jin was named as president-elect in August 2015 months before the AIIB formally convened. At this point, China had a 30 percent stake in the AIIB, giving it effective veto power. Mark Magnier, *China's Jin Liqun Named President Elect of China Infrastructure Investment Bank,* WALL ST. J. (Aug. 24, 2015), http://www.wsj.com/articles/chinas-jin-liqun-named-president-elect-of-asian-infrastructure-investment-bank-1440421017 [https://perma.cc/7LWQ-ECQX] (archived Sept. 18, 2016).

6. China contributed $29.8 billion of the initial $100 billion of the basic capital of the AIIB. The second largest contributor is India with $8.4 billion. China retains veto power over all major decisions of the AIIB. Mark Magnier, *How China Plans to Run the AIIB: Leaner, with Veto*, WALL ST. J. (June 8, 2015), http://www.wsj.com/articles/how-china-plans-to-run-aiib-leaner-with-veto-1433764079 [https://perma.cc/C32Q-TLST] (archived Sept. 18, 2016).

7. *See* Jane Perlez, *China Creates a World Bank of its Own, and the U.S. Balks*, N.Y. TIMES (Dec. 4, 2015), http://www.nytimes.com/2015/12/05/business/international/china-creates-an-asian-bank-as-the-us-stands-aloof.html?_r=0 [https://perma.cc/6WCV-VTPW ] (archived Sept. 18, 2016) (discussing President Xi Jinping's proposal of Asia Infrastructure Investment Bank in 2013 at a meeting of top

States spoken out against the formation of the AIIB, but the United States had attempted to dissuade its closest allies from joining the AIIB.[8] Despite U.S. efforts, however, dozens of the United States' closest allies were present in Beijing as founding members of the AIIB, including the United Kingdom, Germany, Australia, and South Korea, leaving the United States and Japan on the outside.[9] The decision to join the AIIB by the United States' allies was considered by the U.S. media to be a major diplomatic defeat and an embarrassment for the United States.[10]

China established the AIIB due, in no small part, to what it perceived to be poor treatment by the United States. While the United States and its allies dominate the World Bank and IMF, China has minor, insignificant roles in both institutions, even though China has the world's second largest economy.[11] The U.S. Congress deliberately blocked efforts to give China a greater voice in the IMF[12] and the United States has concluded the negotiation of the Trans-Pacific Partnership, a vast free trade agreement, with most of the nations of East Asia but deliberately excluded China from the negotiations. This is hardly a friendly act, but rather the act of a rival with the intent to contain China.[13] Since there was no realistic possibility of an expanded role in the World Bank and the IMF commensurate with China's economic power, and because China felt poorly treated by the United

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leaders in Bali). The United States initially supported the idea but quickly changed course as the Obama administration began a battle to limit the bank's influence. *Id.*

8. *See id.* (noting how the Obama administration, while initially endorsing the AIIB then began "a rear-guard battle to minimize its influence"); *see also* Mike Bird, *China's New Development Bank is Becoming a Massive Embarrassment for Obama*, BUS. INSIDER (Mar. 31, 2015), http://www.businessinsider.com/us-allies-joining-asian-infrastructure-investment-bank-aiib-embarrassment-2015-3?r=UK&IR=T [https://perma.cc/F2TD-LKSJ ] (archived Sept. 18, 2016) ("Try as it might, the US government can't persuade its allies to stop joining the Asian Infrastructure Investment Bank.").

9. In total, the AIIB has fifty-seven founding members, including, in addition to the countries mentioned in the text above, France, Italy, Brazil, Russia, and South Africa. *50 Countries Sign the Articles of Agreement for the Asian Infrastructure Investment Bank,* ASIAN INFRASTRUCTURE INVESTMENT BANK, http://www.aiib.org/html/2015/NEWS_0629/11.html (last visited Oct. 1, 2016) [https://perma.cc/Z4H8-3VXP] (archived Sept. 18, 2016); Bird, *supra* note 8.

10. *See* Perlez, *supra* note 7 (declaring the involvement of United States' allies in the bank to be a "humiliating diplomatic defeat" because the United States was excluded).

11. *See infra* text accompanying notes 102–07 (discussing China's low voting share in other multilateral institutions). For a discussion of the size of China's economy, see *infra* note 22.

12. *See infra* text accompanying note 107–09.

13. *See infra* text accompanying note 245 (explaining why the United States excluded China from the TPP).

States, China set up a rival institution in which China can play a dominant role.[14]

From the United States' perspective, the AIIB is an unwanted intrusion in the multilateral financial system. The United States opposed the AIIB for what it viewed as sound and convincing reasons and not as a vendetta against China. The United States viewed the AIIB as an unwanted rival to the World Bank and the IMF, two venerable international financial institutions that have served as the bedrock of the international financial system since the Bretton Woods Conference held in Bretton, New Hampshire at the end of World War II.[15] The World Bank makes loans to developing countries to promote infrastructure and economic development and the IMF makes loans to countries faced with balance of payment problems.[16]

Given China's track record, the United States argued that the AIIB would become a rival to the World Bank and IMF in lending but would not follow the best practices in international lending promoted by these institutions, such as making loans to countries conditional on the recipients' commitment to transparency, non-corruption in government, environmental sustainability, and recognition of workers' rates, among other conditions.[17] Instead, the United States reasoned that China would attach few if any conditions to its loans based on a track record of making loans to unstable governments, financing construction for unnecessary infrastructure projects, and suddenly uprooting entire villages without adequate compensation.[18]

According to the United States, China would use the AIIB to further its own global ambitions and dictate its own rules for international trade, which stand in stark contrast to the rules of the current multilateral trading system dominated by the United States and its close allies.[19] What proved unexpected and surprising to the United States was that these pleas were ignored by almost all of the

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14. *See* Perlez, *supra* note 7 (stating Zheng Xili, often referred to as the AIIB's godfather, first conceived of the idea for the AIIN when he was with the policy research office of the Communist Party's Central Committee).

15. For a discussion of the history of the Bretton Woods Institutions and the functions of the World Bank and IMF, see *infra* Section II.A below.

16. *See infra* Section II.A; *infra* note 71.

17. *See* Perlez, *supra* note 7 ("The United States worries that China will use the bank to set the global economic agenda on its own terms, forgoing the environmental protections, human rights, anticorruption measures and other governance standards long promoted by its Western counterparts.").

18. *See id*.

19. *See id*. (United States feared "that Beijing would use the bank as another tool to project its influence"). For a more detailed discussion of how China differs from the United States on the rules of the multilateral trading system in contained Party, see *infra* Part III below.

countries to which they were directed (Japan being the one exception).[20] As one commentator noted, every country decided that a small improvement in ties with China was more important than a small deterioration in ties with the United States.[21] This is a calculation that few countries would have made just a few decades ago.[22] A telling blow is that many of the United States' closest western European allies chose to join the AIIB. Especially galling to the United States was the decision by the United Kingdom, the United States' strongest ally, to ignore U.S. pleas to shun the AIIB. In most cases, U.S. opposition to any important foreign policy decision would be enough to dissuade the United Kingdom, and it was unprecedented for the United Kingdom to take sides with China in a contentious battle between the United States and its emerging rival, China, over international financial governance.[23] But that is exactly what

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20. *See infra* text accompanying notes 116–31 (discussing U.S. efforts to dissuade its allies from joining the AIIB).

21. Bird, *supra* note 8.

22. The reason why few countries would have chosen China over the United States over an issue of international trade is that the United States dominated international trade due to the sheer size of the U.S economy. A few decades ago, the United States economy dwarfed that of China. Even as late as 2004, the U.S. economy $11.667 trillion) was seven times the size of China's economy ($1.649 trillion). DANIEL C.K. CHOW, THE LEGAL SYSTEM OF CHINA IN A NUTSHELL 33 (3d ed. 2015) [hereinafter CHOW, LEGAL SYSTEM OF CHINA]. By 2015, China had closed the gap. In 2015, the size of the U.S economy as valued by Gross Domestic Product was $17.968 trillion whereas China's GDP was $11.35 trillion. *World GDP Ranking 2015*, KNOEMA, http://knoema.com/nwnfkne/world-gdp-ranking-2015-data-and-charts (last visited Oct. 1, 2016) [https://perma.cc/SL2R-LCRT] (archived Sept. 18, 2016). As measured by Purchasing Power Parity (PPP), China's economy has already surpassed the U.S. economy as the largest in the world. *Id.* PPP measures compare what a consumer can buy for its money in different countries. As a consumer can buy more for the money in China, the size of China's economy is adjusted upwards. According to the IMF, using PPP, China's economy is worth $17.6 trillion, slightly more than the $17.4 trillion for the U.S. economy. This is significant because for the first time since 1872, the United States has been knocked off the top spot as measured by PPP. Ben Carter, *Is China's Economy Really the Largest in the World*, BBC NEWS (Dec. 16, 2014), http://www.bbc.com/news/magazine-30483762 [https://perma.cc/NU6L-8D4G] (archived Sept. 18, 2016). According to some estimates, even in absolute terms, for example nominal GDP, China's economy is expected to overtake the United States in eleven years. Elena Holodny, *China's GDP is Expected to Surpass the US' in 11 Years*, BUS. INSIDER (June 24, 2015), http://www.businessinsider.com/chinas-gdp-is-expected-to-surpass-the-us-in-11-years-2015-6 [https://perma.cc/SWT4-UVNY] (archived Sept. 18, 2016).

23. *See American poodle to Chinese lapdog?*, ECONOMIST (Mar. 13, 2015), http://www.economist.com/news/business-and-finance/21646352-america-and-britain-odds-over-how-deal-china-american-poodle-pekinese-lapdog [https://perma.cc/3DKN-QXE4] (archived Sept. 18, 2016) (noting how it is extremely rare for Britain to take a foreign policy stake at odds with the United States and that it is unprecedented for Britain to side in a contentious international debate with China, a rival to the United States).

happened in this case: a diplomatic defeat that angered the United States.[24]

An indication of how serious a threat the AIIB poses to the United States is contained in a statement by former Harvard University President and former U.S. Treasury Secretary Lawrence Summers:

> This past month may be remembered as the moment the United States lost its role as the underwriter of the global economic system . . . . I can think of no event since Bretton Woods comparable to the combination of China's effort to establish a major new institution and the failure of the United States to persuade dozens of its traditional allies, starting with Britain, to stay out. This failure of strategy and tactics was a long time coming, and it should lead to a comprehensive review of the U.S. approach to global economics. With China's economic size rivaling that of the United States and emerging markets accounting for at least half of world output, the global economic architecture needs substantial adjustment. Political pressures from all sides in the United States have rendered the architecture increasingly dysfunctional.[25]

What would lead a former U.S. cabinet official whose primary role was to oversee the U.S. financial and banking system to suggest such a seismic shift in economic power from the United States to China? Jin Liqun, President of the AIIB stated, in reference to the United States, that "[h]istory has never set any precedent that an empire is capable of governing the world forever."[26] Why does the establishment of the AIIB portend this possible shift in power to China? As developed in this Article, there are at least three reasons, and all of them should be of major concern for the United States going forward.

First, the establishment of the AIIB brings within the control of the Chinese Communist Party, for the first time, a prestigious multilateral organization consisting of many of the closest allies of the United States, but without the presence of the United States or Japan.[27] As with any powerful institution in China, the AIIB, with its

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24. *See id.* (stating that the United States interpreted Britain's decision to join the bank as siding with China). Perhaps the most defiant diplomatic blow of all to the United States is that Taiwan, whose very survival in the post-War period depends on the United States, has decided to apply for membership in the AIIB, but was rejected by China. Jenny W. Hsu, *China Thwarts Taiwan's Bid to be a Founding Member of AIIB*, WALL ST. J. (April 13, 2015), http://www.wsj.com/articles/china-thwarts-taiwans-bid-to-be-founding-member-of-aiib-1428899140 [https://perma.cc/2Y76-FZA2] (archived Sept. 18, 2016). For an additional discussion of Taiwan's history and its dependence on the United States, see *infra* Section III.B.

25. Lawrence Summers, *A Global Wake-Up Call for the U.S.?*, WASH. POST (Apr. 6, 2015), https://www.washingtonpost.com/opinions/a-global-wake-up-call-for-the-us/2015/04/05/6f847ca4-da34-11e4-b3f2-607bd612aeac_story.html [https://perma.cc/EL6M-PFL3] (archived Sept. 18, 2016).

26. Perlez, *supra* note 7.

27. *See infra* Section IV.A.

permanent headquarters in Beijing, will ultimately be under the control of the Chinese Communist Party, and the Party may use the AIIB as an instrument to pursue its policy goals, as further explained below.[28] It is possible that the Party will act with a light touch and not use the AIIB to further its policy goals, but such a move would be inconsistent with the Party's long history and ambitions. The Party has dominated every governmental or non-governmental organization of any importance in China since the founding of the People's Republic of China;[29] it is possible, although unlikely, that the AIIB will be an exception. Rather, more likely, is that the Party's role may not be apparent to AIIB members, but there will be no doubt that, behind the scenes, the Party will exercise ultimate control over the AIIB.[30] Control over the AIIB, a powerful and prestigious multilateral organization housed in China, will only enhance the Party's own status and prestige within China and among the Chinese populace, further entrenching its authority and power in the state.[31] This is an important achievement for the State-Party obtained through establishing the AIIB.

Second, the State-Party in China may intend to use the AIIB to write its own rules for international trade in the twenty-first century.[32] China might use the AIIB to compete directly with the World Bank and the IMF in international lending for development and for balance of payment problems.[33] Both the World Bank and the IMF are institutions dominated by the United States and a few other developed countries.[34] In particular, the World Bank and IMF serve to promote U.S. policies in recipient countries.[35] These policies are embodied in the so-called Washington Consensus—a set of political and economic conditions that are attached to the granting of loans by the World Bank and the IMF.[36] These conditions further the policy goals of the United States in promoting Western-style capitalism in recipient countries, many of them countries in the developing world.[37]

The World Bank and the IMF also tie issues of environmental protection, sustainability, and workers' rights to loans.[38] By using the World Bank, the IMF, and its own free trade agreements, the United States has been, for many years, setting the rules for international

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28. *See infra* subsection IV.B.1.
29. *See infra* Section IV.A.
30. *See id.*
31. *See infra* subsection IV.B.2.
32. *See infra* Section IV.B.
33. *See infra* subsection IV.B.1.
34. *See infra* Section II.B.
35. *See infra* Section III.A.
36. *See id*.
37. *See id*.
38. *See infra* text accompanying notes 141–44.

trade by creating conditions for trade with the United States.[39] This model is now being challenged by China's establishment of the AIIB.[40] By contrast, China may use the AIIB to issue loans with fewer or no conditions, which might be more appealing to many recipient countries.[41] China holds the view that each nation has the sovereign right to decide for itself how to conduct its internal affairs and should not be made subject to intrusive political and economic conditions as a cost of engaging in international trade.[42] This position stands in direct contrast to the United States' position of using international loans to actively promote its policy goals of Western capitalism and political reform in environmental protection and workers' rights.[43]

The AIIB and other future initiatives may challenge the prevailing view that only nations that comply with the conditions set forth by the United States can engage in international trade. In other words, the AIIB might make its loans based on the "Beijing Consensus," a competing ideological view with the Washington Consensus that is currently considered to be the standard in the multilateral financial system. Moreover, the AIIB may represent the first step in China displacing the United States as the final arbiter of the rules of international trade. The AIIB is the first important blow to the United States' dominance over international trade and may portend that China, not the United States, will write the rules of international trade in the future.

Third, China may use the AIIB to promote its own policy goals in the same way that the United States has used the World Bank, the IMF, and free trade agreements to pursue its policy goals.[44] China's industrial goals are a cluster of mercantilist policies designed by the State-Party to foster and strengthen its massive state-owned enterprises (SOEs).[45] China's SOEs control all important economic sectors in China, and the State-Party has made it a priority to develop "national champions," that is, SOEs that can compete with the most powerful multinational companies in the world.[46] The AIIB may allow the State-Party to create business opportunities for SOEs in recipient countries.[47] The stated goal of the AIIB is to make loans to developing

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39. *See infra* Section III.A.
40. *See infra* Part IV.
41. *See infra* subsection IV.B.1.
42. *See infra* text accompanying notes 149–52; Part III.B.
43. *See infra* Section III.B.
44. *See infra* Part IV.
45. *See infra* text accompanying note 247.
46. *Id*.
47. *See infra* subsection IV.B.2.

countries for infrastructure projects,[48] such as the building of roads, dams, power plants, rail transport, and air transport (including airports).

Many of China's massive SOEs can provide these services under the auspices of the AIIB. In other words, the AIIB can lend money to developing countries to pay SOEs from China to build their infrastructure projects. These projects will help to absorb some of the excess capacity that these SOEs are currently experiencing, created by years of building and over-building infrastructure projects in China.[49] From China's perspective, this may seem perfectly sensible; after all, the United States has been promoting its own policy goals for decades through the use of the World Bank and the IMF, and, more recently, through its free trade agreements. Why should China not pursue its policy goals through the AIIB? This would seem to be a sensible and practical course of action. How successful China is in using the AIIB as a policy tool will depend on whether the other members of the AIIB, such as the United Kingdom, will stand up to and hold China accountable for international best practices or will allow China to pursue its industrial policy goals in exchange for economic opportunities from China.[50]

This Article will develop these themes as follows: Part II will discuss the history of the Bretton Woods institutions, including the reasons for the formation of the World Bank and the IMF. Part II will also discuss the current composition of the World Bank and IMF and how the United States uses both institutions to advance its policy goals. This Part will also discuss China's limited role in the World Bank and IMF and why prospects are dim for China to exercise an expanded role. Part III will then examine how the United States uses the World Bank and the IMF to further its own policy interests through a series of policies called the Washington Consensus and why China objects to this approach. Part IV will examine how China can challenge the Washington Consensus by using the AIIB to forge the Beijing Consensus as a policy tool to further its own policy goals. Part V will draw some conclusions for the future of international trade, including the growing divide between the United States and China on international trade and the growing competition with regard to who will write the rules for international trade in the twenty-first century.

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48. *See AIIB Articles of Agreement, supra* note 2, at 1 (stating that the purpose of the AIIB is to "improve infrastructure connectivity in Asia by investing in infrastructure and other productive sectors"). *Id.* at 2 ("[T]he establishment of the Bank as a multilateral financial institution focused on infrastructure development will help to mobilize much needed additional resources from inside and outside Asia and to remove the financing bottlenecks faced by the individual economies in Asia.").

49. *See infra* text accompanying note 256.

50. *See infra* Part V.

## II. THE WORLD BANK, THE IMF, AND CHINA'S PERCEIVED NEED FOR THE AIIB

### A. *The Bretton Woods Institutions*

In July 1944, near the end of World War II, the United States convened a meeting of forty-four nations in Bretton Woods, New Hampshire.[51] The goal of the Bretton Woods Conference, officially known as the United Nations Monetary and Financial Conference, was to establish the multilateral institutions that would repair the shattered world economy after an immensely destructive world war.[52] The new multilateral financial institutions were also intended to set up a framework for international trade and finance in order to prevent re-occurrence of the disastrous economic policies of the first decades of the twentieth century that plunged the world into to a second world war only decades after the first.[53]

In the first decades of the twentieth century, after World War I, many countries erected protectionist trade barriers.[54] "In 1930, the U.S. Congress passed the Smoot-Hawley Tariff Act," which imposed tariffs (taxes on imports) "that averaged over 53 percent of the value of the products imported into the United States . . . . [O]ther nations followed suit [and enacted] similarly draconian tariffs."[55] These tariff barriers were intended to prevent trade and encourage isolationism.[56] As these protectionist barriers arose, "nations viewed [one another] with mistrust and hostility,"[57] and the conflicts that inevitably erupted contributed to the start of World War II.[58] One lesson from this recent history that the Bretton Woods participants did not want to repeat was that, when economic conflict exists, military conflict will likely soon follow.[59]

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51. *The Bretton Woods Conference, 1944*, U.S. DEP'T. OF STATE ARCHIVE, http://2001-2009.state.gov/r/pa/ho/time/wwii/98681.htm (last visited Oct. 1, 2016) [https://perma.cc/R6NS-Y9DR] (archived Sept. 18, 2016).

52. *See id*. (outlining the policies adopted at Bretton Woods and explaining the need for economic cooperation in light of the unsuccessful protectionist policies of the prior decade).

53. *See id.* (explaining that the policies used to combat the Great Depression led to international instability).

54. DANIEL C.K. CHOW & THOMAS J. SCHOENBAUM, INTERNATIONAL TRADE LAW: PROBLEMS, CASES, AND MATERIALS 18 (2d ed. 2013) [hereinafter INTERNATIONAL TRADE LAW].

55. *Id*.

56. *Id*.

57. *Id*.

58. *Id*.

59. *Id*.

The Bretton Woods nations envisioned a tripartite structure of international economic institutions consisting of an International Trade Organization (ITO), the World Bank, and the IMF.[60] The ITO would help to reduce trade barriers and facilitate global trade.[61] The ITO never came into existence, however, due mainly to opposition by the U.S. Congress.[62] Before the demise of the ITO, the Bretton Woods members did manage to pass a treaty to be administered by the ITO called the General Agreement on Tariffs and Trade (1947) (GATT 1947), which helped to jump start world trade by reducing tariffs.[63] The establishment of the World Trade Organization (WTO) on January 1, 1995, can be seen as the final completion of the tripartite system first envisioned by the Bretton Woods nations, as the WTO plays the role first envisioned for the ITO, although with far more powers than were contemplated for the ill-fated ITO.[64]

The second and third institutions created by the Bretton Woods Conference were the World Bank and the IMF. The World Bank was to make loans first for the reconstruction of Europe, devastated by World War II, and then to developing countries to alleviate poverty and assist in economic development.[65] What is now commonly referred to as the World Bank is technically named the International Bank for Reconstruction and Development (IBRD);[66] the World Bank (or IBRD) is part of a World Bank Group that consists of a number of banks, each with a designated role in world lending.[67] The IMF was to facilitate currency flows (flows of money) across national borders and to ensure

60. *Id*.

61. *Id*.

62. *Id*.

63. The GATT (1947) became a treaty without an administrative organ as the ITO never came into existence. The GATT (1947) was administered by a skeletal staff in Geneva until January 1, 1995 when the WTO came into existence and took over the administration of the GATT, now known as GATT (1994). *See id.* at 26.

64. *Id*. at 28.

65. *See id*. at 19 ("The primary mission of the World Bank is to alleviate poverty by providing loans . . . [and] grants.").

66. THE LEVIN INSTITUTE, INTERNATIONAL MONETARY FUND AND WORLD BANK, GLOBALIZATION 101, 11, http://www.globalization101.org/uploads/File/IMF/imfall.pdf (last visited Oct. 1, 2016) [https://perma.cc/4DTH-3R8Q] (archived Sept. 18, 2016).

67. The World Bank actually consists of a group of institutions. Within this group is the International Bank for Reconstruction and Development (IBRD), which provides loans for middle-income and poor countries for economic development; "the International Development Association (IDA) provides loans to the least developed and poorest countries of the world." The International Finance Corporation (IFC) provides financing for projects in poor countries that investors might otherwise find too risky. "The Multilateral Investment Guarantee (MIGA) helps promote FDI in developing countries by insuring against political risk, such as expropriation, war," and civil disturbances. The International Center for Investment Disputes (ICSID) provides a facility for the settlement of investment disputes between foreign investors and the host country of the investment. INTERNATIONAL TRADE LAW, *supra* note 54, at 19.

stability in the international financial system by encouraging the free convertibility of currencies.[68] The IMF was also designed to discourage the vicious cycle of currency devaluations that occurred prior to World War II,[69] and to assist countries with balance of payment problems.[70] Both the World Bank and the IMF were ultimately designed to facilitate world trade.[71] After all, global trade is not truly possible if many nations are too poor or lack the infrastructure to trade, and trade cannot be conducted if cross-border payments cannot be made predictably and reliably.

### B. *Voting Power within the World Bank and the IMF*

Both the World Bank and the IMF are funded by subscriptions (contributions) from their members.[72] Voting shares within both

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68. *Id*. at 19.

69. Suppose Country A has reserves of Country B's currency as a result of trade with Country B. If Country B then unilateral announces a devaluation of its currency by 50 percent, Country A's currency reserves have just lost 50 percent of its value. Country A may then feel cheated by Country B and hostilities may arise. *Id*. at 20.

70. What are some of the balance of payment issues that countries face? Here is a brief discussion:

> Suppose that Country A has purchased a large quantity of imports from Country B and is due to pay B a sum in B's national currency. Or A has borrowed a loan from B and must repay B. Due to domestic problems, A may lack sufficient amounts of foreign exchange reserves (i.e., B's currency) to pay B. For example, a sudden drop in the price of a key export from A, imprudent domestic fiscal policies, high levels of external debt, and natural disasters can all contribute to A's balance of payment problems. Or A may be living beyond its means by buying goods from B without having earned sufficient foreign currency reserves to pay B. In this case, A may seek to repay B using A's own currency. If B balks at accepting A's currency, the IMF will encourage, but cannot require, B to convert A's currency into B's currency and thus allow A to pay in A's own currency. The free convertibility of currencies is a key component of international trade; one of the IMF's roles is to encourage all of its members to allow for free convertibility.
>
> Suppose, however, that due to mismanagement, A does not even have enough of its own currency to convert into B's currency. At this point, A is faced with several difficult alternatives. It could reduce its spending, attempt to raise money by selling government bonds, or print more money. It may find, however, that reducing spending could lead to hardship, selling its bonds are impossible because there are no buyers, and printing more money will lead to hyper-inflation. These events might trigger a financial and political crisis. The IMF can provide a loan to A to give it breathing room. Such loans are usually conditioned on A's agreement to an appropriate IMF program of economic policies to create fiscal discipline.

*Id*. at 20.

71. *See id*. at 21.

72. *See id*. at 19, 21 ("The World Bank is funded primarily by monetary subscriptions from its 187 member governments and through loans from private banks

institutions are weighted based on subscriptions.[73] The United States is the largest subscriber to both the World Bank and the IMF and, as a result, has the largest voting share in both institutions.[74] The membership of the World Bank and the IMF consists of 188 countries, which includes almost all of the nations of the world.[75] When the World Bank was founded in 1944, the United States had a 35 percent share of the voting shares of the World Bank, based on its capital contributions and overall economic strength.[76] Currently, the United States has a 17.48 percent voting share in the World Bank[77] and has a 16.21 percent voting share in the IMF[78]—still by far the largest in both institutions. Additionally, the United States is the only World Bank

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that are backed by government bonds issued by its members." Further explaining that IMF funds "are contributed by members in the form of assigned quotas.").

73. *Id*. at 19–20.

74. *See id*. at 21 ("The United States continues to wield the most power in these organizations with a 16.36 percent voting share in the World Bank and 17 percent quota share in the IMF.").

75. *See Member Countries*, THE WORLD BANK, http://www.worldbank.org/en/about/leadership/members (last visited Sept. 17, 2016) [https://perma.cc/MKR4-SJXY] (archived Sept. 18, 2016) (listing all member countries of the World Bank generally and listing membership of the IBRD, IDA, IFC, MIGA, and ICSID).

76. *See* STEPHANY GRIFFITH-JONES, GOVERNANCE OF THE WORLD BANK, REPORT PREPARED FOR THE UK DEPARTMENT FOR INTERNATIONAL DEVELOPMENT 4 (2002), http://www.stephanygj.net/papers/Governance_of_the_World_Bank._Paper_prepared_for_DFID.pdf (last visited Sept. 18, 2016) [https://perma.cc/MQ85-WEZ9] (archived Sept. 18, 2016) (noting that the United States was given 35 percent of the World Bank stock when the Bank was formed based on the relative strength of the U.S. economy).

77. *See World Bank Group Finances*, WORLD BANK GRP., https://finances.worldbank.org/organization (last visited Sept. 17, 2016) [https://perma.cc/GJ89-G7LT] (archived Sept. 18, 2016) (providing general financial visualizations for the IBRD and IDA including financial summaries of lending by region). The United States' share represents its voting share in the International Bank for Reconstruction and Development (IBRD), the arm of the World Bank responsible for making loans for economic development. *See International Bank for Reconstruction and Development*, WORLD BANK (Sept. 30, 2014), http://www.worldbank.org/en/about/what-we-do/brief/ibrd [https://perma.cc/83A6-XAHH] (archived Sept. 18, 2016) (describing the history of the IBRD as the original World Bank institution). Japan has the next highest voting percentage of 7.64, less than half of the U.S. share. *See World Bank Group Finances*, WORLD BANK GRP., https://finances.worldbank.org/Shareholder-Equity/Top-8-countries-voting-power/udm3-vzz9 (last visited Sept. 18, 2016) [https://perma.cc/8JUY-BL6Z] (archived Sept. 18, 2016) (visualizing voting power of the top eight countries in the World Bank based on IBRD statements of subscriptions to capital stock and voting power and listing the United States as having 17.5 percent of the World Bank's total voting power).

78. *See IMF Members' Quotas and Voting Power, and IMF Board of Directors*, INT'L MONETARY FUND (Sept. 18, 2016), https://www.imf.org/external/np/sec/memdir/members.aspx [https://perma.cc/RWT8-S54Z] (archived Sept. 18, 2016) [hereinafter *IMF Members' Quotas and Voting Power*] (noting that the next highest voting share in the IMF is held by Germany with a 5.81 voting share).

shareholder that retains veto power over decisions by the World Bank.[79]

Both the World Bank and the IMF have a similar governing structure. The World Bank is headed by a President and the IMF is headed by a Managing Director.[80] Both institutions have a Board of Governors consisting of a representative (usually the trade minister) from each Member Country.[81] Although the Board of Governors is the highest governing body in both the World Bank and the IMF, and assists the President and Managing Director, the governors have delegated the duties for the day-to-day operations of both institutions to an Executive Board that assists the heads of their respective organizations.[82] As a sister institution, the organization of the IMF closely tracks that of the World Bank. The IMF has twenty-four executive directors, five of whom are appointed by the members holding the largest quotas (currently the United States, Japan, Germany, France, and the United Kingdom).[83] The others are elected by the remaining member countries.[84] The World Bank recently added

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79. *See Country at a Glance: United States*, WORLD BANK, http://www.worldbank.org/en/country/unitedstates/overview (last visited Sept. 18, 2016) [https://perma.cc/NVY5-MQU5] (archived Sept. 18, 2016) (providing overview of the United States' leading force in the World Bank).

80. *See Office of the President,* WORLD BANK, http://www.worldbank.org/en/about/president (last visited Sept. 18, 2016) [https://perma.cc/XV99-7PGT] (archived Sept. 18, 2016) (providing brief overview of the office of the president of the World Bank and listing Dr. Jim Yong Kim as the 12th president of the World Bank Group); *see also About the IMF: Christine Lagarde,* INT'L MONETARY FUND (Feb. 26, 2016), https://www.imf.org/external/np/omd/bios/cl.htm [https://perma.cc/3NH9-SKAC] (archived Sept. 18, 2016) [hereinafter *Lagarde*] (providing brief biographic overview of IMF Managing Director Christine Lagarde).

81. *See Organization*, WORLD BANK, https://www.worldbank.org/en/about/leadership (last visited Sept. 17, 2016) [https://perma.cc/L4C4-PB7H] (archived Sept. 18, 2016) (noting that all 189 World Bank member countries are represented by the Board of Governors, "the ultimate policymakers at the World Bank"); *see also Governance Structure*, INT'L MONETARY FUND, https://www.imf.org/external/about/govstruct.htm (last visited Sept. 17, 2016) [https://perma.cc/7V9V-S8KJ] (archived Sept. 18, 2016) (noting that the IMF Board of Governors is comprised of one governor and one alternate governor for each member country).

82. *See* INT'L MONETARY FUND, *supra* note 82 (describing the Board of Governors as "the highest decision-making body of the IMF" but noting that it "[has delegated most of its powers to the IMF's Executive Board").

83. *See How the IMF Makes Decisions*, INT'L MONETARY FUND (July 27, 2016), https://www.imf.org/external/np/exr/facts/govern.htm [https://perma.cc/QWC3-EVGD] (archived Sept. 18, 2016) (noting that for all elections prior to October 2016, the five member countries with the largest quotas each appointed one Executive Director and the remaining member countries elected the remainder of the Executive Directors).

84. *See id*. (stating that for all elections prior to October 2016, the remaining nineteen Executive Directors were elected by the IMF member countries that did not hold top-five quota status).

an additional executive director, so now it has twenty-five executive directors.[85]

The executive directors of the World Bank and IMF are on-site and conduct the day-to-day affairs of both institutions. In the World Bank, the executive directors meet regularly every week,[86] so they are intimately involved in the workings of the World Bank. The twenty-five executive directors of the World Bank elect the President of the World Bank, who also serves as Chair of the Board of Directors.[87] The twenty-four executive directors of the IMF elect the Managing Director, who also serves as the Chair of the IMF Board of Directors.[88] The executive directors of both institutions make decisions by consensus, that is, by the unanimous approval of all directors, although a formal vote is sometimes taken.[89]

Although the executive directors are authorized to elect the heads of their respective institutions from their entire membership, by tradition, the executive directors always elect an American to be the President of the World Bank and a European to be the Managing Director of the IMF.[90] The current President of the World Bank is Jon Yong Kim, former President of Dartmouth College,[91] and the current Managing Director of the IMF is Christine Lagarde, former French Finance Minister.[92] The Deputy Managing Director of the IMF is appointed by the U.S. Treasury.[93] These traditions have been carried

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85. *See Board of Directors*, THE WORLD BANK, http://www.worldbank.org/en/about/leadership/directors (last visited Sept. 17, 2016) [https://perma.cc/8MQU-RKKN] (archived Sept. 18, 2016) (the World Bank added one additional executive director to make a total of twenty-five as of November 2010).

86. Natalie Lichtenstein, Chief Counsel, AIIB Multilateral Interim Secretariat, Keynote Address at Harvard Law School (Nov. 15, 2015). The author was in attendance at this speech and the ensuing conference. Ms. Lichtenstein served as a lawyer for the World Bank for thirty years at the World Bank in various roles. *See Natalie G. Lichtenstein*, JOHNS HOPKINS SCHOOL OF INT'L STUD., https://www.sais-jhu.edu/natalie-lichtenstein (last visited Sept. 17, 2016) [https://perma.cc/KZ62-ZLQF] (archived Sept. 18, 2016).

87. *See* WORLD BANK, *supra* note 82.

88. *See* INT'L MONETARY FUND, *supra* note 84 (noting that the Executive Board appoints for a renewable five year term the Managing Director, who also acts as chairman of the Executive Board).

89. *See id.* ("The Board normally makes decisions based on consensus, but sometimes formal votes are taken.").

90. INTERNATIONAL TRADE LAW, *supra* note 54, at 21.

91. *See About the Office*: *Current President*, WORLD BANK, http://www.worldbank.org/en/about/president/about-the-office/bio (last visited Sept. 17, 2016) [https://perma.cc/6TPQ-VWZH] (archived Sept. 18, 2016).

92. *See Lagarde*, *supra* note 81.

93. *See* Joshua E. Keating, *Why is the IMF Chief Always a European?*, FOREIGN POL'Y (May 18, 2011), http://foreignpolicy.com/2011/05/18/why-is-the-imf-chief-always-a-european/ [https://perma.cc/N8VZ-YDHS] (archived Sept. 18, 2016) (explaining that informal agreements dictate that the U.S. Treasury appoints the IMF deputy managing

out since 1944 and, although there have been calls for a change in this structure, the tradition has continued unimpeded for the last seventy years.[94] This arrangement is a "gentleman's agreement" ensconced by long tradition and maintained by the United States and a small group of western European nations and Japan[95]—one of the United States' closest allies outside of the western world.

Adding to the perception that the World Bank and the IMF are dominated by the United States, the headquarters of both the World Bank and the IMF are located in Washington, D.C.[96] At one time, both were located in the same building.[97] Today, they are located in buildings on the opposite sides of the same street.[98] Both the World Bank and the IMF also work closely with the U.S. Secretary of the Treasury.[99]

Adding to China's frustrations in international finance was the fact that Japan dominates the Asian Development Bank (ADB), an affiliate of the World Bank located in Manila, the capital of the Philippines.[100] By tradition, the President of the ADB is Japanese[101] and Japan holds more than twice (12.80 percent) the voting power in the ADB compared to China (5.477 percent),[102] although China has the

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director and that the directors are always European despite U.S. control over their selection).

94. The days of the "Gentlemen's Agreement" that an American should always be the head of the World Bank and a European chief of the IMF has drawn increasing criticism from developing countries and may be coming to a close, but the day has not yet arrived. *See New Head of IMF Likely to be European*, N.Y. TIMES (Aug. 29, 2007), http://www.nytimes.com/2007/06/29/business/worldbusiness/29iht-imf.4.6419485.html?_r=0 [https://perma.cc/VG8K-VKG6] (archived Sept. 18, 2016) (quoting an IMF official as stating that in reference to the IMF that "[i]t will be important for the credibility of that reform process that the selection process is opened up to candidates other than a European").

95. *See id*. (discussing the origins of the "gentlemen's agreement"). Another tradition favors Japan since the head of the Asian Development Bank is also Japanese. Perhaps this too is part of the "gentleman's agreement." *See infra* note 101.

96. INTERNATIONAL TRADE LAW, *supra* note 54, at 21.

97. *Id*.

98. *Id*.

99. *Id*.

100. *See Contacts*, ASIAN DEV. BANK, http://www.adb.org/contacts/main (last visited Sept. 17, 2016) [https://perma.cc/38JH-T9P5] (archived Sept. 18, 2016) (providing a list of all ADB offices).

101. *See* Stephen Howes et al., *Asian Development Bank Defies G20*, EAST ASIA FORUM (Apr. 27, 2013), http://www.eastasiaforum.org/2013/04/27/asian-development-bank-defies-g20/ [https://perma.cc/N3ZU-EGZ2] (archived Sept. 18, 2016) ("ADB presidents – eight of them since the Bank's founding in 1966 – have always been nominated by Japan and rubber-stamped by everybody else.").

102. *See Annual Report 2014: Members, Capital Stock, and Voting Power*, ASIAN DEV. BANK (Dec. 15, 2014), http://www.adb.org/sites/default/files/institutional-document/158032/oi-appendix1.pdf (last visited Sept. 18, 2016) [https://perma.cc/WL9M-

larger economy. The United States holds a 12.752 percent voting share in the ADB,[103] just a fraction below Japan's share. Together, Japan and the United States, close allies, dominate ADB lending in Asia.

Given all of these entrenched traditions, meant to maintain the power status quo, China might feel like an outsider or, at best, a minor player in both Bretton Woods institutions. China currently has a 6.09 percent voting share in the IMF[104] and a 4.61 percent voting share in the World Bank.[105] In 2010, a proposal was made in the IMF to reform voting rights in order to give developing countries greater voting power and to reduce the dominance of western European nations on the Board of Directors.[106] The 2010 reforms would have made China the IMF's third largest member.[107] However, the U.S. Congress rejected this reform, leading to criticism by the Chief of the IMF, China, and other IMF emerging market countries.[108] Even if the U.S. Congress had approved the reforms, China would still have had far less power in the IMF than the United States.[109] China cannot be blind to the political reality that the World Bank, the IMF, and the ADB will continue to be dominated by the United States, working in close cooperation with a few western European allies and Japan to control international finance and trade.

### C. *China's Decision to Establish the AIIB*

China's minor role in both Bretton Woods institutions is no doubt one impetus for establishing the AIIB. As the world's second largest economy, China has only a minor role in the world's two most

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3BEV] (archived Sept. 18, 2016) (listing the capital stock and voting power for all members of the Asian Development Bank and stating that Japan holds 12.840 percent voting power and China holds 5.477 percent).

103. *See id*. (stating that the United States holds 12.752 percent voting power in the Asian Development Bank).

104. *IMF Members' Quotas and Voting Power*, *supra* note 79.

105. THE WORLD BANK, INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT SUBSCRIPTIONS AND VOTING POWER OF MEMBER COUNTRIES 1 (2016), http://siteresources.worldbank.org/BODINT/Resources/278027-1215524804501/IBRDCountryVotingTable.pdf [https://perma.cc/7BB7-47HP] (archived Sept. 18, 2016).

106. *See China Urges IMF to Give More Power to Emerging Markets*, REUTERS (Jan. 15, 2014), http://www.reuters.com/article/us-china-imf-idUSBREA0E1PT2014 0115 [https://perma.cc/74GM-BKPF] (archived Sept. 18, 2016) (noting that the U.S. Congress refused to fund measures that give China more voting power in the IMF).

107. *See id*. (noting that the reforms would have made China the third-largest IMF member and would have reduced western Europe's control of the IMF board).

108. *See id*. (noting the failure of the U.S. Congress' to include the IMF funding in a spending bill approved in January 2014).

109. *See id*. (stating that the reforms would have made China the third-largest IMF member and that the United States is the largest IMF member).

important multilateral financial institutions. Long tradition, the unwillingness of the United States to cede power, and the general negative sentiment towards China in the U.S. Congress[110] might have convinced China that gaining any real clout in the World Bank and IMF was a losing battle. Instead of fighting a battle for greater power in the World Bank and IMF that it could not win, China decided to set up its own bank where it would play the leading role. On October 24, 2014, China President Xi Jinping signed an agreement to establish the AIIB with twenty-one Asian nations.[111]

A second reason for establishing the AIIB is the urgent need for infrastructure development in Asia. Estimates are that Asia will need over $8 trillion per year for the next ten years in infrastructure development.[112] The World Bank currently has only $252 billion of

110. *See* Robert Sutter, *Congress' Weak China Hand*, DIPLOMAT (Jan. 27, 2012), http://thediplomat.com/2012/01/congress-weak-china-hand/ [https://perma.cc/DE28-RDRA] (archived Sept. 18, 2016) (noting "the upswing in congressional criticism of China's policies").

111. *See Twenty One Asian Sign MOU Establishing Asian Infrastructure Investment Bank*, XINHUANET (Oct. 24, 2014), http://news.xinhuanet.com/english/business/2014-10/24/c_133740149.htm [https://perma.cc/PX25-J68C] (archived Sept. 18, 2016) (listing the twenty-one founding signatories: Bangladesh, Brunei, Cambodia, China, India, Kazakhstan, Kuwait, Laos, Malaysia, Mongolia, Myanmar, Nepal, Oman, Pakistan, the Philippines, Qatar, Singapore, Sri Lanka, Thailand, Uzbekistan and Vietnam, and mentioning that President Xi met with representatives from each of the signing nations). China is also a founding member of the New Development Bank (NDB) consisting of the so-called BRICS countries (Brazil, Russia, India, China, and South Africa). The NDB, established in July 2015, is also intended to lending money for infrastructure projects to developing countries. The formation of the NBD, however, has been marred by years of distrust among its members. Among to the media, the NBD is not even a real bank. It has an initial capital of $50 billion, most of it contributed by China. Once these funds are used up, then the other members must contribute their share of capital but it is not clear that the other BRICS countries, all beset by financial difficulties, will even be able to contribute their shares. The NDB is viewed with suspicion by its own members, the other BRICS countries, due to China's outsize influence and matters of governance could be contentious. For these reasons, it is doubtful that the NDB will be a major player in international lending, unlike the AIIB in which no one seems to question China's dominance. *See NBD: A Bank with a Question Mark*, DUETSCHE WELLE (Aug. 4, 2016), http://www.dw.com/en/ndb-a-bank-with-a-question-mark/a-19172152 [https://perma.cc/6FAF-54LQ] (archived Sept. 18, 2016) (proposing that whether the NDB will be viewed as a "real bank" in which investors have confidence will depend of the success of its first projects and noting the concern of critics that a bank established by the BRICs counties will be less reliable in upholding labor and social standards than is the World Bank or the IMF).

112. *See Who Will Pay for Asia's $8 Trillion Infrastructure Gap?*, ASIAN DEV. BANK (Sept. 30, 2013), http://www.adb.org/news/infographics/who-will-pay-asias-8-trillion-infrastructure-gap [https://perma.cc/3JAF-KZRZ] (archived Sept. 18, 2016) (describing Asia's $8 trillion infrastructure gap and considering whether the private sector should play a larger role in closing the gap through investment and financing instruments).

available capital—far short of what is needed. The AIIB has a current authorized capital fund of $100 billion,[113] but China has $3.5 trillion in capital reserves,[114] which could be used to increase the capital of the AIIB at some point in the future. Infrastructure projects approved by the World Bank are also conditioned on a set of policies[115] that some Asian countries find onerous;[116] the AIIB holds out the promise of less red tape and fewer conditions in lending, which might expedite the loans.[117]

Third, the United States seems to needlessly antagonize China over the AIIB, which only strengthens China's resolve to establish the AIIB with a broad membership. Not only did the United States block attempts to give China more power in the IMF, but, as soon as China formally announced the AIIB, the United States also launched a campaign to dissuade its allies from joining the AIIB. The United States claimed that the AIIB would not follow best practices in international lending because China would fail to live up to the environmental, human rights, and other governance standards that are essential for developing countries.[118] Certainly, the United States could decide for itself that it would not join the AIIB, but it also did not want any of its allies to join[119]—a move that seemed petulant and cynical to Beijing.[120] To counter the U.S. campaign, China sent Jin Liqun, a former finance minister[121] and the presumptive new head of the AIIB,[122] to Washington, D.C. in an attempt to persuade U.S. officials that China would indeed adopt the best practices of nations in international lending. The United States, however, remained skeptical of China's real intentions. An official of the National Security Council refused to believe Mr. Jin's assurances and stated, "I am not going the

113. *AIIB Articles of Agreement*, *supra* note 2, at art. 4(1).

114. *$4 Trillion Peak in FX Hoard Frees PBOC Hands: Economy*, BLOOMBERG (Jan. 11, 2015), http://www.bloomberg.com/news/articles/2015-01-11/-4-trillion-peak-for-china-s-stockpile-of-foreign-currency-may-free-pboc-s-hands [https://perma.cc/W3WK-LSZJ] (archived Sept. 18, 2016).

115. *See infra* Section III.A.

116. *See infra* subsection IV.B.1.

117. *See id.*

118. *See* Perlez, *supra* note 7 (explaining that the United States fears China will use the AIIB to "set the global economic agenda on its own terms, forgoing the environmental protections, human rights, anticorruption measures and other governance standards" that the United States has promoted in the past).

119. *See* Bird, *supra* note 8 (suggesting that the United States has been isolated by allies unexpectedly joining the AIIB).

120. *See infra* text accompanying note 137.

121. *See AIIB Articles of Agreement*, *supra* note 2 (describing the election of Liquin as the first president of the AIIB).

122. *See* Magnier, *supra* note 5 (stating that former vice finance minister Jin Liquin was chosen in August 2015 by member shareholders as AIIB president-elect).

buy the cake you have cooked."[123] Undaunted, Mr. Jin replied, "You are always welcome into the kitchen to help with the baking."[124]

Unconvinced by Mr. Jin's assurances, the United States continued to press its closest allies, including the United Kingdom, France, Italy, Germany, several other Western powers in Europe, and important allies in the Pacific, including Australia and South Korea, to shun the AIIB. The goal of the United States was to diminish the status of the AIIB, limiting it to the role of a minor regional bank with a small membership so that it would pose no threat to the World Bank and the IMF.[125] Despite the entreaties by the United States, dozens of U.S. allies, including all of the Western European powers courted by the United States, joined the AIIB.

The case of Britain is illuminating. Britain is the United States' closest ally (these ties were cemented when Roosevelt and Churchill fought together to defeat Nazi Germany and its Axis allies) and will generally stand with the United States on any decision of this magnitude. Yet even Britain balked. The timing was fortuitous because relations between Britain and China had been icy since British Prime Minister David Cameron met with the exiled Dai Lama in 2012,[126] and Britain was eager to get back in China's good graces. Britain's Chancellor of the Exchequer (a position similar to the U.S. Treasury Secretary) wanted London to become a prime center for the trading in Chinese currency, the Renminbi (RMB or "people's currency" in English), and felt that investment inflows from China to Britain were essential to the nation's health.[127] Keeping the negotiations secret, Britain gave Washington twenty-four hours' notice when it

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123. The statement was made by Evan S. Medeiros, the council's senior adviser on China. Perlez, *supra* note 7.

124. *Id*.

125. *See* Jane Perlez, *U.S. Opposing China's Answer to World Bank*, N.Y. TIMES (Oct. 9, 2014), http://www.nytimes.com/2014/10/10/world/asia/chinas-plan-for-regional-development-bank-runs-into-us-opposition.html?ref=world&_r=0. [https://perma.cc/YLS2-GJDZ] (archived Sept. 18, 2016) (noting that the United States tried to dissuade South Korea and Australia from joining AIIB to "ensure membership in the bank would be limited to smaller countries, depriving it of the prestige and respectability the Chinese seek").

126. *See* Andrew Woodcock, *David Cameron 'Must Apologise' for Meeting Dalai Lama to Restore Diplomatic Relations with China*, BUS. INSIDER (May 7, 2013), http://www.businessinsider.com/us-allies-joining-asian-infrastructure-investment-bank-aiib-embarrassment-2015-3?r=UK&IR=T [https://perma.cc/JAS3-KYEB] (archived Sept. 18, 2016) (describing China's anger over Cameron's meeting with the Dalai Lama and "that the meeting had 'undermined' UK-China relations"). The Dalai Lama is the spiritual leader of Tibet who fled into exile decades ago to avoid Chinese rule over Tibet, which continues to be an area of contested sovereignty. For a further discussion of Tibet, see *infra* Section III.B.

127. Perlez, *supra* note 7.

decided to join the AIIB.[128] Washington considered this to be a major affront[129] and the U.S. press ridiculed the "craven desperation with which Britain has sought to ingratiate itself with China,"[130] even suggesting that Britain has transformed itself from an "American poodle" into a "Chinese lapdog."[131] A few months later, President Xi rewarded Britain in a four-day state visit that resulted in commercial deals worth $40 billion pounds ($60 billion dollars) and a Chinese investment stake in the British nuclear industry.[132] Britain's example opened the floodgates for other traditional U.S. allies to join, including France, Germany, Italy, Australia, and South Korea. Altogether fifty-seven nations, including Russia, India, Brazil, and South Africa, have joined the AIIB.[133] Far from being a small regional bank with a limited membership, the AIIB boasts most of the major economic powers of the world among its members.

The U.S. media has labeled the United States' handling of the AIIB as a diplomatic disaster and a humiliation for the Obama administration.[134] Delighted by the U.S. failure, the Chinese state-controlled media gloated: "Welcome Germany! Welcome France! Welcome Italy!"[135] Xinhua, the official Chinese news agency, continued, saying that "[d]espite a petulant and cynical Washington," more and more major countries are joining the AIIB.[136] "[H]olding sour grapes over the AIIB makes America look isolated and hypocritical."[137] China's official press agency finished with a derisive jab aimed at the United States: "So Washington, what are you waiting for?"[138]

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128. *Id.*

129. *Id.*

130. *See American poodle to Chinese lapdog?*, *supra* note 23 (noting Britain's eagerness to curry favor with China and describing British Prime Minister David Cameron's visit to China in December 2013 as a "tour of atonement, to make up for the offense . . . Cameron had given China by meeting the Dalai Lama . . . the previous year").

131. *See id.*

132. *China's Xi Seals Nuclear Power Deal as Part of $62 Billion Splurge in Britain*, REUTERS (Oct. 21, 2015), http://www.reuters.com/article/us-china-britain-idUSKCN0SF0Q720151021 [https://perma.cc/E5L9-DGMF] (archived Oct. 3, 2016).

133. *See 50 Countries Sign the Articles of Agreement for the Asian Infrastructure Investment Bank*, *supra* note 9.

134. David R. Sands, *Diplomatic Disaster: Obama Humiliated by Allies' Rush to Join China's New Bank*, WASH. TIMES (Mar. 18, 2015), http://www.washingtontimes.com/news/2015/mar/18/obama-humiliated-as-allies-join-chinas-asian-infra/?page=all [https://perma.cc/JE7G-CKTF] (archived Sept. 18, 2016).

135. Tian Dongdong, *Commentary: Washington, What Are You Waiting For?*, XINHUANET (Mar. 18, 2015), http://news.xinhuanet.com/english/2015-03/18/c_134076605.htm [https://perma.cc/4Q9P-6CVQ] (archived Sept. 18, 2016).

136. *Id.*

137. *Id.*

138. *Id.*

## III. THE WORLD BANK, THE IMF, AND THE WASHINGTON CONSENSUS

### A. *The Washington Consensus and the Doctrine of Conditionality*

Not only does China object to what appears to be its permanent, minor role in the World Bank and IMF, but China also objects to how both institutions are being used to further the policy goals of the United States and its allies. Loans from the World Bank and the IMF are conditioned on the recipient accepting a list of fiscal and policy demands that are known as the Washington Consensus. These policies are the following:

- Fiscal discipline (limits on government spending);
- Redirection of public expenditures towards education, health, and infrastructure;
- Tax reform (broadening the tax base and reduction in overall taxes);
- Market-determined interest rates (no government set interest rates on borrowed money);
- Competitive exchange rates (no exchange rates pegged to a hard currency such as the U.S. dollar);
- Trade liberalization (reduction or elimination of tariffs and quotas on imports);
- Openness to foreign direct investment;
- Privatization of state-owned enterprises;
- Deregulation;
- Legal security for property rights, including intellectual property rights; and
- Reduced roles for the state.[139]

Additional policies promoted by the World Bank are environmental sustainability,[140] workers' rights (that is, the four core labor standards of (1) freedom of workers to engage in collective bargaining, (2) prohibitions against child labor and (3) slave labor, and (4) elimination of discrimination in employment[141]), and non-

139. INTERNATIONAL TRADE LAW, *supra* note 54, at 21–22.

140. *See Goal 7 Ensure Environment Sustainability by 2015*, WORLD BANK, http://www.worldbank.org/mdgs/environment.html (last visited Oct. 2, 2016) [https://perma.cc/AAF2-TJHJ] (archived Sept. 18, 2016) (noting that part of the World Bank Environmental Sustainability Strategy is improving "sustainable management of natural resources" and increasing "access to low-emission, climate-smart transport, energy, [and] agriculture").

141. *See* The World Bank, *Core Labor Standards and the World Bank*, LABOR MARKETS (July 2000), http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/

corruption in government.[142] The United States has recently indicated that all future U.S. free trade agreements with its trading partners will contain provisions linking trade to the environment and workers' rights.[143] One observer, Ian Bremmer, President of the Eurasia Group, notes that, "[f]or decades the [United States] has used its authority in the World Bank and IMF . . . to guide developing countries toward Western values."[144]

Critics of the Washington Consensus are legion. One of the most prominent is Joseph Stiglitz, Chief Economist of the World Bank from 1997–2000 and a winner of the Nobel Prize in economics. Stiglitz argues that these conditions are too rigidly and unthinkingly applied to countries regardless of their individual characteristics.[145] He thinks these conditions—often referred to as a whole as "conditionality"—are going far beyond the typical requirements that banks impose on borrowers to ensure that the money is paid back;[146] rather, Stiglitz claims that these conditions are so forceful that they should be seen a policy tool to reshape the governance of nations, often putting recipient nations in the humiliating position of either choosing to cave in or forgoing the money.[147] These polices are designed to promote a system based on the Washington Consensus, laden with its Western emphasis on developing countries without regard to the social effects—an

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EXTSOCIALPROTECTION/EXTLM/0,,contentMDK:20310132~menuPK:390633~pagePK:148956~piPK:216618~theSitePK:390615~isCURL:Y,00.html [https://perma.cc/E4JF-W3GB] (archived Sept. 18, 2016) (describing how the World Bank seeks to achieve an atmosphere that is conducive to achieving core labor standards).

142. The World Bank Group has a strategic plan for curbing corruption. *See generally* STRENGTHENING GOVERNANCE: TACKLING CORRUPTION, THE WORLD BANK GROUP'S UPDATED STRATEGY AND IMPLEMENTATION PLAN (Mar. 16, 2012), http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/285741-1326816182754/GACStrategyImplementationPlan.pdf [https://perma.cc/2SYJ-NXY6] (archived Sept. 18, 2016) [hereinafter ANTI-CORRUPTION STRATEGY].

143. *See infra* text accompanying note 162.

144. Ian Bremmer, *What Does the AIIB Mean for the U.S.?*, WORLD ECONOMIC FORUM (Apr. 2, 2015), http://www.weforum.org/agenda/2015/04/what-does-the-aiib-mean-for-the-us/?utm_content=buffer46e36&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer [https://perma.cc/3UT3-YP8D] (archived Sept. 18, 2016).

145. *See* JOSEPH P. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 16 (2002) ("[T]he economic policies that evolved into the Washington Consensus and were introduced into developing countries were not appropriate for countries in the early stages of development or early stages of transition."). This theme of uncompromising rigidity and arrogance on the part of the IMF and the Work Bank underlies the entirely of Chapter One, "The Promise of Global Institutions," of Stiglitz's book. *Id.* at 3–22.

146. *See id.* at 44.

147. *See id.* at 40–41 (describing how the managing director forced the humiliated president of Indonesia to turn over economic sovereignty of his country as a condition of receiving a loan from the IMF).

invasion of sovereignty.[148] Moreover, some of these reforms—such as privatization, transparency, and non-corruption in government—might even lead to the toppling of the more corrupt and unstable regimes in developing countries, resulting in wholesale political and regime change.[149] These goals are far beyond the typical banker's much more modest goals, to ensure the repayment of money with interest;[150] they are political ends that suit the ambitious global agenda of the United States and some of its allies. In other words, the World Bank and IMF are not acting like banks but rather like instruments of political and economic reform, in accordance with an agenda set by the United States and its close allies.

This criticism of the World Bank and IMF, as expressed by Stiglitz, is widely known, but China has a deeper concern about the Washington Consensus. China sees the Washington Consensus as posing a political threat to China's long-term national and global interests. The Washington Consensus and the doctrine of conditionality espouse a view that world trade can be conditioned on a set of intrusive Western-style policies that are imposed by more powerful nations onto less powerful nations as the cost of doing business. The cost of doing business with the World Bank and the IMF is a commitment to economic and policy reform in accordance with the rules set forth by the United States and its allies. China rejects this approach as an illegitimate interference with the borrower nation's sovereign right to conduct its own internal affairs as it wishes.[151]

In contrast to the doctrine of conditionality embodied in the Washington Consensus, China follows a doctrine of non-interference, that is, China believes that the political characteristics of a borrower nation, or any nation with which it conducts business, is of no concern to anyone but that nation itself.[152] This doctrine of non-interference is one reason why China has been subject to criticism for doing business with rogue states such as Sudan, which has little regard for human

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148. *See id*. at 40–41, 44–45 (explaining how the rigid conditions can undermine economic development with the nations subject to those conditions).

149. *See id*. at 20, 47, 52 (describing riots that erupted in countries like Indonesia, Morocco, and Thailand following IMF intervention as a result of reduced assistance for unattained conditions).

150. *Id*. at 44.

151. *See Principles of China's foreign Policy*, ASIA FOR EDUCATORS (2009) (citing ANDREW J. NATHAN & ROBERT S. ROSS, THE GREAT WALL AND THE EMPTY FORTRESS: CHINA'S SEARCH FOR SECURITY (1997)), http://afe.easia.columbia.edu/special/china_1950_forpol_principles.htm [https://perma.cc/S269-6RLU] (archived Sept. 18, 2016) (explaining that a core idea of China's foreign policy is the "uninfringeable sovereignty of all states large and small").

152. *Id*.

rights,[153] and Iran, which has a regime objectionable to western countries because of its sponsorship of terrorism and its desire to acquire nuclear weapons.[154] Despite sweeping economic sanctions imposed by the United States and other world powers on Iran, China invested heavily in Iran and, now that the sanctions have been lifted, China is far ahead of the West in investment projects.[155] From China's perspective, each nation has a right to determine for itself how it views the issue of human rights and other internal policies (e.g., self-armament), and it is not for China—or the United States—to attempt to use trade as a tool to coerce a nation to change its own policies.

### B. *China's Doctrine of Non-Interference*

China's doctrine of non-interference is fundamentally at odds with the doctrine of conditionality that underlies the Washington Consensus and a great deal of U.S. trade policy. Outside of its work in the Work Bank and the IMF, the United States now includes provisions relating to environmental sustainability, transparency, and workers' rights in all of its free trade agreements. The U.S. practice of including provisions related to the environment and labor began with the North American Free Trade Agreement (NAFTA), which entered into effect in 1994.[156] Along with the main NAFTA agreement, the parties also entered into two side agreements: the North American Agreement on Labor Cooperation, which aims to improve conditions for workers,[157] and the North American Agreement on Environmental Cooperation, which provides for obligations to enforce environmental

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153. Daniel C.K. Chow, *How China Uses International Trade to Promote its View of Human Rights*, 45 GEO. WASH. INT'L L. REV. 681, 681 n.1 (2013) [hereinafter Chow, *How China Uses International Trade*].

154. *See* Patrick Clawson, *U.S. Sanctions*, THE IRANIAN PRIMER (Aug. 2010), http://iranprimer.usip.org/resource/us-sanctions [https://perma.cc/65U3-AL7C] (archived Sept. 18, 2016) (discussing how the past five U.S. administrations responded to Iran with sanctions).

155. *See* Thomas Erdbrink, *China Deepens its Footprint in Iran After Lifting of Sanctions*, N.Y. TIMES (Jan. 26, 2016), http://www.nytimes.com/2016/01/25/world/middleeast/china-deepens-its-footprint-in-iran-after-lifting-of-sanctions.html?_r=0 [https://perma.cc/NR7N-S2UB] (archived Oct. 2, 2016) (noting a European diplomat's statement that "[w]here we had to stand on the sidelines, the Chinese have been filling the void. . . . [t]hey are way ahead of all of us").

156. North American Free Trade Agreement, Can.-Mex.-U.S., Dec. 17, 1992, 32 I.L.M. 289 (1993), https://ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta/ (last visited Oct. 2, 2016) [https://perma.cc/A8PY-YADM] (archived Sept. 18, 2016).

157. North American Agreement on Labor Cooperation, Can.-Mex.-U.S., Sept. 14, 1993, 32 I.L.M. 1499 (1993), http://www.labour.gc.ca/eng/relations/international/agreements/naalc.shtml [https://perma.cc/8Z28-JVA2] (archived Sept. 18, 2016).

protection standards.[158] Subsequently, in 2011, Congress approved the U.S. South Korean Free Trade Agreement (known as KORUS). KORUS includes a reciprocal obligation to enforce domestic environmental laws, as well as obligations under the seven covered multilateral environmental agreements.[159] KORUS also includes a reciprocal obligation to adopt and enforce the basic rights of workers, as contained in the 1998 International Labor Organization Declaration on Fundamental Principles and Rights at Work.[160] The current 2012 Model Bilateral Investment Treaty (BIT), drafted by the U.S. Department of State, which serves as a template for all future U.S. BITs with its trading partners, also includes provisions related to transparency, the environment, and labor.[161]

Why would China object to policies that tie trade obligations to protection of the environment? There is, of course, the issue of national sovereignty alluded to above. China believes that policies related to the balance between industrial development and protection of the environment are issues that each nation needs to decide for itself.[162] Beyond this ideological point, however, is the political reality that China continues to conduct its own industrial development using means that are harmful to the environment, such as using coal-powered factories—a source of "dirty fuel" that causes significant air pollution.[163] "China is [also] the biggest [producer] of greenhouse gases in the world and the main driver of climate change."[164] According to the U.S. National Aeronautics and Space Administration (NASA), climate change could lead to serious, permanent, and dangerous

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158. North American Agreement on Environmental Cooperation, Can.-Mex.-U.S., Sept. 14, 1993, 32 I.L.M. 1480 (1993), http://www.cec.org/about-us/NAAEC [https://perma.cc/M8QJ-W752] (archived Sept. 18, 2016).

159. Free Trade Agreement Between the United States of America and the Republic of Korea, S. Kor.-U.S., art. 20.2, 20.3.1, Jun. 30, 2007, https://ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file852_12719.pdf [https://perma.cc/JYN9-RV96] (archived Sept. 18, 2016).

160. *Id*. at art.19.2.

161. 2012 U.S. MODEL BILATERAL INVESTMENT TREATY arts. 11–13, (2012), http://www.state.gov/documents/organization/188371.pdf [https://perma.cc/D6F9-FZEX] (archived Sept. 18, 2016).

162. The preamble of China's Constitution enshrines the basic goal of modernization and industrialization of science, agriculture, industry, and technology as a sacred goal of the new nation. *See* XIANFA pmbl. ¶3 (1982) (China), http://en.people.cn/constitution/constitution.html [https://perma.cc/6FHB-SH4F] (archived Sept. 18, 2016).

163. *See* Edward Wong, *Glut of Coal Powered Plants Casts Doubt on China's Energy Priorities*, N.Y. TIMES (Nov. 11, 2015), http://www.nytimes.com/2015/11/12/world/asia/china-coal-power-energy-policy.html?_r=0 [https://perma.cc/J3G7-7FPX] (archived Oct. 2, 2016) (calling into question China's commitment to renewable energy given the continuing building of "dirty fuel" coal powered plants).

164. *Id*.

changes to the Earth's environment.[165] If the World Bank, the IMF, and the United States are able to create an expectation that international financial obligations and international trade must be tied to the enforcement of environmental standards, China could find itself bound to make legal commitments to the environment in its transactions with the World Bank, the IMF, or with international trade partners.

It should be emphasized that China does not object to environmental protection—to the contrary, it is a national priority[166]—but China does object to the notion that environmental protection should be a condition of conducting trade with the United States, and objects to the notion that multilateral financial institutions dominated by the United States should be dictating the terms of that environmental protection as the cost of obtaining a loan. Each nation should be able to decide, as a matter of sovereign right, how to deal with environmental protection issues on its own. Such a decision might include joining multilateral environmental treaties that create international obligations, but that too involves a voluntary decision to join and differs from being forced to accept environmental obligations as a cost of doing business.

Even more important and sensitive to China is the issue of multilateral financial institutions and the United States dictating the protection of workers' rights as a condition of doing business. Workers' rights are closely related to human rights and China insists that each nation has the sovereign right to decide for itself how to protect human rights.[167] Furthermore, China believes that human rights are not absolute and universal, but are derivative from the state;[168] human rights are relative and need to be determined in accordance with a country's economic and political stage of development.[169] Perhaps the most important corollary to China's basic view on human rights is the principle that the sovereign has the right to use force, including deadly force, against its own citizens when the sovereign finds that it is under

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165. *See The Consequences of Climate Change*, NAT'L AERONAUTICS AND SPACE ADMIN., http://climate.nasa.gov/effects/ (last visited Oct. 2, 2016) [https://perma.cc/E7AQ-5D53] (archived Sept. 18, 2016).

166. Article 4 of the PRC Environmental Protection Law states that "[t]he plans for environmental protection formulated by the state must be incorporated into the national economic and social development plans." Huanjing Baohu Fa (环境保护法) [Environmental Protection Law] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 24, 2014, effective Jan. 1, 2015), art. 4, http://www.china.org.cn/english/environment/34356.htm [https://perma.cc/H3BX-FEPW] (archived Sept. 18, 2016).

167. Chow, *How China Uses International Trade*, *supra* note 154, at 721.

168. *Id*. at 689–96, 721.

169. *Id*. at 721.

threat.[170] This is not an abstract debate for China, but a core national security interest and a core issue of sovereignty.[171]

Unlike the United States, China has significant areas of contested sovereignty involving populations in the tens of millions of people and active uprisings in some of these areas.[172] Xinjiang Autonomous Province, a region in northwestern China with a population of over 21 million, is an area subject to frequent incidents of political unrest.[173] Xinjiang is home to the Uyghurs, an ethnic minority of Turkish origin and Muslim faith.[174] Many Uyghurs feel mistreated by the Chinese ethnic majority (the Han) and violent clashes resulting in many deaths have erupted.[175] The State-Party considers the Ugyhur Independence Movement to be a separatist movement and the attacks on the Han majority instigated by Uyghurs to be terrorist acts that should be suppressed with merciless force.[176]

Another area of contention is the Xizang Province, also known as Tibet, a territory of 3 million people in southwestern China.[177] Both the Tibetans, an ethnic minority with a population of about 3 million people, and the Uyghurs, have their own languages but are subject to compulsory education in Chinese,[178] leading many to believe that China would like to erase their languages and their cultures.[179] The Dalai Lama, Tibet's spiritual leader, fled from Tibet and Chinese rule into exile many decades ago.[180] To China's exasperation, the Dalai

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170. *Id*. at 695–96.
171. *See id*. at 696.
172. *Id*.
173. *See id*. at 701–02.
174. *Id*.
175. *See* AFP, *450 Killed in China's Xinjiang last year, mostly Uighurs: Group*, DAILY MAIL (Mar. 4, 2015), http://www.dailymail.co.uk/wires/afp/article-2978812/450-killed-Chinas-Xinjiang-year-Uighurs-group.html [https://perma.cc/4CLM-383G] (archived Oct. 2, 2016) (describing deaths as result of "excessive force" against acts described by China as acts of "terrorism" and blamed on "separatists") (emphasis in original).
176. Chow, *How China Uses International Trade*, *supra* note 154, at 701–02.
177. *Id*. at 700.
178. *See Tongue-Tied*, ECONOMIST (July 2015), http://www.economist.com/news/china/21656216-teaching-uighur-children-mandarin-will-not-bring-stability-xinjiang-tongue-tied [https://perma.cc/SQ3A-UL2S] (archived Sept. 18, 2016); *cf.* Saransh Sehgal, *Mandarin Education Plan Riles Tibetans*, ASIA TIMES ONLINE (Nov. 4, 2010), http://atimes.com/atimes/China/LK04Ad02.html [https://perma.cc/8NTB-S425] (archived Sept. 18, 2016) (explaining "[t]he Chinese government's plan to introduce Mandarin as the language of education in Tibetan schools" in late 2010).
179. Sehgal, *supra* note 179.
180. The Dalai Lama fled Tibet to India on March 31, 1959 in the face of China's suppression of a national uprising. *March 31: 1959 Dalai Lama Begins Exile*, THIS DAY IN HISTORY (2010), http://www.history.com/this-day-in-history/dalai-lama-begins-exile [https://perma.cc/59X8-KCR4] (archived Sept. 18, 2016).

Lama has since become an international celebrity and icon whose reception by foreign nations (such the United Kingdom)[181] always provokes a furious response by China.

Inflicting the most grievous wound of all to China is Taiwan, an island off the eastern coast of China with a population of 23.5 million people[182] who share the same ethnic origin as the majority of people on Mainland China.[183] Taiwan serves as the last painful reminder of the long period of China's weakness and domination by foreign powers that lasted for 150 years, until the middle of the twentieth century.[184] For fifty years, until the end of World War II, China ceded sovereignty over Taiwan to Japan as a spoil of war.[185] At the end of World War II, China was ravaged by a brutal civil war between the Nationalists headed by Chiang Kai-shek, with the strong backing of the United States, and the Communists, led by Mao Zedong.[186] For a brief period (from about 1927–1948), Chiang had a tenuous hold on the leadership of China after having had established a new government, the Republic of China in 1927.[187] Despite having overwhelming advantages in troops and U.S.-provided military equipment, however, Chiang lost to Mao and fled to the island of Taiwan where he installed the seat of government for the Republic of China.[188] Implacable enemies to the end, Mao and Chiang vowed to destroy the other.[189] Without the intervention of the Korean War and the protection of the United States, it is likely that Taiwan would have long ago returned to Chinese sovereignty.[190] Although relations between China and Taiwan have improved in recent years, the separation of Taiwan from the motherland, and the U.S. role in protecting Taiwan, continue to be deeply painful for the Party.[191] A mark of the depth of China's pain is its vow to reunite Taiwan with the mainland by force if necessary.[192] China has also

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181. The Dalai Lama's visit to the United Kingdom sparked a frigid response from China and the thawing of relations was one reason why the United Kingdom choose to join the AIIB. *See* Perlez, *supra* note 7.

182. Central Intelligence Agency, *World Factbook East and Southeast Asia: Taiwan*, CIA, https://www.cia.gov/library/publications/the-world-factbook/geos/tw.html [https://perma.cc/876W-EMMT] (archived Sept. 18, 2016).

183. Chow, *How China Uses International Trade*, *supra* note 154, at 697.

184. *See* CHOW, LEGAL SYSTEM OF CHINA, *supra* note 22, at 7–9.

185. Taiwan Provincial Administration Information Hall, *Administration of Taiwan in Recent Centuries*, A BRIEF INTRODUCTION TO TAIWAN'S HISTORY & CULTURE, http://subtpg.tpg.gov.tw/Eng2/history/history-e-2_3.htm (last visited Oct. 2, 2016) [https://perma.cc/9N88-96UM] (archived Sept. 18, 2016).

186. *See* CHOW, LEGAL SYSTEM OF CHINA, *supra* note 22, at 12.

187. *Id.* at 10–12.

188. *Id*. at 12.

189. *Id*.

190. Chow, *How China Uses International Trade*, *supra* note 154, at 698.

191. *See id*. at 697.

192. *See id*. at 700.

repeatedly insisted that the issue of Taiwan reunification is an internal issue and not subject to external interference.[193] No doubt a military conflict in the Taiwan Straits could result in a huge cost in human lives. China's insistence that it has the right to use force to reunify Taiwan with the mainland is a core issue of sovereignty for China on which there can be no compromise.[194]

China's insistence that it has the right to use force against its own citizens is one major reason why China objects to the Western view of human rights promoted by the United States and other Western nations. The U.S. view of human rights as universal and above the state allows human rights to serve as a shield against the use of arbitrary power by the State.[195] Human rights can also create a right of the people to self-determination—a view that bolsters Xinjiang, Tibet, and Taiwan's claims for independence and self-rule.

Aside from workers' rights, human rights, and the environment, there are other policies in the Washington Consensus that are inconsistent with China's policies. For example, the privatization of state-owned enterprises runs directly counter to China's insistence that the state-owned enterprise must be the centerpiece of the economy.[196] While there are yet other policies of the Washington Consensus that conflict with China's own policies, the merit of each policy is less important than China's fundamental objection to the overall approach of the United States and its allies in using the Bretton Woods institutions as policy tools to impose Western political and economic values on countries as a condition of doing business. By contrast, China's doctrine of non-interference supports its core view that the state has the right to use force against its own citizens when the state is threatened. With the establishment of the AIIB, China now has a multilateral financial institution that espouses China's own doctrine of non-interference to serve as a counterweight to Washington's conditionality approach, as embodied in the World Bank and the IMF. Perhaps China's doctrine of non-interference will soon become known as the "Beijing Consensus."

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193. *Id*.

194. *See China Won't Renounce Use of Force in Taiwan; It Urges U.S. to Promote Peaceful Reunification*, DESERT NEWS (Feb. 29, 2000), http://beta.deseretnews.com/article/746400/China-wont-renounce-use-of-force-in-Taiwan.html?pg=all [https://perma.cc/5XST-54HH] (archived Sept. 18, 2016) ("China's defense minister told the commander of U.S. Pacific forces Tuesday that Beijing would never relinquish its right to use military force to recover the island" of Taiwan.").

195. *See* Chow, *How China Uses International Trade*, *supra* note 154, at 688–89.

196. *See infra* Section IV.B.

## IV. THE AIIB AS A POLICY TOOL FOR CHINA

### A. *The State-Party and Control of the AIIB*

This idea that the AIIB might serve as a counterweight to the Washington Consensus assumes that China will dominate the AIIB in the same, or in an even more extreme way than the United States and its allies have dominated the World Bank and the IMF. The difference is that China will use the AIIB to advance its own policy goals and not the policy goals of the World Bank, the IMF, and the Western values relating to the environment, workers' rights, transparency in governance, and non-corruption in government. The use of the AIIB by the State-Party to further its own goals is fodder for the U.S. criticism that China will not follow "best practices" in international lending, that is, the Washington Consensus with its Western-laden values.

Whether the AIIB follows "best practices" as defined by Washington depends in large part on whether the State-Party will be able to dominate the AIIB or whether other countries can exercise enough control so that power is shared. To analyze how power will be distributed in the AIIB, it is necessary to begin by noting that China proposed the AIIB,[197] is its largest contributor,[198] and holds veto power.[199] Additionally, the permanent headquarters of the AIIB are located in Beijing[200]—the capital city of China and the seat of the Chinese government and Communist Party.[201] These facts alone suggest that China will play a dominant role, but there are other factors that reinforce the notion that the State-Party will ultimately control the AIIB.

In China, the Party is able to control every important governmental or non-governmental organization by installing its own members in leadership positions.[202] For example, officials in the Chinese government hold two positions: a government position and a Party position; the party position is always supreme to the parallel government position.[203] Xi Jinping is the current President of the PRC,[204] but this position is largely ceremonial.[205] Far more important

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197. *Supra* text accompanying note 6.

198. *Id*.

199. *Id*.

200. ASIAN INFRASTRUCTURE INVESTMENT BANK, *supra* note 1.

201. *See The Communist Party of China*, CHINA TODAY, http://www.chinatoday.com/org/cpc/ (last visited Oct. 2, 2016) [https://perma.cc/5EQE-RA37] (archived Sept. 14, 2016) (using a chart to explain the structure of the National Congress of the CPC).

202. *See* CHOW, LEGAL SYSTEM OF CHINA, *supra* note 22, at 119, 134.

203. *See id*. at 134.

204. *Id*.

205. *Id*. at 102.

is his position as the General Secretary of the Communist Party, the highest position in the Party hierarchy.[206] In addition to these two positions, Xi is also chairman of the Party's Central Military Commission, which controls China's Military, the People's Liberation Army.[207] At some points, the Party and the government merge. The best example is the Central Military Commission, which is both a Party organ and a government bureau: the members of each organ are identical.[208] Xi's Party positions, not his government position as President, are the true source of his power.[209]

By installing Party leaders in all leading government positions, the Party is able to control the State.[210] This same structure is repeated in state-owned enterprises (SOEs)—business entities that are administrative units of the state.[211] An SOE has a corporate structure "consisting of [a] CEO, [a] Vice CEO, [a] Chief Accounting Officer, and a Board of Directors similar to the corporate management structure of firms outside of China. . . . The Party structure includes a secretary of the Party Committee, several Deputy Secretaries, and a Secretary of the Party Discipline Inspection Committee" (*discipline* is a synonym for the harsher sounding *corruption*).[212] A similar structure exists within universities. The highest position in a university is not the President but the Party Secretary, often translated as "Provost" to avoid causing concern to American partner universities.[213] A PRC law school has a dean, but it also has a Party Secretary who is more powerful.[214]

The AIIB's President Jin Liqun is a former Finance Minister of China and is, in all likelihood, a senior member of the Party. Although Jin has not trumpeted his Party affiliations, all important positions in China are held by Party officials and it is highly likely that Jin, a former finance minister, and handpicked by the State-Party to head the AIIB, is a senior Party official.[215] Of course, Jin's specific position

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206. *Id*. at 103.

207. *Id*.

208. *Id*. at 134–35.

209. *See id*. at 103.

210. *Id*. at 134.

211. *See* Daniel C.K. Chow, *Why China Wants a Bilateral Investment Treaty with the United States*, 33 B.U. INT'L L. J. 421, 443 (2015).

212. *Id*.

213. This was explained to the author by a Chinese university administrative official.

214. This observation is based upon the author's own experience when a meeting was arranged with the head of a law school in China and the Party Secretary, not the dean, held the meeting in his office.

215. *See* Mu Chunshan, *China's Forgotten Non-Communist Parties*, DIPLOMAT (Aug. 25, 2012), http://thediplomat.com/2012/08/chinas-forgotten-non-communist-

within the elites of the Party is not publicly known—a factor that may be raised in the discussion of transparency, a key World Bank, IMF, and U.S. international trade condition.

Aside from the President, the powers of the AIIB are vested in the Board of Governors, which consists of representatives from each of the Member States.[216] The Board of Governors is required to meet once annually.[217] The AIIB Board of Governors can delegate the general operational duties of the AIIB to a Board of Directors,[218] which serves under the Board of Governors and handles the day-to-day operations of the AIIB. The Board of Governors elects the twelve directors that comprise the Board of Directors.[219] Unlike the World Bank and IMF, which have resident directors who live and work in Washington, D.C., the Board of Directors of the AIIB consists of nonresident directors.[220] The AIIB Board of Directors will meet "periodically throughout the year,"[221] which has been interpreted by the AIIB to mean quarterly meetings.[222] The President of the AIIB will recommend one or more vice presidents to the Board of Directors for approval.[223] The rest of the officers and staff of the AIIB shall be appointed by the President without consultation.[224]

It should be apparent that the daily operations of the AIIB will be conducted by the President, his management team, and his staff, who will live in Beijing and work at the AIIB headquarters on a daily basis. The directors of the AIIB are nonresident directors who will live in their home countries. Contrast this arrangement with that of the World Bank, which has resident directors who meet Monday, Tuesday, and Thursday every week to conduct the daily business of the World Bank.[225] The directors of the World Bank are full-time employees, while the directors of the AIIB will likely serve as directors on a part-time basis, since they only meet once every three months. If the work of the AIIB directors is similar to the work of directors of large business corporations, the directors' quarterly meetings will consist of reports

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parties/ [https://perma.cc/BB4Q-P2L8] (archived Sept. 13, 2016) (discussing the Chinese Communist Party's "monopoly on power").

216. *AIIB Articles of Agreement*, *supra* note 2, art 22(1).

217. *Id*. at art. 24(1).

218. *See id*. at art. 23(2).

219. *Id.* at art. 25(1).

220. *Id*. at art. 27(1).

221. *Id*.

222. *See Inaugural Meeting of the AIIB's Board of Directors, supra* note 1 (describing the inaugural meeting of the AIIB's Board of Directors); *see also* Lichtenstein, *supra* note 87.

223. *AIIB Articles of Agreement*, *supra* note 2, at art. 30(1).

224. *Id*. at art. 30(2)–(3).

225. *See* WORLD BANK, *supra* note 86 (describing the board of directors of the World Bank).

by the management and a casting of votes on issues that have been already prepared for discussion by the management team, all handpicked by the President. With the exception of the Vice President, the board has no say in the selection of the management and working staff of the AIIB.[226] If the AIIB follows the pattern of other important organizations in China under the leadership of the Party, it seems highly likely that senior management will also be Party members or approved by the Party.

This suggests that the Party, through the President and his management team, could control the day-to-day operations of the AIIB. The hand of the Party in running the AIIB seems assured, given its control over all major governmental and non-governmental organizations in China, and given that the original idea for the AIIB came from the Party's Central Committee, which is a group of senior Party leaders.[227] The control of the AIIB by the Party represents a first in history: control of a prestigious multilateral institution that consists of all of the closest allies of the United States but where neither the United States nor Japan, China's two largest competitors for influence in Asia, is a member. This is a significant diplomatic and political achievement for the State-Party and, at the same time, a setback and an embarrassment for the United States.

### B. *The AIIB and Its Policy Goals*

#### 1. The "Beijing Consensus"

Will the AIIB follow international best practices, that is, will it condition its loans on the Western values of the Washington Consensus? Or will the AIIB espouse a doctrine of non-interference and attach few, if any, conditions to its loans? Nowhere in its Articles of Agreement does the AIIB allude to the doctrine of conditionality. Article 13 does state that the AIIB will ensure that its operation complies with "policies addressing environmental and social impacts,"[228] but Indonesia has reported that the AIIB has already approved a $1 billion loan for projects including coal-fired power plants[229]—projects blocked by the World Bank for their harmful

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226. *AIIB Articles of Agreement*, *supra* note 2, at art. 30(2).

227. *See* Perlez, *supra* note 7.

228. *AIIB Articles of Agreement*, *supra* note 2, at art. 13(4).

229. BANKWATCH MAIL, NEW BEIJING-BACKED ASIAN INFRASTRUCTURE INVESTMENT BANK STRUGGLES TO CONVINCE ON ENVIRONMENT AND SUSTAINABILITY ISSUES 3 (Dec. 2015), http://bankwatch.org/sites/default/files/bankwatchmail63.pdf [https://perma.cc/829P-H6GX] (archived Oct. 2, 2016).

environmental impact.[230] The Indonesian government then issued a statement that "AIIB imposes looser environment requirement[s] in disbursing its loans, making it the preferred creditor for financing Indonesia's coal-fired power plant projects."[231] Sensing the political fallout from such a candid statement, Indonesia retracted this statement and replaced it with the less provocative statement that "AIIB—as opposed to other multilateral lenders like Asian Development Bank or the World Bank—allowed its financing to be used for Indonesia's coal-fired power plant projects."[232] The Indonesian project prompted a Bank Watch Group to warn that "the new beginnings under way at the AIIB threaten to see a return to the darkest, unregulated days of international development finance."[233]

Indonesia's posture raises the question of whether AIIB's Asian borrowers would prefer to have looser controls on environmental impact, since coal-fired power plants are far less expensive than alternatives that do less damage to the environment. India, for example, has huge coal reserves and has also expressed the hope that the AIIB will approve loans for India to use its coal-fired power plants, which will put the AIIB "in direct conflict with the World Bank."[234] The reaction of Asian nations to what they hope will be looser standards by the AIIB should not be surprising given how developing nations have, in the past, expressed resentment at the World Bank and IMF's bullying and arrogance in imposing conditions on loans in ways that humiliated the recipients.[235]

Further support for a doctrine of non-interference is contained in Article 31(2), which states that the "Bank, its President, officers and staff shall not interfere in the political affairs of any member, nor shall they be influenced in their decisions by the political character of the member concerned. Only economic considerations shall be relevant to their decisions."[236] Note too that nothing in the AIIB refers to human rights or workers' rights. Members of the AIIB, such as Indonesia, which has a checkered history in human rights,[237] will therefore be allowed as loan recipients, provided they meet the economic criteria.

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230. *See id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. Manoj Kumar & Tony Munroe, *For India, China-backed Lender May be Answer to Coal Investment*, REUTERS (Nov. 5, 2014), http://www.reuters.com/article/us-india-aiib-insight-idUSKBN0IP2S020141106 [https://perma.cc/ZG63-T7SX] (archived Sept. 14, 2016).

235. STIGLITZ, *supra* note 146.

236. *AIIB Articles of Agreement*, *supra* note 2, at art. 31(2).

237. *See World Report 2015: Indonesia*, HUM. RTS. WATCH (Jan. 2015), https://www.hrw.org/world-report/2015/country-chapters/Indonesia [https://perma.cc/L8VY-Z6DN] (archived Sept. 14, 2016).

China's track record in its recent international trade treaties may also provide an indication of how the AIIB will function. As noted earlier, all recent U.S. free trade agreements contain requirements related to the environment, labor, and transparency.[238] In the past decade, China has entered into free trade agreements with its strategic partners, including Costa Rica (2011), Peru (2009), Singapore (2008), New Zealand (2008), Chile (2008), and Pakistan (2006 and 2009).[239] On November 22, 2015, China signed a Protocol to Upgrade the China Free Trade Agreement with the Association of Southeast Asian Nations (ASEAN) (consisting of Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei Darusssalam, Vietnam, Laos, Myanmar, and Cambodia).[240] Many more Chinese free trade agreements are under negotiation.[241] A hallmark of these agreements—in contrast to U.S. free trade agreements—is that they do not contain any clauses that pertain to the environment, human rights, or labor rights.[242]

China's refusal to link environmental sustainability and workers' rights to trade may be one reason why the United States has excluded China from the U.S.-led negotiations for the Trans-Pacific Partnership

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238. *See supra* text accompanying note 141–43.

239. The following are the press releases associated with the agreements. *See* Press Release, China FTA Network, China-Costa Rica FTA Entered into Force on August 1 (Aug. 3, 2011) (http://fta.mofcom.gov.cn/enarticle/encosta/encostanews/201108/7440_1.html [https://perma.cc/54E3-TV6G] (archived Sept. 15, 2016)); Press Release, China FTA Network, China and Peru Signed Free Trade Agreement (May 9, 2009) (http://fta.mofcom.gov.cn/enarticle/enperu/enperunews/200910/1215_1.html [https://perma.cc/8VY4-FCZP] (archived Sept. 15, 2016)); Press Release, China FTA Network, China-Singaporean FTA Signed in Beijing (Oct. 29, 2008) (http://fta.mofcom.gov.cn/enarticle/ensingapore/ensingaporenews/200910/1204_1.html [https://perma.cc/6ERX-NB3E] (archived Sept. 15, 2016)); Press Release, China FTA Network, China, New Zealand Sign Free Trade Deal (Apr. 9, 2008), (http://fta.mofcom.gov.cn/enarticle/ennewzealand/ennewzealandnews/200911/1626_1.html [https://perma.cc/6TAK-WKCU] (archived Sept. 15, 2016)); Press Release, China FTA Network, China and Chile Signed FTA on Trade in Services (Apr. 15, 2008) (http://fta.mofcom.gov.cn/enarticle/enchile/enchilenews/200910/1199_1.html [https://perma.cc/2AY3-PDBP] (archived Sept. 15, 2016)); Press Release, China FTA Network, China and Pakistan Sign FTA Agreement on Trade in Services (Feb. 22, 2009) (http://fta.mofcom.gov.cn/enarticle/enpakistan/enpakistannews/200910/1220_1.html [https://perma.cc/UA3R-EYEU] (archived Sept. 15, 2016)).

240. Press Release, China FTA Network, Zinhua News Agency Gao Hucheng Is Interviewed by the Zinhua News Agency on the Successful Signing of the China-ASEAN FTA Upgrading Protocol (Dec. 2, 2015) (http://fta.mofcom.gov.cn/enarticle/chinadmen/endmnews/201512/29597_1.html [https://perma.cc/44M7-7V9F] (archived Sept. 15, 2016)).

241. *See Free Trade Agreements Under Negotiation,* CHINA FTA NETWORK, http://fta.mofcom.gov.cn/english/fta_tanpan.shtml (last visited Oct. 12, 2016) [https://perma.cc/WA9M-KBSK] (archived Sept. 15, 2016).

242. *See, e.g.*, China-Costa Rica Free Trade Agreement, April 8, 2010, China-Costa Rica (2011); China-Peru Free Trade Agreement, Dec. 6, 2009, China-Peru (2010).

(TPP), a vast free trade agreement with many of the most powerful economies in Asia (including Japan, Singapore, Australia, and Vietnam).[243] The United States may have believed that China would balk at provisions imposing certain requirements concerning environmental sustainability and workers' rights. Of course, China has interpreted its exclusion from the TPP negotiations as shoddy treatment by the United States, consistent with China's poor treatment in the World Bank and the IMF.[244]

Ultimately, no parsing of the text of the AIIB or China's free trade agreements will determine whether the AIIB will adhere to the doctrine of conditionality as currently embodied in the Washington Consensus and employed by the World Bank and the IMF, or whether the AIIB will actively promote the doctrine of non-interference. The AIIB's position can only be determined by an examination of its actual practices, which may take some years to become clear. It is a safe assumption, however, that the AIIB will not adopt the Washington Consensus, laden as it is with Western values. Rather, all indications are that the AIIB will adopt a different approach, one that may become known as the "Beijing Consensus." Beyond the doctrine of non-interference, the following sections explore some of the other policies that might comprise the Beijing Consensus.

2. Promoting China's State-Owned Enterprises

Aside the doctrine of non-interference, the State-Party may use the AIIB to promote state-owned enterprises (SOEs). SOEs are business entities that are controlled by the State-Party through a system of parallel management structures, as stated above, in which the Party position is always more important than the corporate position. China has vowed to create "national champions," that is, SOEs that can compete with the most powerful multinational companies in the world today.[245] The Party has pledged to "incessantly strengthen" the "vitality" of SOEs.[246] Although some SOEs have been

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243. *See The Trans-Pacific Partnership*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, https://ustr.gov/tpp/ (last visited Oct. 12, 2016) [https://perma.cc/HR6F-79PZ] (archived Sept. 15, 2016).

244. *See* Daniel C.K. Chow, *How the United States Uses the Trans-Pacific Partnership to Contain China in International Trade*, 17 CHI. J. INT'L L. (forthcoming 2017) (manuscript at 6).

245. *See* China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects on the U.S. Economy, Inv. No. 332-514, USITC Pub. 4199, at 5–6 (Nov. 2010) (amended).

246. Bob Davis & Brian Spegele, *State Companies Emerge as Winners Following Top China Meeting*, WALL ST. J. (Nov. 13, 2013), http://www.wsj.com/articles/SB10001424052702303559504579195551704526972 [https://perma.cc/E387-KKZH] (archived Nov. 18, 2016).

privatized, and SOEs control less of the economy than they did prior to reforms begun in 1978, SOEs continue to dominate in all vital economic sectors. For example, SOEs enjoy near monopolies in energy (oil and gas exploration), transportation (including air and rail transport), electricity and water supply, and telecommunications.[247] SOEs also control all financial institutions, including banks, which provide easy credit to finance other SOEs.[248]

In 2011, The Chinese government reported the existence of 144,700 SOEs, excluding financial institutions, with assets worth $13.6 trillion.[249] The world's largest company by capitalization is PetroChina,[250] a SOE in the energy sector, ranked ahead of Exxon-Mobil, which is ranked number two on the 2015 U.S. Fortune 500 list.[251] All SOEs are subject to the supervision of the central level State-Owned Assets Supervision and Administration Commission (SASAC) of the State Council, China's executive body.[252] The SASAC is the controlling shareholder in all critical SOEs and regularly rotates its personnel with SOEs over which it exercises its supervision.[253] Because almost all high ranking government officials are also Party officials, the rotation of SASAC officials with SOE officials, also Party members, strengthens the Party's control over SOEs. As SOEs control all vital industries, the Party's tight grip over SOEs also allows the Party to control China's economy.

Since SOEs control industries that are involved in infrastructure development, China can promote SOEs by using the AIIB to make loans to developing countries to fund infrastructure projects that will

247. *See* CHOW, LEGAL SYSTEM OF CHINA, *supra* note 22, at 24.

248. *See* Eve Cary, *Reforming China's State-Owned Enterprises*, DIPLOMAT (June 19, 2013), http://the diplomat.com/2013/06/reforming-chinas-state-owned-enterprises/ [https://perma.cc/WVX8-C9NH] (archived Sept. 15, 2016) ("85 percent of loans in 2009 were issued to SOEs, because banks themselves are state-owned, and are directed to let credit flow to other state-owned businesses.").

249. WAYNE M. MORRISON, CONG. RESEARCH SERV., RL3356, CHINA-U.S. TRADE ISSUES 28 (2014).

250. *PetroChina Becomes World's Largest Listed Company*, CHINA VIEW (Nov. 6, 2007), http://news.xinhuanet.com/english/2007-11/06/content_7018280.htm [https://perma.cc/FR2F-MKHJ] (archived Sept. 14, 2016).

251. Carolyn Davis, *Exxon Mobil, Chevron, Philips 66 in Top 10 of Fortune 500*, NATURAL GAS INTEL. (Oct. 8, 2015), http://www.naturalgasintel.com/articles/103955-exxonmobil-chevron-phillips-66-in-top-10-of-fortune-500# [https://perma.cc/8ESA-YS2D] (archived Oct. 12, 2016).

252. *See* Li-Wen Lin & Curtis J. Milhaupt, *We are the National Champions: Understanding the Mechanisms of State Capitalism in China,* 65 STAN. L. REV. 697, 734–35 (2013) ("SASAC directly or indirectly controls a majority stake in virtually every leading firm in every critical industry in China . . . [and] represents a second attempt to consolidate control rights over the national SOEs.").

253. *See id*. at 734, 740.

be implemented by SOEs. In other words, China may use the AIIB to lend money to other countries to buy Chinese goods and services from SOEs. China could use its own state-owned banks to make these loans, but the AIIB will add the prestige and legitimacy of a multilateral lending institution to China's practices. The loans will be made not just by Chinese banks, but also by a multilateral bank consisting of most of the world's great powers. The AIIB loans will further legitimize China's use of its SOEs to fund infrastructure projects under terms that might not be acceptable to the World Bank. China's SOEs will also benefit because, after years of building in China, many SOEs now have excess capacity that can be put to use in AIIB-funded projects.[254]

The use of the AIIB to funnel projects to SOEs also portends that China may not enforce international standards against corruption in international business. The United States and the World Bank condition trade on controls on government corruption.[255] China's SOEs are notorious for their corrupt practices.[256] While China has cracked down on corruption by SOEs in China, SOEs appear to have free reign in foreign countries to use corrupt practices as a means of doing business.[257] This is evidenced in reports of corruption by SOEs in developing countries and by China's failure to prosecute even one case against SOEs for bribes made in foreign countries under a recently enacted criminal law[258] that targeted overseas bribery and was passed as part of China's obligations under the United Nations Convention Against Corruption.[259] These practices suggest that, unlike the World

254. *See* Minxin Pei, *China's Slowing Economy: The Worst has Yet to Come*, FORTUNE (Jan. 21, 2015), http://fortune.com/2015/01/21/china-economy-growth-slowdown/ [https://perma.cc/NL7K-2W7P] (archived Nov. 14, 2016).

255. *See* ANTI-CORRUPTION STRATEGY, *supra* note 143 (discussing how the World Bank considers corruption to be a major obstacle in its efforts to end extreme poverty and how illegal bribes dwarf all development assistance).

256. *See* Daniel C.K. Chow, *Why China's Crackdown on Commercial Bribery Threatens U.S. Multinational Companies Doing Business in China,* 31 ARIZ. J. INT'L & COMP. L. 511, 528 (2014).

257. *See* Xu Yi-Chong, *Chinese State-Owned Enterprises in Africa: Ambassadors or Freebooters?*, 23 J. OF CONTEMP. CHINA, 822, 823 (2014) (describing criticism of China's SOEs spreading "bad behavior" to Africa in areas of corruption, human rights/labor rights, environmental pollution, and even crimes).

258. *See* 中华人民共和国刑法 [Criminal Law of the People's Republic of China] (promulgated by the National People's Congress, March 14, 1997, effective October 1, 1997, revised 1999, 2000, 2001, 2002, 2005, 2006, 2009, 2011), art. 164, http://www.cecc.gov/resources/legal-provisions/criminal-law-of-the-peoples-republic-of-china [https://perma.cc/Y2B4-7NTU] ("Where a person gives money or property to an employee of a company . . . for the purpose of seeking illegitimate benefits . . . he shall be sentenced to fixed-term imprisonment . . . or criminal detention.").

259. *See United Nations Convention Against Corruption, Signature and Ratification Status as of December 1, 2015*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, https://www.unodc.org/unodc/en/treaties/CAC/signatories.html (last visited Oct.

Bank, the AIIB might not condition loans on controls on foreign corruption, or may not enforce such conditions.

3. Promoting the RMB as an International Currency

The AIIB's current obligations are to make loans in dollars, but the AIIB might, in the future, make loans in Renminbi (RMB, or "the people's currency"). China has been seeking to promote the RMB as an international currency for some time and these efforts were recently rewarded when, on November 30, 2015, the IMF declared the RMB as one of its official currencies.[260] Promoting the RMB will add considerable prestige to the currency. For example, the Wall Street Journal stated that

> [i]t confers a measure of international legitimacy to China's currency as the government starts to liberalize its rigidly controlled exchange rate and financial system. For the Chinese, it is a matter of prestige, a plank in Beijing's strategy to elevate the country's economic role in the global economy as it challenges U.S. political and economic dominance around the world.[261]

Much more than prestige is involved, though: the point missed by this observation is that China will also gain significant political power if the RMB becomes an established international currency frequently used in international transactions.

Today, most international transactions are conducted in U.S. dollars.[262] Transactions in U.S. dollars create great power for the United States over the international financial system. Trade in U.S. dollars, even if initiated overseas, requires clearance from banks in the United States.[263] The United States can effectively freeze any transaction by blocking the transfer of dollars by U.S. banks. For

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12, 2016) [https://perma.cc/CLP9-QDCJ ] (archived Sept. 15, 2016) (listing China as a signatory to the Convention Against Corruption).

260. *See* Krishnadev Calamur, *The Yuan as a Global Currency*, ATLANTIC (Nov. 30, 2015), http://www.theatlantic.com/business/archive/2015/11/imf-sdr-yuan/418020/ [https://perma.cc/H9HJ-89QR] (archived Sept. 13, 2016).

261. Ian Talley, *IMF Makes Yuan an Elite Lending-Reserve Currency*, WALL ST J. ASIA (Dec. 1, 2015), at A1.

262. *See* Ping Chew, *Why the Dollar Will Remain the Global Currency*, BLOOMBERG (April 23, 2009), http://www.bloomberg.com/news/articles/2009-04-23/why-the-dollar-will-remain-the-global-currency [https://perma.cc/EFS4-FQBH] (archived Sept. 14, 2016) (stating that the dollar is the most widely accepted means of payment for services and goods in international trade).

263. *See generally* IRENE FINEL-HONIGMAN & FERNANDO B. SOTELINO, INTERNATIONAL BANKING FOR A NEW CENTURY 12–13 (2015) (describing clearance of all U.S. dollar transactions in the United States and how the United States is able to enforce sanctions against these transactions and impose the harshest fines and penalties).

example, the United States can impose sanctions on a country, such as Iran, by prohibiting the transfer of U.S. dollars through U.S. banks to Iran.[264] Since oil is paid for in U.S. dollars, the United States can effectively restrict the sales of oil by Iran through controlling U.S. banks. In the case of Iran, China was able to circumvent many of the West's restrictions on buying Iranian oil (using means that are undisclosed), but was careful not to violate U.S. restrictions on banking because China must deal with U.S. banks on a regular basis.[265]

It is apparent that, if China is able establish the RMB as a currency that can be regularly used in international transactions, China can circumvent future U.S. sanctions, because China will not need to use U.S. dollars or U.S. banks; thus, China will be able to deal directly with countries subject to U.S. sanctions. In addition, China would then have the same power to control international financial transactions in RMB through its control of Chinese banks. China could suspend or use the threat of suspending RMB transactions through Chinese banks to add weight to its dealings in international transactions. Using the AIIB to promote the RMB as a currency regularly used in international trade not only creates prestige for China, but could also add immense power over the international financial system.

## V. CONCLUSION

The establishment of the AIIB as a multilateral institution represents a diplomatic triumph, as China was able to attract dozens of the United States' closest allies in defiance of U.S. opposition. Beyond this diplomatic coup, however, there are larger potential consequences for the future of the international global system. Despite China's own assertions to the contrary, the AIIB might emerge as a direct rival to the World Bank and the International Monetary Fund. This rivalry will consist not only in the amounts of loans made, but also in the rules of international lending and the rule of international trade in general. Will China use the AIIB to counter the Washington Consensus, laden with Western values, with its own approach that pursues its policy goals under what might become known as the Beijing Consensus? Aside from the doctrine of non-interference, the Beijing Consensus might include policies intended to promote SOEs and the

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264. *See* James Killick et al., *How US Laws Can Apply,* WHITE & CASE (Oct. 15, 2014), http://www.whitecase.com/publications/insight/how-us-laws-can-apply [https://perma.cc/ZT3G-438B] (archived Sept. 14, 2016) ("The jurisdiction potentially created by clearing US dollars through a US bank can also significantly extend the reach of US sanctions laws. Sanctions can prohibit or restrict doing business with countries (such as Cuba, Sudan, and Iran), individuals or companies referred to as "specially designated nationals" or "SDNs," which are 'blocked' parties subject to a US asset freeze.").

265. Erdbrink, *supra* note 156.

use of the RMB as a regularly used currency for international transactions. In addition to these policies, the Party may well have other goals in mind. The governance structure of the AIIB, the role of the Party, and China's own global ambitions suggest that China is poised to use the AIIB as a policy tool just as the United States and its closest allies have used the World Bank and the IMF.

The competing roles of the AIIB and the World Bank represent, for the future, a clash between rival multilateral financial institutions led by the United States and China. The clash could elevate the longstanding conflict between the United States and China over the rules governing international trade to the multilateral policy level for the first time. This portends a larger struggle over who will write the rules for international trade in the future.

One option for the United States is to join the AIIB and attempt to stem the AIIB's influence from the inside. This option, however, is unrealistic. The United States has indicated that it will not join the AIIB[266] and political realities suggest that such an option would not pass in the U.S. Congress: joining the AIIB requires a capital contribution in the billions of dollars to a Chinese-controlled bank—a move unlikely to be approved by Congress.[267] Even if the United States did join the AIIB, its role will be carefully limited by the State-Party. No one in the executive or legislative branches of the U.S. government should have any illusions to the contrary.

The purpose of this Article is not to choose sides between the doctrine of conditionality, favored by the United States, and the doctrine of non-interference, favored by China. Whether one approach is superior to the other involves a debate about philosophy, politics, and morality far beyond the scope of this Article. The arguments made here point out that this debate has been elevated to the multilateral level and that the State-Party has achieved a breakthrough in gaining control over a prestigious multilateral peer to the World Bank.

That China will attempt to use the AIIB to further the goals of the State-Party seems to be a foregone conclusion. It is simply a political reality that nations often use the multilateral institutions that they control as policy tools to further their own national interests.[268] Why should anyone expect China to behave otherwise? This Article also points out the most evident policies that China might wish to promote through the AIIB. It would be unrealistic to believe that, while the

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266. Scott Morris, *No, The U.S. Will Not Join the AIIB, But Here's One Thing it Can Do*, CTR. FOR GLOBAL DEV. (Mar. 20, 2015), http://www.cgdev.org/blog/no-us-will-not-join-aiib-%E2%80%93-here%E2%80%99s-one-thing-it-can-do [https://perma.cc/Y5X7-ZGHY] (archived Sept. 14, 2016).

267. *Id*.

268. For a recent example of the United States uses this tactic to further its interests at the expense of China see Chow, *supra* note 244.

United States uses the World Bank and the IMF to promote the Washington Consensus and U.S. goals, China will not attempt to do the same in using the AIIB—under its firm control—to further China's policy goals. Of course, it is possible that China will not succeed in its efforts because it might meet effective opposition from other members of the AIIB. This possibility seems unlikely but, at this point in the infancy of the AIIB, it is not possible to see exactly how the AIIB's development will unfold. Yet, it is a development that is worth watching because it will indicate whether China will begin to succeed in displacing the United States as the final arbiter of the rules of international trade in the modern global economy.