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The New Cold War with China and Russia: Same as the Old Cold War?

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THE NEW COLD WAR WITH CHINA AND RUSSIA: SAME AS THE OLD COLD WAR?

*Stuart Ford**

*“It has been said that history repeats itself. This is perhaps
not quite correct; it merely rhymes.”*

-Theodor Reik¹

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1. THEODOR REIK, CURIOSITIES OF THE SELF: ILLUSIONS WE HAVE ABOUT OURSELVES 133 (1965); *see also History Does Not Repeat Itself, But It Rhymes*, QUOTE INVESTIGATOR, <https://quoteinvestigator.com/2014/01/12/history-rhymes/> [<https://perma.cc/AH9S-XFTJ>]. This saying is often attributed to Mark Twain, but there is no evidence that he ever used it himself. The closest Mark Twain came to this sentiment was, “[h]istory never repeats itself, but the Kaleidoscopic combinations of the pictured present often seem to be constructed out of the broken fragments of antique legends.” MARK TWAIN & CHARLES DUDLEY WARNER, THE GILDED AGE: A TALE OF TO-DAY 430 (1874).

I. INTRODUCTION

The title of this symposium is “International Law and the New Cold War.” This title contains several assumptions. The first assumption is that we are currently in the midst of a cold war and the second is that this new cold war is similar enough to the original cold war² to warrant describing it as a new version of the old one. This Article will explore these assumptions in more detail and see what can be learned by comparing this new cold war to the original one.

It will proceed as follows. First, it will examine the original cold war. What was the original cold war and what were its key features? Second, are we in a new cold war? If so, is this new conflict similar enough to the original cold war to be described as a new version of it? Third, in what ways is this new conflict different from the original cold war? Then, finally, it will make some predictions about the course of this new cold war based on an analysis of its similarities to and differences from the original cold war.

II. THE ORIGINAL COLD WAR

The original Cold War began soon after WWII ended. The alliance between the United States and the Soviet Union that was victorious during WWII was one of convenience and quickly began to break down after Germany and Japan were defeated.³ The United States embarked on the Marshall Plan in 1947 to provide aid to Western Europe while the Soviet Union tightened its grip on the parts of Eastern Europe that it controlled.⁴ That

2. This Article will generally refer to the Cold War that existed between the United States and the Soviet Union between 1949 and 1990 as the “original” Cold War. It will refer to the current tensions between the United States, Russia, and China as the “new” Cold War.

3. Ebrahim Afsah, *Cold War (1947-91)*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶ 1 (2009) (“Differences in ideology, perception, and national interest quickly led to the unravelling of the war time alliance between the Soviet Union and the United States, replacing it with intense competition and hostility.”); *id.* ¶ 5 (noting that the alliance between the US and the Soviet Union was one caused by “military necessity” after Germany invaded the Soviet Union in 1941).

4. *See Marshall Plan, 1948*, OFF. OF THE HISTORIAN, [history.state.gov/milestones/1945-1952/marshall-](https://history.state.gov/milestones/1945-1952/marshall)

same year, in response to a communist insurgency in Greece, President Truman announced the Truman Doctrine, which committed the United States to provide political, military and economic assistance to any democratic nation under threat from communist insurgents.⁵ In 1948, the Soviet Union cut off access to the parts of Berlin controlled by the United States and Great Britain, which resulted in the Berlin airlift.⁶ In 1949, the United States joined the North Atlantic Treaty Organization, a body designed to deter a Soviet invasion of Europe.⁷ That same year, China⁸ became an ally of the Soviet Union when the communists, led by Mao Zedong, won the Chinese civil war.⁹ In 1950, communist North Korea, supported by China, invaded South

plan (noting that Secretary of State George C. Marshall called for a comprehensive plan to rebuild Europe in June 1947) [<https://perma.cc/K54Q-V9HX>].

5. *The Truman Doctrine, 1947*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1945-1952/truman-doctrine> [<https://perma.cc/K5SG-8XQU>].
6. *The Berlin Airlift, 1948-1949*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1945-1952/berlin-airlift> [<https://perma.cc/A8YC-U5VC>].
7. *North Atlantic Treaty Organization (NATO), 1949*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1945-1952/nato> [<https://perma.cc/7MS4-SP7B>]. The Soviets responded by forming the Warsaw Pact, a security alliance amongst the communist governments of Eastern Europe. *See also* The Warsaw Treaty Organization, 1955, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1953-1960/warsaw-treaty> [<https://perma.cc/XTD3-QCSP>].
8. The country's full name is the People's Republic of China, but this article refers to it as China throughout.
9. *The Chinese Revolution of 1949*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1945-1952/chinese-rev> [<https://perma.cc/5339-E22Y>]. Beginning in the 1970s, however, there were cracks in this alliance as China and the Soviet Union fought several proxy wars over territory and influence and the US policy of rapprochement with China decreased tensions between the US and China. *See* Afsah, *supra* note 3, ¶ 27; *Rapprochement with China, 1972*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1969-1976/rapprochement-china> [<https://perma.cc/6QPT-3FLU>].

Korea, which drew the United States and its allies into the Korean War.¹⁰

At this point, there was a “cold” war between the two superpowers—the United States and its allies on the one hand and the Soviet Union and its allies on the other hand. This was a “cold” war because US and Soviet troops did not directly fight one another.¹¹ Both sides saw direct conflict between US and Soviet troops as likely to lead to a cycle of escalation that would ultimately result in a nuclear war.¹² Nevertheless, the Soviet Union sought the expansion of communist influence,¹³ while the US tried to prevent that expansion.¹⁴ The East and West were engaged in a cold war that, while it never resulted in direct conflict between the superpowers, was marked by political struggle, espionage, diplomatic maneuvering, and numerous

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10. See *Korean War and Japan’s Recovery*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1945-1952/korean-war> [<https://perma.cc/Z77K-X8E6>].
 11. See Afsah, *supra* note 3, ¶ 1 (“Despite the severity of this antagonism and its highly militarized nature, direct hostilities between the main protagonists was avoided.”).
 12. *Id.* ¶¶ 1, 9-10.
 13. See W.B. Ballis, *Soviet Foreign Policy: Goals and Tactics*, 17 NAVAL WAR COLL. REV. 54, 54-55 (1964). Soviet leaders did not always see this conflict between East and West as one that would inevitably end in war. During the 1950s and 1960s the Soviet leader, Nikita Krushchev, saw the possibility for “peaceful coexistence” and “peaceful competition” with capitalist societies. He believed this peaceful competition would ultimately demonstrate the superiority of communism without needing to win an armed conflict with the West. See also Carlo Panara & Paul French, *Peaceful Coexistence*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶¶ 17-19 (2019); Victor P. Karpov, *The Soviet Concept of Peaceful Coexistence and its Implications for International Law*, 29 L. AND CONTEMP. PROBS. 858, 858-59 (1964).
 14. The US diplomat George Kennan proposed that the goal of the US should be the “containment of Russian expansive tendencies” in 1947. Despite criticism of this policy and various policy changes, “containment in the more general sense of blocking the expansion of Soviet influence remained the basic strategy of the United States throughout the cold war.” *Kennan and Containment 1947*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1945-1952/kennan> [<https://perma.cc/GA2Z-KZSC>]; see also Bohdan Harasymiw, *Russia, the United States, and the New Cold War*, 12 J. MIL. & STRATEGIC STUD. 1, 27 (2010) (noting that the US also promoted free trade and democracy throughout the world).

proxy wars, including conflicts in Korea, Vietnam, Afghanistan, the Middle East, and Latin America.¹⁵

The cold war fluctuated in its intensity. For example, President Nixon engaged in a policy of “détente” with the Soviet Union during the early 1970s,¹⁶ but relations between the superpowers worsened in the early 1980s during President Reagan’s first term in office.¹⁷ By the mid-1980s, however, the Soviet Union was suffering severe economic problems and Mikhail Gorbachev came to power in 1985 promising “glasnost,” openness, and “perestroika,” economic reform.¹⁸ These reforms, however, could not prevent the collapse of the Soviet Union and the Warsaw Pact.¹⁹ The Berlin Wall came down in November 1989 and virtually all the communist governments of Eastern Europe were replaced by non-communist governments by 1990.²⁰ The Soviet Union formally dissolved in 1991, with the Soviet republics

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15. See W. Michael Reisman, Editorial Comment, *International Law After the Cold War*, 84 AM. J. INT’L L. 859, 860 (1990) (noting that fear of a nuclear war caused the superpowers to engage in a series of proxy wars instead of direct conflict as they vied for supremacy) (“Espionage and covert actions were conducted almost with impunity.”); see also Afsah, *supra* note 3, ¶¶ 1, 26-27.
 16. See *Détente and Arms Control, 1969-1979*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1969-1976/detente> (describing attempts to reduce tensions with the Soviet Union) [<https://perma.cc/U343-KLNF>]; see also *Rapprochement with China, 1972*, *supra* note 9 (describing President Nixon’s attempt to improve relations with China).
 17. See *U.S.-Soviet Relations, 1981-1991*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1981-1988/u.s.-soviet-relations> [<https://perma.cc/3MJ5-F6ZT>].
 18. Afsah, *supra* note 3, ¶¶ 32-33 (noting that by the 1980s the Soviet economy had entered a rapid decline and that Gorbachev promised economic reform to try to revitalize the economy).
 19. See *id.* ¶¶ 38, 40 (noting that economic issues were not enough, on their own, to cause the collapse of the Soviet Union and that “social actors” and the power of “ideas and norms” played an important role); see also Stuart Ford, *OSCE National Minority Rights in the United States: The Limits of Conflict Prevention*, 23 SUFFOLK TRANSNAT’L L. REV. 1, 4-5 (1999) (arguing that the Conference for Security and Cooperation in Europe played a crucial role in ending the Cold War through its promotion of human rights behind the Iron Curtain).
 20. See Afsah, *supra* note 3, ¶¶ 36-37.

achieving independence.²¹ By 1991, the Cold War was over and the possibility of direct conflict between the superpowers had been “drastically reduced.”²²

III. A POST-COLD WAR INTERLUDE

What followed the cold war was a brief period of cooperation between the United States and its former adversaries. Initially, there was hope that the US and Russia²³ would be able to put aside their differences and cooperate to build “a more peaceful future for all mankind.”²⁴ Russia agreed to reforms designed to open its economy,²⁵ and President Clinton publicly affirmed the United States’ commitment to building “a new democratic partnership” with Russia.²⁶ The US also committed to engagement with China in the belief that this would eventually

21. *Id.* ¶ 36.

22. Reisman, *supra* note 15, at 861; *see also* Afsah, *supra* note 3, ¶ 37 (arguing that the end of the Cold War could be attributed to a number of dates in 1989 or 1990).

23. The country’s full name is the Russian Federation, but this Article refers to it as Russia throughout.

24. *See* EUGENE RUMER & RICHARD SOKOLSKY, CARNEGIE ENDOWMENT FOR INT’L PEACE, THIRTY YEARS OF U.S. POLICY TOWARD RUSSIA: CAN THE VICIOUS CIRCLE BE BROKEN? 5-6 (2019) (quoting George H. W. Bush, *State of the Union Message*, N.Y. TIMES, Jan. 30, 1991, www.nytimes.com/1991/01/30/us/state-union-transcript-president-s-state-union-message-nation.html [<https://perma.cc/2QWK-SWJX>]) (noting that both President Bush and President Clinton hoped to be able to cooperate with Russia and promote democracy in Russia).

25. *See* Stanley Fischer, *Stabilization and Economic Reform in Russia*, BROOKINGS PAPERS ON ECON. ACTIVITY, no. 1, 1992, at 77, 77-78.

26. RUMER & SOKOLSKY, *supra* note 24, at 7 (quoting Jack Nelson, *Clinton Sees New Partnership With Russia, Boosts U.S. Aid: Summit: America’s Interests and Values Are Embodied in Yeltsin’s Policies, the President Says. Assistance Package Is Expanded to \$1.6 Billion to Include Grain Sales*, L.A. TIMES, Apr. 5, 1993, www.latimes.com/archives/la-xpm-1993-04-05-mn-19451-story.html [<https://perma.cc/BY5F-Y8DE>]). This period of cooperation essentially ended in 1998 with the Asian financial crisis, which devalued the ruble and caused Russia to default on its sovereign debt; shortly thereafter, Putin came to power. *Id.* at 8.

lead to “a more liberal, democratic form of governance.”²⁷ Western leaders believed that if China could be brought into the global trade system, it would grow faster, which would cause its political system to “converge more closely with their own.”²⁸ More broadly, the 1990s were marked by a growing commitment to democracy and human rights worldwide.²⁹

The end of the cold war also gave rise to a period of trade liberalization,³⁰ leading to the creation of the North American Free Trade Agreement³¹ and the completion of the Uruguay round of trade negotiations, which transformed the General Agreement on Trade and Tariffs into the World Trade Organization.³² This culminated in 2001 with the entry of China into the WTO. The Chinese economy had been growing strongly during the 1980s and

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27. See Dean P. Chen, *The End of Liberal Engagement with China and the New US-Taiwan Focus*, 35 PAC. FOCUS: INHA J. INT'L STUD. 397, 408 (2020).
 28. Aaron L. Friedberg, *Engagement With China Was Always a Long Shot*, FOREIGN POL'Y (May 12, 2022), <https://foreignpolicy.com/2022/05/12/getting-china-wrong-engagement-change/> [<https://perma.cc/UE2P-HMVF>]. It was always unlikely, however, that engagement would cause China to become a liberal democracy. See *id.*; Robert Griffiths, *Engagement with China: Was It a Mistake?*, AM. FOREIGN SERV. ASS'N, <https://afsa.org/engagement-china-was-it-mistake> (arguing that, in hindsight, “the idea that the West was going to adopt China into its ranks was fanciful”) [<https://perma.cc/9N57-BJ5A>].
 29. See Roland Rich, *Bringing Democracy into International Law*, 12 J. DEMOCRACY 20, 20 (2001) (noting that the 1900s saw broad acceptance of a norm of democracy); Jean-Philippe Thérien & Philippe Joly, “*All Human Rights for All*”: *The United Nations and Human Rights in the Post-Cold War Era*, 36 HUM. RTS. Q. 373, 374 (2014).
 30. See Lael Brainard, *Trade Policy in the 1990s*, BROOKINGS (June 29, 2001), www.brookings.edu/research/trade-policy-in-the-1990s/ [<https://perma.cc/5DG7-3WZH>].
 31. See Andrew Chatzky et al., *NAFTA and the USMCA: Weighing the Impact of North American Trade*, COUNCIL ON FOREIGN RELS., www.cfr.org/background/naftas-economic-impact (July 1, 2020, 8:00 AM) [<https://perma.cc/B2XN-Z6LL>].
 32. See *The Uruguay Round*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm [<https://perma.cc/2QLW-QTTZ>].

1990s but maintained barriers to the entry of foreign products.³³ At the end of the 1990s, China made the decision to join the WTO, which meant opening its economy to a vast array of foreign goods.³⁴ This was supposed to make China an integral and law-abiding part of the international trading system.³⁵ These overlapping trends in trade liberalization, democratization, and human rights meant that by the end of the 1990s, there was “guarded optimism” for the future.³⁶

This period of cooperation ended around the turn of the millennium. Vladimir Putin came to power in Russia in May 2000.³⁷ He has ruled Russia since then—aside from a brief period between 2008 and 2012 when he was the Prime Minister rather than the President.³⁸ Putin initially promised political and economic reforms, but by 2004 he had begun to turn away from the West and his earlier promises.³⁹ President Putin has since called the breakup of the Soviet Union “the greatest geopolitical catastrophe of the century,”⁴⁰ and one of his principal goals is to restore Russia to what he believes is its rightful place as a global

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33. See Nicholas R. Lardy, *Issues in China's WTO Accession*, BROOKINGS (May 9, 2001), www.brookings.edu/testimonies/issues-in-chinas-wto-accession/ [<https://perma.cc/6EZV-8383>].
 34. See *id.*
 35. See *id.*
 36. See Rich, *supra* note 29, at 33; see also Matthew D. Stephen, *Emerging Powers and Emerging Trends in Global Governance*, 23 GLOB. GOVERNANCE 483, 484-86 (2017) (noting that “the 1990s witnessed a burst of multilateral treaty making and a flourishing of new global initiatives to deepen economic liberalization, expand human rights, and take care of some of the most egregious externalities of global capitalism”). Stephen describes this period as one of “liberal optimism.” *Id.* at 484.
 37. Yevgenia Albats et al., *How Putin Changed Russia Forever*, FOREIGN POL’Y (May 7, 2020, 9:47 AM), <https://foreignpolicy.com/2020/05/07/how-putin-changed-russia-forever/> [<https://perma.cc/7KFN-NUPQ>].
 38. See Roger Cohen, *The Making of Vladimir Putin: Tracing Putin's 22-Year Slide From Statesman to Tyrant*, N.Y. TIMES, www.nytimes.com/2022/03/26/world/europe/vladimir-putin-russia.html (Mar. 26, 2022) [<https://perma.cc/E9G9-YDXF>].
 39. See *id.*
 40. Michael G. Roskin, *The New Cold War*, PARAMETERS, Spring 2014, at 5, 5.

superpower.⁴¹ Under his rule, Russia has become increasingly authoritarian.⁴² It has also become more belligerent, invading Georgia in 2008,⁴³ seizing Crimea from Ukraine in 2014,⁴⁴ and then invading Ukraine again in 2022.⁴⁵ US-Russian relations have steadily declined over this period.⁴⁶

US-China relations have followed a somewhat similar downward trajectory over time. By the early 2000s, China's

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41. *See id.* (noting that President Putin has worked to extend control over those parts of the former Soviet Union that have tried to break away). Vladimir Papava argues that Russia was forced by weakness to accept cooperation with and economic assistance from the West in the aftermath of the collapse of the Soviet Union, but that Russia saw itself as the victim of the West and always intended to regain its power. *See* Vladimir Papava, Comment, *The End of the Frozen Cold War?*, 3 CAUCASIAN REV. INT'L AFFS. 98, 99 (2009) (calling the belief that Russia would choose "co-operation with the civilized world, along with democratic changes and transition to a market economy" a "dream" that the West "mistook for reality"); *see also infra* note 190.
 42. *See* Cohen, *supra* note 38 (describing Russia's slide into authoritarianism under President Putin); *see also Russia: Freedom in the World 2022*, FREEDOM HOUSE, <https://freedomhouse.org/country/russia/freedom-world/2022> (describing Russia in 2022 as an "authoritarian political system" where power is "concentrated in the hands of President Vladimir Putin") [<https://perma.cc/3N2P-5HBA>].
 43. *See* Peter Dickinson, *The 2008 Russo-Georgian War: Putin's Green Light*, ATLANTIC COUNCIL (Aug. 7, 2021), www.atlanticcouncil.org/blogs/ukrainealert/the-2008-russo-georgian-war-putins-green-light/ [<https://perma.cc/K4MG-FGZF>].
 44. *See* Steven Lee Myers & Ellen Barry, *Putin Reclaims Crimea for Russia and Bitterly Denounces the West*, N.Y. TIMES (Mar. 18, 2014), www.nytimes.com/2014/03/19/world/europe/ukraine.html [<https://perma.cc/72UP-6PPU>].
 45. *See* Michael Schwirtz et al., *Here's How the Russian Attack Is Unfolding*, N.Y. TIMES (Feb. 24, 2022), www.nytimes.com/2022/02/24/world/europe/how-russia-attacked-ukraine.html [<https://perma.cc/A9UV-ZXVD>].
 46. *See* Jennifer Hansler, *Putin's War on Ukraine Has 'Driven US-Russian Relations into the Depths,' US Ambassador to Moscow Says*, CNN (Apr. 28, 2022, 3:59 PM) www.cnn.com/2022/04/28/politics/us-ambassador-russia-sullivan-cnntv/index.html [<https://perma.cc/AR45-YFZW>]; *see also* Steven Pifer, *US-Russian Relations, One Year After Geneva*, BROOKINGS (June 16, 2022), www.brookings.edu/blog/order-from-chaos/2022/06/16/u-s-russia-relations-one-year-after-geneva/ [<https://perma.cc/LD9F-Y3F9>].

phenomenal economic growth had made it a player on the world stage.⁴⁷ Initially, the US and China's interests were aligned by their economic ties and a joint commitment to the war on terror.⁴⁸ Leaders in the US hoped that engagement would result in China opening up both its economic and political systems.⁴⁹ But, while China promised economic reforms,⁵⁰ it remained committed to one party rule by the Chinese Communist Party.⁵¹ The US and China are now major trading partners,⁵² and many Americans have benefited from trade with China,⁵³ but economic relations have been rocky.⁵⁴ The US has come into conflict with China over its

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47. Lardy, *supra* note 33; *see also* Lee Hamilton, *The State of US-China Relations*, WILSON CENTER (Apr. 3, 2003), www.wilsoncenter.org/article/the-state-us-china-relations (expressing optimism for the future of US-China relations but also noting the potential for instability over various issues, including economic and political reforms and Taiwan) [<https://perma.cc/74WQ-PD9C>].
48. *See* Hamilton, *supra* note 47.
49. *See supra* text accompanying notes 27-28.
50. For example, China joined the WTO and promised to make significant changes to open its economy. *See* Lardy, *supra* note 33.
51. *See* Lindsay Maizland & Eleanor Albert, *The Chinese Communist Party*, COUNCIL ON FOREIGN RELS., www.cfr.org/backgrounder/chinese-communist-party (Oct. 6, 2022, 2:30 PM) (noting that the "CCP has had a monopoly on power since the Mao Zedong-led party defeated nationalist rivals and founded the People's Republic in 1949) [<https://perma.cc/3WUY-YJBY>]; *see also* Friedberg, *supra* note 28 (arguing that the CCP has consistently "found ways to exploit the opportunities afforded by engagement" with the West, including "expanding China's economy" while simultaneously avoiding "exposing its people to dangerous liberal ideas" and minimizing demand for political change).
52. *See infra* note 253.
53. *See* Anshu Siripurapu & Noah Berman, *The Contentious U.S.-China Trade Relationship*, COUNCIL ON FOREIGN RELS., www.cfr.org/backgrounder/contentious-us-china-trade-relationship (Dec. 2, 2022, 5:00 PM) (noting that US consumers have benefited from the import of lower-priced Chinese goods and that American companies earn hundreds of billions of dollars annually from sales in China) [<https://perma.cc/F5U6-H7RU>].
54. *See* Yukon Huang, *The US-China Trade War Has Become a Cold War*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Sept. 16, 2021), <https://carnegieendowment.org/2021/09/16/u.s.-china-trade-war-has-become-cold-war-pub-85352> (describing trade tensions between US and China) [<https://perma.cc/JS83-BMJU>].

use of subsidies to protect strategic industries,⁵⁵ forced technology transfers,⁵⁶ currency manipulation,⁵⁷ theft of intellectual property,⁵⁸ labor conditions in Chinese factories,⁵⁹ and the effect of imported Chinese goods on the US manufacturing sector.⁶⁰ This eventually resulted in a trade war with China in 2018.⁶¹ Today, the US and China are sometimes described as being in an economic cold war.⁶²

While economic tensions play a big part in the declining US-China relationship, the two countries are at odds over other issues as well, including human rights, democracy, and the future of Taiwan. The US and China have fundamentally different ideas

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55. See CAP. TRADE INC., AN ASSESSMENT OF CHINA'S SUBSIDIES TO STRATEGIC AND HEAVYWEIGHT INDUSTRIES 2 (2009).
56. See SEAN O'CONNOR, HOW CHINESE COMPANIES FACILITATE TECHNOLOGY TRANSFER FROM THE UNITED STATES 4 (2019).
57. See Siripurapu & Berman, *supra* note 53 (noting that “[m]any economists say China kept the value of its currency, the renminbi, artificially low in the decade after it joined the WTO” as a means to make Chinese imports cheaper and US exports more expensive).
58. See Mara Hvistendahl, *China's Theft of U.S. Trade Secrets Under Scrutiny*, SCIENCE (Feb. 28, 2017), www.science.org/content/article/china-s-theft-us-trade-secrets-under-scrutiny [<https://perma.cc/7H95-978G>].
59. See David Barboza, *Report Cites Brutal Conditions in Chinese Factories*, N.Y. TIMES (Aug. 22, 2007), www.nytimes.com/2007/08/22/business/worldbusiness/21cnd-factor.html [<https://perma.cc/UE4R-BFF2>].
60. See Siripurapu & Berman, *supra* note 53.
61. See USTR *Finalizes Tariffs on \$200 Billion of Chinese Imports in Response to China's Unfair Trade Practices*, OFF. OF THE U.S. TRADE REPRESENTATIVE (Sept. 18, 2018), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/september/ustr-finalizes-tariffs-200>; Alan Rappeport & Ana Swanson, *Trump Renews Trade War as China Talks End Without a Deal*, N.Y. TIMES (May 10, 2019), www.nytimes.com/2019/05/10/us/politics/trump-china-trade.html [<https://perma.cc/NK8P-7T4M>]. The US also tried to restrict China's access to advanced technologies developed by American companies. See Ana Swanson & David McCabe, *Trump Effort to Keep U.S. Tech Out of China Alarms American Firms*, N.Y. TIMES (Feb. 16, 2020), www.nytimes.com/2020/02/16/business/economy/us-china-technology.html [<https://perma.cc/P54D-A9MH>].
62. *E.g.*, Huang, *supra* note 54.

about what constitutes human rights.⁶³ While the US has routinely criticized Chinese human rights practices,⁶⁴ these differences now seem intractable, with the US recently labeling the treatment of Uighurs by the Chinese government genocide.⁶⁵ In recent years, particularly since President Xi Jinping came to power in 2012, China has become increasingly authoritarian,⁶⁶ and its desire to take Taiwan and dominate the South China Sea has increased tensions between the US and China.⁶⁷ As a result, US-China relations have become worse over time and are now under “extreme duress.”⁶⁸

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63. See Hamilton, *supra* note 47 (noting that the US had “struggled to advance the cause of human rights and political reform in China” and that human rights in China were “among the most restricted in the world”).
64. US criticism of Chinese human rights practices has been a staple of the State Department’s Country Reports on Human Rights Practices for more than a decade. See, e.g., U.S. DEP’T OF STATE, 2019 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (INCLUDES HONG KONG, MACAU, AND TIBET); U.S. DEP’T OF STATE, 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (INCLUDES TIBET, HONG KONG, AND MACAU).
65. See Edward Wong & Chris Buckley, *U.S. Says China’s Repression of Uighurs is ‘Genocide’*, N.Y. TIMES, www.nytimes.com/2021/01/19/us/politics/trump-china-xinjiang.html (July 27, 2021) [<https://perma.cc/Q5S4-9TW8>].
66. See *infra* text accompanying notes 166-67, 170-73, 198.
67. See Robert D. Kaplan, *A New Cold War Has Begun*, FOREIGN POL’Y (Jan. 7, 2019, 6:27 PM), <https://foreignpolicy.com/2019/01/07/a-new-cold-war-has-begun/> (noting that China is committed to establishing military control over the South and East China seas) [<https://perma.cc/GUV4-UFKH>]; see also *infra* text accompanying notes 87-95.
68. See Michael D. Swaine, *A Relationship Under Extreme Duress: US-China Relations at a Crossroads*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Jan. 16, 2019), <https://carnegieendowment.org/2019/01/16/relationship-under-extreme-duress-u.s.-china-relations-at-crossroads-pub-78159> [<https://perma.cc/Q9ZJ-U63V>]; see also Christopher Wray, FBI Director, Remarks at Hudson Institute on the Threat Posed by the Chinese Government and the Chinese Communist Party to the Economic and National Security of the United States (July 7, 2020), www.fbi.gov/news/speeches/the-threat-posed-by-the-chinese-government-and-the-chinese-communist-party-to-the-economic-and-national-security-of-the-united-states (“The greatest long-term threat to our nation’s information and intellectual property, and to our economic vitality, is the counterintelligence and economic espionage threat

On the surface, US tensions with China and Russia appear to be two different foreign relations problems. At least since 2001, however, when the Shanghai Five, which includes Russia and China, met and declared that they would oppose “U.S. hegemony,” Russia and China have worked together to limit US power.⁶⁹ That same year, Russia and China signed a treaty of friendship that established a “strategic cooperative partnership” between the two countries.⁷⁰ While it is not a mutual defense pact, like NATO, the two countries did commit not to use force against each other.⁷¹ They also agreed to work together to maintain a “global strategic balance,”⁷² and cooperate at the United Nations Security Council.⁷³ Essentially, this was an agreement to work together to constrain the United States.⁷⁴ In 2021, Russia and China extended the treaty for another five years and hailed its role in strengthening the partnership between the two countries and restraining US influence.⁷⁵ Effectively, since 2001, Russia and

from China. It’s a threat to our economic security—and by extension, to our national security.”) [<https://perma.cc/4W24-MV37>]; Jane Perlez, *This Might Not Be a Cold War, but It Feels Like One*, N.Y. TIMES (Sept. 13, 2022), www.nytimes.com/2022/09/13/world/asia/xi-jinping-china-biden.html (noting that relations between the US and China were getting worse, there was relatively little communication between the two counties, and they appeared to be sliding towards “a new version of the Cold War”) [<https://perma.cc/3CNP-YGV5>].

69. See Roskin, *supra* note 40.

70. Treaty of Good-Neighborliness and Friendly Cooperation Between the People’s Republic of China and the Russian Federation, China-Russ., art. 1, July 24, 2001, www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/200107/t20010724_679026.html [<https://perma.cc/D26M-UZXL>].

71. *Id.* art. 2.

72. *Id.* art. 12.

73. *Id.* art. 13.

74. See Ariel Cohen, *The Russia-China Friendship and Cooperation Treaty: A Strategic Shift in Eurasia?*, THE HERITAGE FOUND., (July 18, 2001), www.heritage.org/europe/report/the-russia-china-friendship-and-cooperation-treaty-strategic-shift-eurasia [<https://perma.cc/9KH8-AEXD>].

75. See Vladimir Isachenkov, *Russia, China Declare Friendship Treaty Extension, Hail Ties*, ABC4, www.abc4.com/news/russia-china-declare-friendship-treaty-extension-hail-ties/ (June 28, 2021, 06:13 AM) [<https://perma.cc/4SUX-AHVH>].

China have been working together to undermine the United States.⁷⁶ More generally, they have both worked to spread authoritarianism and undermine democracy all across the globe.⁷⁷ This Chinese-Russian alliance⁷⁸ combined with the marked downturn in US relations with both China and Russia, raises the question of whether the United States is now in a cold war with Russia and China.

IV. A NEW COLD WAR

Is the US now in a cold war with Russia and China? The hallmark of the original cold war, and what made it a cold war rather than a “hot” war, was that the superpowers did not directly engage in conflict.⁷⁹ The superpowers were careful to avoid direct conflict because of the risk of a nuclear war.⁸⁰ They

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76. See Lindsay Maizland, *China and Russia: Exploring Ties Between Two Authoritarian Regimes*, COUNCIL ON FOREIGN RELS., www.cfr.org/background/china-russia-relationship-xi-putin-taiwan-ukraine (June 14, 2022, 2:30 PM) (arguing that Russia and China are “strategic partners” and noting that Vladimir Putin has said their partnership has “no limits” but also noting that they are allies of convenience brought together by their shared belief that the United States threatens their interests) [<https://perma.cc/PMY7-YJVJ>]; Perlez, *supra* note 68 (noting that China is “seeking to create an alliance of autocracies” with Russia because it “needs a strong partner in Moscow to push back against what it sees as American hegemony”).
77. See *infra* text accompanying notes 188-89, 193.
78. See Keith Bradsher et al., *Challenges for Russia and China Test a ‘No Limits’ Friendship*, N.Y. TIMES (Sept. 13, 2022), www.nytimes.com/2022/09/13/world/asia/china-russia-xi-putin.html (describing the alliance between Russia and China to restrain American hegemony as well as the risks for China in tying itself too tightly to Russia) [<https://perma.cc/MN3E-JJ8N>].
79. NEW OXFORD AMERICAN DICTIONARY 340 (Angus Stevenson ed., 3rd ed. 2010) (defining a cold war as “a state of political hostility between countries characterized by threats, propaganda, and other measures short of open warfare”); THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2022) (defining a cold war as a “state of political tensions and military rivalry between nations that stops short of full-scale war”).
80. See Reisman, *supra* note 15, at 859 (“The Cold War was not a hot war because the introduction and constant symmetrical refinement of nuclear weapons established a ‘balance of terror.’”); Kaplan,

engaged in proxy wars, they threatened and cajoled one another and applied political and economic pressure, but they did not directly engage in hostilities.⁸¹

This new period we have entered embodies this key feature of cold wars because the adversaries are not engaging directly in conflict with one another. For example, Russia has invaded Ukraine but has been careful not to directly attack any NATO country that would trigger the collective defense provisions of NATO and bring the US into the conflict.⁸² At the same time, the US has been careful to support Ukraine economically and militarily, while not risking a direct conflict with Russian forces. Thus, the US has rejected calls for it to enforce a no-fly zone over Ukraine precisely because this would put US forces in direct conflict with Russia.⁸³ Rather, the US has been carefully calibrating how much support it can give Ukraine without starting a war with Russia.⁸⁴ Thus, the conflict between the US and Russia is a cold war rather than a hot one.

supra note 67 (“What kept the Cold War from going hot was the fear of hydrogen bombs.”).

81. See *supra* Section II (describing the original cold war).
82. North Atlantic Treaty art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243 (“The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith . . . such action as it deems necessary, including the use of armed force . . .”).
83. Luke Broadwater & Chris Cameron, *U.S. Lawmakers Say They Are Largely Opposed to a No-Fly Zone Over Ukraine*, N.Y. TIMES (March 6, 2022) www.nytimes.com/2022/03/06/us/politics/no-fly-zone-ukraine-congress.html (noting that lawmakers largely agreed that the US should not establish a no-fly zone over Ukraine because of the risk that it would draw the US directly into an armed conflict with Russia) [<https://perma.cc/2FWM-M8TS>].
84. Bryan Clark & Peter Rough, *How to Equip Ukraine to Break the Black Sea Blockade*, FOREIGN POL’Y (July 6, 2022), <https://foreignpolicy.com/2022/07/06/ukraine-war-russia-blockade-grain-exports-black-sea-odesa-shipping-uav-gray-eagle-mq-1/> (noting that the US and its allies have been “excruciatingly careful” not to do anything “that might be interpreted as military confrontation with Russia” and have generally limited themselves to weapons systems that are like those used by Russian troops rather than

Although it is less clear, there also appears to be a cold war between the US and China.⁸⁵ The US and China are not currently engaged in any proxy wars that are equivalent to the armed conflict in Ukraine, but they are engaged in a long-running dispute over Taiwan.⁸⁶ While there are other tensions between the US and China, including concerns about trade, human rights, and democracy,⁸⁷ Taiwan is the most likely flashpoint for an armed conflict.⁸⁸ The CCP claims that Taiwan is part of China and has repeatedly said that it will reclaim the territory at some point.⁸⁹ For example, President Xi has described reunification with Taiwan as a core national interest of China⁹⁰ and has stated that

sending the weapons that NATO would use to fight Russia) [https://perma.cc/EM7L-CJLC].

85. See Huang, *supra* note 54; cf. Perlez, *supra* note 68 (noting that “Beijing and Washington try to play down the metaphor of a new Cold War” but that China and the US are on a “collision course that risks bringing about a new version of the Cold War”). This cold war is harder to see, in part, because China has historically been much more reluctant to use armed force against other states, although it has become more assertive militarily in recent years. See Andrew Scobell & Lucy Stevenson-Yang, *China Is Not Russia. Taiwan Is Not Ukraine*, U.S. INST. PEACE (Mar. 4, 2022), www.usip.org/publications/2022/03/china-not-russia-taiwan-not-ukraine [https://perma.cc/NQP5-BKDU].
86. Cf. Scobell & Stevenson-Yang, *supra* note 85 (noting differences between the situation in Ukraine and the situation in Taiwan).
87. See *supra* text accompanying notes 47-68.
88. See Tessa Wong, *Taiwan: Are the US and China Heading to War over the Island?*, BBC NEWS (June 14, 2022), www.bbc.com/news/world-asia-61782370 (quoting China’s Defence Minister General Wei Fenghe who stated: “Let me make this clear: if anyone dares to secede Taiwan from China, we will not hesitate to fight. We will fight at all costs and we will fight to the very end. This is the only choice for China”) [https://perma.cc/9QHN-WCU9].
89. Lindsay Maizland, *Why China-Taiwan Relations Are So Tense*, COUNCIL ON FOREIGN RELS., www.cfr.org/background/china-taiwan-relations-tension-us-policy-biden (Aug. 3, 2022, 4:45 PM) [https://perma.cc/TS23-YNA7].
90. Scobell & Stevenson-Yang, *supra* note 85 (noting that President Xi has said that “realizing China’s complete reunification is a historic mission and an unshakable commitment of the Communist Party of China,”).

it will occur by 2049.⁹¹ The US maintains many ties with Taiwan, despite not establishing formal diplomatic ties with it, sells weapons to Taiwan for its self-defense, trains with its military, and has developed a policy of “strategic ambiguity” where the US maintains the ability to come to Taiwan’s defense if it is attacked by China while not specifically committing to do so.⁹² The goal of this policy is to deter China from invading Taiwan.⁹³ Taiwan does not have the capability to defend against a Chinese attack without US support,⁹⁴ so absent the US’s strategic ambiguity, China might have already invaded Taiwan. In this sense, the US and China are already engaged in what looks like a cold war over Taiwan, since neither party wishes to risk direct conflict between US and Chinese forces to resolve the question of Taiwan’s future.⁹⁵

Thus, it appears the US is in a new cold war with both Russia and China. Most scholars generally agree with this conclusion,⁹⁶ but there are disagreements about the exact contours of this new cold war. For example, Brands and Gaddis see the current cold

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91. President Xi has characterized reunification with Taiwan as essential to achieving the “China Dream” of becoming a global superpower and indicated this should happen by 2049. See John Culver & Ryan Hass, *Understanding Beijing’s Motives Regarding Taiwan and America’s Role*, BROOKINGS (March 30, 2021), www.brookings.edu/on-the-record/understanding-beijings-motives-regarding-taiwan-and-americas-role/ [<https://perma.cc/6MMS-S9T8>].
 92. See Maizland, *supra* note 89. But see David Sacks, *What Biden’s Big Shift on Taiwan Means*, COUNCIL ON FOREIGN RELS. (May 24, 2022, 12:46 PM), www.cfr.org/blog/what-bidens-big-shift-taiwan-means (noting that President Biden has appeared to undermine the long-standing US policy of strategic ambiguity by stating that the US would come to the aid of Taiwan if it was invaded by China) [<https://perma.cc/D5AF-E935>].
 93. See Maizland, *supra* note 89; Sacks, *supra* note 92.
 94. See Maizland, *supra* note 89.
 95. See also *supra* text accompanying note 62 (noting that the US and China also appear to be in an economic cold war).
 96. See, e.g., Hal Brands & John Lewis Gaddis, *The New Cold War: America, China, and the Echoes of History*, FOREIGN AFFS., Nov.-Dec. 2021, at 10, 10; Greg Mastel, *The New Cold War: Time To Get Serious About China*, INT’L ECON., Winter 2022, at 54, 56; Robert Legvold, *Managing the New Cold War: What Washington and Moscow Can Learn From the Last One*, FOREIGN AFFS., July-Aug. 2014, at 74, 74; Roskin, *supra* note 40.

war as being primarily between the US and China.⁹⁷ Mastel agrees that China is the US's principal adversary in this new cold war.⁹⁸ Legvold, on the other hand, sees it as being primarily between the US and Russia,⁹⁹ while Roskin sees the new cold war as being between the US on one side and Russia and China on the other, although he also sees Russia as the junior partner in their alliance.¹⁰⁰ As noted below, it is the contention of this Article that the US is in a cold war with both China and Russia, but that Russia is decidedly the junior partner in the Russia-China alliance.¹⁰¹ In that sense, this Article agrees with the position taken by Roskin.

There is also scholarly disagreement about when this new cold war began. For example, Legvold argues that Russia's 2014 seizure of Crimea represented the beginning of this new cold war.¹⁰² Others place the beginning of this new cold war in the late 2000s.¹⁰³ There are even some that suggest that this new period of tensions is merely a continuation of the original cold war.¹⁰⁴

97. See Brands & Gaddis, *supra* note 96.

98. See Mastel, *supra* note 96, at 54-68.

99. Legvold, *supra* note 96.

100. Roskin, *supra* note 40 (“The New Cold War will be long and deep only if the current Sino-Russian entente turns into an alliance. A hostile Russia alone can cause mischief but, compared to the old Soviet Union, is weak and sufferable. Russia and Chia together are a much tougher challenge.”)

101. See *infra* Section V(A) (arguing that Russia is no longer an economic or military superpower).

102. Legvold, *supra* note 96, at 75 (arguing that Russia's seizure of Crimea in 2014 pushed the relationship between Russia and the US “over a cliff” and that each party now views the other as an adversary).

103. See Harasymiw, *supra* note 14, at 1-3 (noting that the phrase the “New Cold War” was first popularized by two books from the early 2000s) (citing MARC MACKINNON, *THE NEW COLD WAR: REVOLUTIONS, RIGGED ELECTIONS AND PIPELINE POLITICS IN THE FORMER SOVIET UNION* 5 (2007); then citing EDWARD LUCAS, *THE NEW COLD WAR: PUTIN'S RUSSIA AND THE THREAT TO THE WEST* 3 (1st ed. 2008)); *id.* at 21 (arguing that Russia's invasion of Georgia in 2008 was seen as proof that a new cold war had begun).

104. See, e.g., Papava, *supra* note 41, at 102 (arguing that the present cold war is simply a continuation of the old cold war involving the same parties, for many of the same reasons, including Russia's quest for Great Power status and a similar “action style” from Russia).

And, of course, there are some who question whether we are in a cold war at all.¹⁰⁵ The latter group, however, appears to be in the minority.

Despite the disagreements about some of the details, however, there is broad agreement that we are now in a new cold war. But just because the conflict is a cold one now, we cannot ignore the possibility that it may become a hot war at some point in the future. A hot war between global superpowers could have catastrophic consequences if the parties miscalculate.¹⁰⁶ It is unlikely that any of the parties would deliberately escalate the conflict into a nuclear one because of the risk of mutually assured destruction,¹⁰⁷ but any direct military conflict between nuclear powers, even if it starts out as non-nuclear, runs risks of escalating in ways that are hard to control.¹⁰⁸ The current conflict in Ukraine

105. See, e.g., Harasymiw, *supra* note 14, at 31 (arguing that, from the perspective of an international relations theorist, the current tensions between the US and Russia do not meet the criteria for a new cold war – defined as “a standoff between the two superpowers” – but also acknowledging that many politicians, diplomats and policymakers disagree).

106. For example, an analysis of the consequences of a “large-scale nuclear war” during the original cold war suggested some horrifying consequences. See Paul R. Ehrlich et al., *Long-Term Biological Consequences of Nuclear War*, 222 *SCIENCE* 1293, 1293 (1983) (predicting that “30 to 50 percent of the total human population could be immediate casualties of a nuclear war,”); *id.* at 1299 (predicting that the survivors, particularly in the Northern Hemisphere, would face “extreme cold, water shortages, lack of food and fuel, heavy burdens of radiation and pollutants, disease and severe psychological distress – all in twilight or darkness”).

107. See Tom de Castella, *How Did We Forget About Mutually Assured Destruction?*, BBC NEWS (Feb. 15, 2012), www.bbc.com/news/magazine-17026538 (noting that during the original cold war, the superpowers knew that it was essentially impossible to win a nuclear war because at least some of the opponent’s weapons would survive any first strike and result in a devastating counterstrike, thus any nuclear conflict would result in mutually assured destruction) [<https://perma.cc/29VW-68VM>].

108. See James Johnson, *Escalation to Nuclear War in the Digital Age: Risk of Inadvertent Escalation in the Emerging Information Ecosystem*, MOD. WAR INST. (Oct. 13, 2021), <https://mwi.usma.edu/escalation-to-nuclear-war-in-the-digital-age-risk-of-inadvertent-escalation-in-the-emerging-information-ecosystem/> (noting that “the fog of war increases the risk of inadvertent escalation because misperceptions, misunderstandings, poor communications, and unauthorized or unrestrained offensive operations can impair the

exemplifies this risk.¹⁰⁹ The United States wants to support Ukraine in its fight against Russia's invasion but does not want to engage directly in an armed conflict with Russia.¹¹⁰ Thus, the US and its allies carefully calibrate their assistance to avoid such an escalation.¹¹¹

There is also the risk of escalation with China.¹¹² China has become increasingly assertive about reclaiming Taiwan and has broader territorial ambitions in the South China Sea.¹¹³ If China were to invade Taiwan, this might draw the US into a direct conflict with China thus turning the cold war into a hot one.¹¹⁴ But, even if China does not invade Taiwan, there is still a risk of escalation. The US regularly sends naval vessels into areas of the South China Sea that China claims as its territorial waters.¹¹⁵

ability of defense planners to influence the course of war") [<https://perma.cc/8RMN-S9GT>].

109. See, e.g., Benjamin Jensen & Adrian Bogart, *The Coming Storm: Insights from Ukraine about Escalation in Modern War*, CTR. FOR STRAT. & INT'L STUD. (May 26, 2022), www.csis.org/analysis/coming-storm-insights-ukraine-about-escalation-modern-war (reporting the results of a war game involving players with significant national security experience that indicated significant risks of escalation in the conflict in Ukraine) [<https://perma.cc/QK4A-BKUE>].
110. See Broadwater & Cameron, *supra* note 83 (noting that lawmakers largely agreed that the US should not establish a no-fly zone over Ukraine because of the risk that it would draw the US directly into an armed conflict with Russia).
111. See, e.g., Amy J. Nelson & Alexander H. Montgomery, *Mind the Escalation Aversion: Managing Risk Without Losing the Initiative in the Russia-Ukraine War*, BROOKINGS (Mar. 11, 2022), www.brookings.edu/blog/order-from-chaos/2022/03/11/mind-the-escalation-aversion-managing-risk-without-losing-the-initiative-in-the-russia-ukraine-war/ [<https://perma.cc/FQH7-28QY>].
112. See Kaplan, *supra* note 67.
113. See Roskin, *supra* note 40, at 5-6; Mastel, *supra* note 96, at 55-57.
114. See Brands & Gaddis, *supra* note 96, at 14; Roskin, *supra* note 40, at 5; see also Megan Tonner-Robinson et al., *Preparing the Battlespace: The Potential for Conventional War Between the US and China*, WILD BLUE YONDER ONLINE J. (Jan. 5, 2022), www.airuniversity.af.edu/Wild-Blue-Yonder/Articles/Article-Display/Article/2888851/preparing-the-battlespace-the-potential-for-conventional-war-between-the-us-and/ [<https://perma.cc/RQT4-94SQ>].
115. See *China Says it 'Drove' Away U.S. Destroyer That Sailed Near Disputed Isles*, REUTERS, www.reuters.com/world/us/us-

This results in close encounters between the two militaries.¹¹⁶ This includes extremely close encounters between Chinese and US aircraft¹¹⁷ and extremely close encounters between Chinese and US ships.¹¹⁸ The Chinese air force has also sent large numbers of aircraft very close to Taiwanese airspace, which has resulted in close encounters between Chinese and Taiwanese aircraft.¹¹⁹ These sorts of close encounters between unfriendly militaries inevitably carry the risk of unintended escalation. Thus, leaders in the US, China, and Russia will have to actively manage this new cold war to avoid it escalating out of their control.¹²⁰ As bad

destroyer-sails-near-disputed-schina-sea-islands-china-says-it-drove-ship-2022-07-13/ (July 13, 2022, 6:25 AM) (noting that China claims the right to control much of the South China Sea, but that the US regularly sends ships through those disputed waters to “assert[] navigational rights and freedoms in the South China Sea . . . consistent with international law) [<https://perma.cc/8JZD-VK7B>]; Ben Blanchard, *U.S. Carriers in South China Sea, Taiwan Reports Further Chinese Incursion*, REUTERS, www.reuters.com/world/asia-pacific/two-us-carriers-enter-schina-sea-counter-malign-influence-2022-01-24/ (Jan. 24, 2022, 6:51 AM) (noting that two US carrier groups entered disputed waters in the South China Sea in January 2022 to carry out training) [perma.cc/N55Y-USR7].

116. See Ryan Browne, *US Navy Has Had 18 Unsafe or Unprofessional Encounters With China Since 2016*, CNN (Nov. 2, 2018, 11:03 AM), www.cnn.com/2018/11/03/politics/navy-unsafe-encounters-china/index.html (noting that between 2016 and 2018, there were 18 unsafe close encounters between the US and Chinese military in the South China Sea) [<https://perma.cc/YL4M-B4AP>].
117. *Id.* (noting that there had been a number of unsafe intercepts of Navy surveillance planes by the Chinese air force).
118. See Luis Martinez, *Chinese Warship Came Within 45 Yards of USS Decatur in the South China Sea: US*, ABC NEWS (Oct. 1, 2018, 7:21 PM), <https://abcnews.go.com/Politics/chinese-warship-45-yards-uss-decatur-south-china/story?id=58210760> [<https://perma.cc/FV2H-PMY7>].
119. See Zubaidah Abdul Jalil, *China Sends 30 Warplanes Into Taiwan Air Defense Zone*, BBC NEWS (May 31, 2022), www.bbc.com/news/world-asia-61642217 [<https://perma.cc/Y5UB-UTLK>].
120. See Legvold, *supra* note 96, at 78; Kaplan, *supra* note 67 (arguing that preventing a hot war between the US and China will require “intensified diplomacy” from both the State Department and Pentagon); Michael Schuman, *China Now Understands What a Nuclear Rivalry Looks Like*, THE ATLANTIC (Feb. 16, 2022), www.theatlantic.com/international/archive/2022/02/china-russia-nuclear-weapons/622089/ (noting that the new nuclear forces being

as the current cold war is, it would be worse if it became a hot war between the United States and either Russia or China.

V. SAME AS THE OLD COLD WAR?

The US is now in a cold war with Russia and China, but that does not necessarily mean that it the same as the original cold war.¹²¹ There are similarities and those similarities mean that we may be able to draw lessons about this new cold war from the experiences of the earlier one.¹²² However, scholars have also warned that this current cold war is different enough that we must be careful what lessons we draw.¹²³

This Section will explore how similar this new cold war is to the original one. The original cold war featured: 1) a cold war; 2) between rival superpowers; 3) driven by opposing ideologies; and 4) the looming threat of nuclear war.¹²⁴ As shown above in Section IV, the first element is present because we are in a cold war with Russia and China. The rest of this Section will explore whether the other three elements are present as well.

built by China do not match its expressed nuclear policy of maintaining a purely defensive nuclear force) [<https://perma.cc/49FN-Q8ZY>].

121. See Brands & Gaddis, *supra* note 96 (rejecting the conclusion that we are facing a repeat of the Cold War that existed between 1947 and 1991 because the context of the present tensions is quite different); Legvold, *supra* note 96 (arguing that the current tensions between Russia and the US are not a repeat of the original Cold War because they do not “match[] the depth and scale of the contest” of the Cold War, but they do represent a new cold war because they are characterized by a significant rupture in relations between Russia and the US).
122. See *id.* at 17 (noting that while there is always uncertainty about how the future will play out, it may be possible to make some predictions about the course of this new cold war from the lessons learned during the original cold war).
123. Legvold, *supra* note 96 (arguing that mistakenly assuming that this cold war will be exactly like the earlier cold war would be a mistake as it could lead policymakers to pursue “the wrong, even dangerous strategies”).
124. See *supra* Section II.

A. *Between Rival Superpowers*

One of the features of the original cold war was that it was a conflict between rival superpowers. Is this new cold war a conflict of superpowers? A superpower is a powerful and influential nation, often a nuclear power, which has the ability to influence events on a global scale.¹²⁵ According to this definition, the US is a superpower.¹²⁶ It has the most capable military in the world¹²⁷ and either the largest or second largest economy in the world,¹²⁸ as well as a massive arsenal of nuclear weapons.¹²⁹ But what about Russia and China?

Russia is not a superpower. During the original cold war, the Eastern bloc was comprised of the Soviet Union plus the communist states of Eastern Europe. Many of the Eastern European states that were on the Soviet Union's side during the Cold War have now sided with the United States against Russia.¹³⁰ Indeed, the current conflict in Ukraine pits Russia

125. NEW OXFORD AMERICAN DICTIONARY, *supra* note 79 (defining a superpower as “a very powerful and influential nation”); THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, *supra* note 79 (defining a superpower as a “powerful and influential nation, especially a nuclear power that dominates its allies or client states in an international bloc”); THE OXFORD ENGLISH DICTIONARY (J.A. Simpson & E.S.C Weiner eds., 2d ed. 1989) (defining a superpower as a “nation or state having a dominant position in world politics; one which has the power to act decisively in pursuit of interests that embrace the whole world”).

126. See Robert Kagan, *A Superpower, Like it or Not*, FOREIGN AFFS. (Feb. 16, 2021), www.foreignaffairs.com/articles/united-states/2021-02-16/superpower-it-or-not [<https://perma.cc/3L9J-4ANV>].

127. The United States has “the world’s most capable military power, with a unique ability to project power on a global basis.” See THE INT’L INST. FOR STRATEGIC STUD., THE MILITARY BALANCE 2021 47-48 (James Hackett ed., 2021).

128. See discussion *infra* note 150 (noting the difficulty of determining whether the US or China has the larger economy).

129. See *Status of World Nuclear Forces*, FED’N OF AM. SCIENTISTS, <https://fas.org/issues/nuclear-weapons/status-world-nuclear-forces/> [<https://perma.cc/ZZ28-V95X>].

130. Some of the US’ allies in the Ukraine conflict include former Warsaw Pact nations like Poland, Romania, and the states that make up the former Czechoslovakia (the Czech Republic and Slovakia), as well as former Soviet Republics like Latvia, Lithuania, and Estonia. See *Arms For Ukraine: Who Has Sent What?*,

against a former Soviet republic that only obtained its independence at the end of the original cold war. Moreover, the breakup of the Soviet Union leaves Russia much smaller—physically, militarily, economically, and by population—than the Soviet Union. Russia’s current population is only half that of the Soviet Union at the end of the Cold War and it will likely shrink further in the coming decades.¹³¹ Its economy is approximately one-twelfth the size of the United States,¹³² and is due to shrink this year as a result of sanctions imposed because of its invasion of Ukraine.¹³³ Its military is also smaller and less capable than the

FRANCE 24 (Jan. 6, 2022, 7:44 PM), www.france24.com/en/live-news/20220601-arms-for-ukraine-who-has-sent-what [<https://perma.cc/VWE4-VBPU>]; see also Hanna Duggal & Marium Ali, *What Weapons Has Ukraine Received From the US and Allies?*, ALJAZEERA (June 15, 2022), www.aljazeera.com/news/2022/6/15/infographic-what-weapons-has-ukraine-received-from-the-us-and-al [<https://perma.cc/3VJG-KW5D>].

131. For example, in 1989, the Soviet Union had a population of 286 million people. *Total Population of Select Ethnicities and Nationalities in the Soviet Union in 1979 and 1989*, STATISTA, www.statista.com/statistics/1248304/population-ussr-by-ethnicity-cold-war/ [<https://perma.cc/5BFF-X98Y>]. In 2021, Russia had a population of 146 million people, which is only slightly more than half that of the Soviet Union. Moreover, Russia is faced with a slowing birth rate, slowing immigration, a rising mortality rate, and a “brain drain” as young, educated Russians leave the country. The result is that Russia’s population is likely to shrink over the next couple of decades. See Cyrielle Cabot, *Population Decline in Russia: ‘Putin Has No Choice but to Win’ in Ukraine*, FRANCE 24 (May 24, 2022, 8:02 PM), www.france24.com/en/europe/20220524-population-decline-in-russia-putin-has-no-other-choice-but-to-win-in-ukraine [<https://perma.cc/2EAP-D7T3>].
132. Compare IMF, *United States World Economic Outlook*, IMF Datamapper (October 2022) (showing that the U.S. GDP is approximately 25 trillion annually), with IMF, *Russian Federation World Economic Outlook*, IMF Datamapper (October 2022) (showing that Russian GDP is slightly less than \$2 trillion annually).
133. The sanctions are also likely to result in a sharp increase in inflation, and a significant decrease in imports. These effects will be somewhat offset by strong revenues from the export of oil and gas. See Gerard DiPippo, *Strangling the Bear? The Sanctions on Russia After Four Months*, CTR. FOR STRAT. & INT’L STUD. (June 22, 2022), www.csis.org/analysis/strangling-bear-sanctions-russia-after-four-months [<https://perma.cc/9PT8-H53C>].

US military.¹³⁴ Moreover, the conflict in Ukraine has demonstrated that pre-war assessments of the Russian military were far too favorable to Russia.¹³⁵ The Russian army has significant problems with training, planning, and logistics, and has generally under-performed on the battlefield.¹³⁶ There is now a much more serious mismatch between the forces of the US and Russia than there was at the height of the Cold War, when Soviet and Warsaw Pact forces were expected to significantly outnumber NATO forces.¹³⁷

The invasion of Ukraine has also weakened Russia's military for the foreseeable future. The US estimated that more than 75,000 Russian soldiers had been killed or wounded in Ukraine by July 2022.¹³⁸ This represents about half of the total number of

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134. The United States remains “the world’s most capable military power, with a unique ability to project power on a global basis.” It spent nearly \$780 billion on defense spending in 2020, and has an active duty military of 1.4 million members. The Russian Federation, by comparison, spends much less on defense spending (about \$43 billion), has only 900,000 active duty military personnel, many of whom are conscripts, and that military is considerably less capable. *See* THE INT’L INST. FOR STRATEGIC STUD., *supra* note 127, at 47-48, 190-91.
135. *See* Richard H. Shultz & Benjamin Brimelow, *Russia’s Potemkin Army*, MOD. WAR INST. (May. 23, 2022), <https://mwi.usma.edu/russias-potemkin-army/> [<https://perma.cc/7ZJ8-9JRA>].
136. Robert Dalsjö, Michael Jonsson & Jonah Norberg, *A Brutal Examination: Russian Military Capability in Light of the Ukraine War*, 64 SURVIVAL: GLOB. POL. & STRATEGY 7, 8 (2022); Seth G. Jones, *Russia’s Ill-Fated Invasion of Ukraine: Lessons in Modern Warfare*, CTR. FOR STRAT. & INT’L STUD. (June 1, 2022), www.csis.org/analysis/russias-ill-fated-invasion-ukraine-lessons-modern-warfare [<https://perma.cc/H3M5-Y5XP>].
137. There is no longer a risk that Russia will send more than a million soldiers pouring through the Fulda Gap into NATO’s interior. *Fulda Gap Is Key Point in NATO Defense Against Soviet Forces*, L.A. TIMES, Mar. 1, 1987, www.latimes.com/archives/la-xpm-1987-03-01-mn-6926-story.html [<https://perma.cc/YS8L-ZP9L>].
138. Catie Edmondson & Eduardo Medina, *The U.S. Is Quietly Sharing Its Estimate of Russian War Casualties: More Than 75,000 Killed or Injured*, N.Y. TIMES, www.nytimes.com/live/2022/07/28/world/ukraine-russia-news-war#the-us-is-quietly-sharing-its-estimate-of-russian-war-casualties-more-than-75000-killed-or-injured (July 29, 2022) [<https://perma.cc/S2PR-NR4Z>].

soldiers that initially invaded Ukraine.¹³⁹ In addition to the personnel losses, the Russian army has suffered massive materiel losses as well, including more than 1,200 tanks, more than 2,100 armored troop carriers of various kinds, and significant numbers of artillery, airplanes, and helicopters.¹⁴⁰ It will take the Russian military years to recover from these losses.¹⁴¹ In short, Russia is no longer an economic or military superpower,¹⁴² although it still has a massive nuclear arsenal.¹⁴³

China, on the other hand, is a much more significant economic power than Russia. The Chinese economy is now the largest or second largest in the world, depending on what measure you use.¹⁴⁴ It is also the most populous country in the world, with

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139. *Id.* A loss of 10% of a unit's personnel can render that unit combat-ineffective, so losing nearly half of the force they began the war with is devastating. See Helene Cooper, Julian E. Barnes & Eric Schmitt, *As Russian Troop Deaths Climb, Morale Becomes an Issue, Officials Say*, N.Y. TIMES (Mar. 16, 2022), www.nytimes.com/2022/03/16/us/politics/russia-troop-deaths.html [<https://perma.cc/5C3N-DKW3>].
140. The figures for troop carries combines the categories of Armoured Fighting Vehicles, Infantry Fighting Vehicles, and Armoured Personnel Carriers. Moreover, these numbers represent only Russian equipment losses that have been verified by photo or videographic evidence. Actual Russian equipment losses are almost certainly considerably higher than this. Stijn Mitzer et al., *Attack on Europe: Documenting Russian Equipment Losses During the 2022 Russian Invasion of Ukraine*, ORYX (Feb. 24, 2022), www.oryxspioenkop.com/2022/02/attack-on-europe-documenting-equipment.html [<https://perma.cc/QQ8S-BX6V>]. In addition, the flagship of the Russian Black Sea fleet, the Moskva, was sunk by Ukraine. Carole Landry, *The Sinking of the Moskva*, N.Y. TIMES (Apr. 14, 2022), www.nytimes.com/2022/04/14/briefing/russia-ukraine-war-flagship-mariupol.html?searchResultPosition=1 [<https://perma.cc/SWK3-NZH8>].
141. Oliver Knox, *Russia Will Take 'Years' to Recover From Early Ukraine Setbacks*, THE WASH. POST (May 11, 2022, 11:49 AM), www.washingtonpost.com/politics/2022/05/11/russia-will-take-years-recover-early-ukraine-setbacks/ [<https://perma.cc/BLH7-KQUH>].
142. Harasymiw, *supra* note 14, at 27.
143. See *Status of World Nuclear Forces*, *supra* note 129 (indicating that Russia has nearly 6,000 nuclear warheads, more than any other country).
144. There is some debate about whether the US or China has the largest economy in the world and the answer depends partly on

more than 1.4 billion people, more than four times the population of the United States,¹⁴⁵ and it has a land area approximately the same as the United States.¹⁴⁶

While the Chinese military is not yet a peer of the United States,¹⁴⁷ that may change in the next decade or two.¹⁴⁸ Historically, the Chinese military has not been involved in many armed conflicts with other countries,¹⁴⁹ but its foreign policy has become more assertive recently and over the last decade China

how you measure it. If measured by gross domestic product (GDP), then the US has a higher larger economy. On the other hand, if you calculate the size of their respective economics according to purchasing power parity (PPP), then China has a larger economy. See Graham Allison, *China Is Now the World's Largest Economy. We Shouldn't Be Shocked*, THE NAT'L INT. (Oct. 15, 2020), <https://nationalinterest.org/feature/china-now-world%E2%80%99s-largest-economy-we-shouldn%E2%80%99t-be-shocked-170719> [<https://perma.cc/U5KR-6D8G>]. Compare United States World Economic Outlook, *supra* note 132 (showing that the U.S. GDP was almost \$25 trillion and accounts for 16% of the global economy), with IMF, *China, People's Republic of World Economic Outlook*, IMF Datamapper (October 2022) (showing that China's GDP was \$20 trillion but accounted for 19% of the global economy).

145. See *China*, U.S. CENSUS BUREAU, www.census.gov/popclock/world [<https://perma.cc/8ZVD-WX6D>].
146. See *Land Area (sq. km)*, THE WORLD BANK, https://data.worldbank.org/indicator/AG.LND.TOTL.K2?most_recent_value_desc=true [<https://perma.cc/9P2L-KPM7>].
147. See Alastair Gale, *China's Military Is Catching up to the U.S. Is It Ready for Battle?*, WALL ST. J. (Oct. 10, 2022, 10:04 AM), www.wsj.com/articles/china-military-us-taiwan-xi-11666268994 [<https://perma.cc/XLP4-8ZPY>].
148. See OFF. OF THE SEC'Y OF DEF., ANN. REP. TO CONG., MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA V (2021) (noting the Chinese goal of making the PLA into a "world-class" military by 2049).
149. See Scobell & Stevenson-Yang, *supra* note 85; see also Lindsay Maizland, *China's Modernizing Military*, COUNCIL ON FOREIGN RELS. (Feb. 5, 2020, 4:40 PM), www.cfr.org/backgrounders/chinas-modernizing-military (noting that China's last major war was when it invaded Vietnam in 1979) [<https://perma.cc/NVA3-48QY>]. But see Scobell & Stevenson-Yang, *supra* note 85 (noting that China has had skirmishes with Indian forces along their disputed border and that the Chinese navy has rammed vessels belonging to some of its maritime neighbors).

has spent a lot of money modernizing its military.¹⁵⁰ Particularly since President Xi came to power in 2012, China has worked to increase the strength of its military with the goal of making it a force that can dominate the South China Sea.¹⁵¹ As a result, Chinese defense spending has increased dramatically, more than doubling between 2010 and 2020.¹⁵² China now spends nearly \$300 billion per year on its military, which is still less than half what the US spends, but is more than four times what Russia spends.¹⁵³ In line with its goal of being able to control the South China Sea, it has focused on developing its navy and now has the largest navy in the world.¹⁵⁴ While the Chinese navy does not currently have the newest or largest ships,¹⁵⁵ it is building significant new capacity, including modern aircraft carriers and submarines, and expects to significantly increase the size of its navy by 2030.¹⁵⁶ Its goal is to be able to “fight and win wars” against a “strong enemy,” which is thought to be a euphemism for the United States.¹⁵⁷ It also has a small but growing nuclear arsenal.¹⁵⁸

At the height of the Cold War, the Soviet Union was a global superpower. It was an economic peer of the United States and had a much larger military than the West. In contrast, Russia in

150. See Maizland, *supra* note 149.

151. See *id.*

152. See THE INT’L INST. FOR STRATEGIC STUD., *supra* note 127, at 249.

153. See Diego Lopes da Silva et al., *Trends in World Military Expenditure, 2021*, STOCKHOLM INT’L PEACE RSCH. INST., Apr. 2022, at 2.

154. See OFF. OF THE SEC’Y OF DEF., *supra* note 148, at 48. It also has the largest overall military with more than two million members. THE INT’L INST. OF STRATEGIC STUD., *supra* note 127, at 249.

155. See David Axe, *Yes, China Has More Warships than the USA. That’s Because Chinese Ships Are Small.*, FORBES (Nov. 5, 2021, 8:00 AM) www.forbes.com/sites/davidaxe/2021/11/05/yes-china-has-more-warships-than-the-usa-thats-because-chinese-ships-are-small/?sh=7b105383611d (noting that the average Chinese naval vessel is considerably smaller than the average US naval vessel) [https://perma.cc/GQT3-KKQP]; Maizland, *supra* note 149 (noting that only 70% of China’s fleet could be considered modern).

156. See OFF. OF THE SEC’Y OF DEF., *supra* note 148, at 49.

157. See *id.* at V.

158. See *Status of World Nuclear Forces*, *supra* note 129; OFF. OF THE SEC’Y OF DEF., *supra* note 148, at 1 (noting that China is engaging in a “large-scale expansion of its nuclear forces”).

2022 has a much weaker military—except for its possession of nuclear weapons—and a much weaker economy. It is no longer a superpower.

Today, China is an economic superpower,¹⁵⁹ but it is not yet a military superpower because it would currently have difficulty projecting force beyond its periphery.¹⁶⁰ It is in the midst of a process of modernizing and improving its military, however, and will probably constitute a military superpower within the next decade.¹⁶¹ Thus, the new cold war is a clash of superpowers between the US and China, with Russia as China's decidedly junior partner.

B. *Opposing Ideologies*

The original cold war represented a clash of opposing ideologies: capitalism vs. communism. Unlike the original cold war, however, the current cold war is not about communism because neither Russia nor China is communist.¹⁶² China continues to be ruled by the Chinese Communist Party, but it is no longer communist.¹⁶³ The CCP is authoritarian¹⁶⁴ and carefully

159. *See supra* text accompanying note 144.

160. *See* OFF. OF THE SEC'Y OF DEF., *supra* note 148 (noting that one of the PLA's long-term goals is the ability to “project power globally”).

161. *See supra* text accompanying notes 147-58.

162. *See* Legvold, *supra* note 96, at 75.

163. *See* Mastel, *supra* note 96, at 55.

164. *See* Elizabeth Economy, *China's Assertive Authoritarianism*, DEMOCRACY: A JOURNAL OF IDEAS, <https://democracyjournal.org/magazine/62-special-issue/chinas-assertive-authoritarianism/> (noting that “Xi Jinping’s accession to power as General Secretary of the Communist Party in November 2012 proved decisive in turning the country toward a more authoritarian model”) [<https://perma.cc/HJ82-77HE>]; Maya Wang, *China's Techno-Authoritarianism Has Gone Global: Washington Needs to Offer an Alternative*, HUM. RTS. WATCH (Apr. 8, 2021, 1:43 PM), www.hrw.org/news/2021/04/08/chinas-techno-authoritarianism-has-gone-global [<https://perma.cc/8Y8Z-UBAW>]; *Freedom in the World 2022: China*, FREEDOM HOUSE, <https://freedomhouse.org/country/china/freedom-world/2022> (noting that “China’s authoritarian regime has become increasingly repressive in recent years” and that the “ruling Chinese Communist Party (CCP) continues to tighten control over all aspects of life and

manages the economy and the population to maintain its position and prevent the rise of groups or movements that could threaten its power,¹⁶⁵ but it is not communist.¹⁶⁶ The Chinese government does exert considerable control over the Chinese economy through state-owned enterprises in many industries, but there are also private companies and private property.¹⁶⁷ The resulting system is often termed “state capitalism,” a situation where privately-owned “Chinese firms are vigorous competitors in domestic and global markets” but at the same time “the state plays a major role in the economy.”¹⁶⁸ While the CCP has harnessed market forces to drive China’s economic development, there is a “strong political consensus” within the CCP that it should guide the overall economy.¹⁶⁹ The resulting system merges the benefits of capitalism with strong control by an authoritarian political elite. So, while the CCP retains the word communist in its name, China is no longer a communist state.

Russia is not communist either.¹⁷⁰ Russia began the transition to a market economy at the end of the original cold war, but the transition was difficult and support for it waned after Russia

governance . . . and it has undermined an earlier series of modest rule-of-law reforms”) [<https://perma.cc/EK2F-ZZ5K>].

165. For example, since 2017, China has detained more than a million members of the Uyghur ethnic group in what are essentially prison camps in Xinjiang province where they are forced to renounce Islam and pledge loyalty to the CCP. See Lindsay Maizland, *China’s Repression of Uyghurs in Xinjiang*, COUNCIL ON FOREIGN RELS., www.cfr.org/backgrounders/chinas-repression-uyghurs-xinjiang (Sept. 22, 2022, 11:30 AM) [<https://perma.cc/93QS-9EN5>]. This has been undertaken because the CCP fears that religion might pose a threat to the territorial integrity of the Chinese state and thus must be controlled or eliminated. *Id.*
166. See Brands & Gaddis, *supra* note 96, at 13 (noting that “China’s post-Cold War leaders, having compulsively studied the Soviet example, sought to avoid repeating it by transforming Marxism into consumer capitalism without at the same time allowing democracy”).
167. See Mastel, *supra* note 96, at 55 (noting that about 40% of China’s GDP is generated by state-owned enterprises).
168. See Andrew Batson, *Some Facts About China’s State Capitalism*, in *CHINESE STATE CAPITALISM: DIAGNOSIS AND PROGNOSIS* 9, 9 (Scott Kennedy & Jude Blanchette eds., 2021).
169. See *id.* at 14.
170. See generally Legvold, *supra* note 96, at 75.

defaulted on its debt following the 1998 financial crisis.¹⁷¹ After 2003, the state increased its ownership in key sectors, including the energy sector, media, banking, and finance.¹⁷² By 2015, roughly half the economy was controlled by the state.¹⁷³ At the same time, a small number of business owners, often known as oligarchs, have become extremely wealthy.¹⁷⁴ Russia has high levels of corruption, with many oligarchs owing their positions to President Putin.¹⁷⁵ The result is a mix of state capitalism and kleptocracy,¹⁷⁶ but there is still private property ownership in Russia. There are many small businesses in Russia, although the share of economic activity by small businesses is decreasing,¹⁷⁷ and until recently, there was also extensive foreign investment in Russia, although many foreign companies have withdrawn following the invasion of Ukraine.¹⁷⁸ Russia is an authoritarian state,¹⁷⁹ but it no longer has the trappings of communism, with its idea that all property would be publicly owned and people

171. See Simeon Djankov, *Russia's Economy Under Putin: From Crony Capitalism to State Capitalism*, PETERSON INST. INT'L ECON., Sept. 2015, at 2.

172. See *id.* at 3.

173. See *id.*

174. See *id.* at 6 (noting that in 2015 Moscow had more billionaires than any other city in the world).

175. Given the high levels of official corruption and the relationships between the oligarchs and that corruption, Russia is sometimes described as a kleptocracy. See generally Miriam Lansky & Dylan Myles-Primakoff, *The Rise of Kleptocracy: Power and Plunder in Putin's Russia*, 29 J. DEMOCRACY 76, 76-77 (2018).

176. See *id.*; Djankov, *supra* note 171.

177. See *Russia's Small Business Share Hits Record Low*, THE MOSCOW TIMES (Nov. 15, 2021), www.themoscowtimes.com/2021/11/15/russias-small-business-share-hits-record-low-a75559 (noting that small businesses accounted for just 11.5% of total corporate revenue, the smallest amount since figures were first published in 2008) [<https://perma.cc/55PK-X3YR>].

178. See *Over 1,000 Companies Have Curtailed Operations in Russia – But Some Remain*, YALE SCH. MGMT. (Feb. 16, 2023), <https://so.m.yale.edu/story/2022/over-1000-companies-have-curtailed-operations-russia-some-remain> [<https://perma.cc/683C-DZPM>].

179. See *supra* note 42.

would receive what they need from the state.¹⁸⁰ In fact, Russia is now one of the most unequal countries in the world.¹⁸¹

On the surface, then, this is a striking difference between the current cold war and the original one. One of the defining features of the original cold war was the contest between capitalism and communism.¹⁸² That contest is over. Even though Russia and China are no longer communist, however, they are both increasingly authoritarian.¹⁸³ Moreover, they both see themselves as being in conflict with the United States and its allies. Russia under Putin seeks to reconstitute the geographic, political, and military power of the Soviet Union,¹⁸⁴ which brings it into conflict

180. The phrase “from each according to his ability, to each according to his needs” was popularized by Karl Marx in his 1875 work “Critique of the Gotha Program” and embodied one of the key ideas of communism – the idea that each person would contribute to society according to their abilities and that each would receive what they needed for their “human flourishing.” See Pablo Gilabert, *The Socialist Principle “From Each According to Their Abilities, to Each According to Their Needs”*, 46 J. SOC. PHIL. 197, 198 (2015). This principle, which was at the heart of communism, would, in theory, interrupt “the translation of inequities in natural endowments into unequal access to consumption goods.” *Id.*

181. See Stuart Ford, *The Need for a Wealth Inequality Amendment*, 122 W. VA. L. REV. 1, 21 (2019) (noting that Russian society has a more unequal distribution of wealth than the United States and is one of the most unequal countries in the world).

182. Erin Blakemore, *What Was the Cold War—and Are We Headed to One?*, NAT’L GEOGRAPHIC (Mar. 23, 2022), www.nationalgeographic.com/culture/article/cold-war [<https://perma.cc/98CL-FRTQ>].

183. See *supra* text accompanying notes 40-42 (describing Russia’s authoritarianism); *supra* text accompanying notes 163-167 (describing China’s authoritarianism). It is also worth noting that both China and Russia are rated as “not free” according to Freedom House’s Global Freedom Scores. See *Countries and Territories*, FREEDOM HOUSE, <https://freedomhouse.org/countries/freedom-world/scores> [<https://perma.cc/4CTL-8ZYL>]. Russia is also described as a “Consolidated Authoritarian Regime” according to Freedom House’s Democracy Scores. *Id.* China has not been given a Democracy Score by Freedom House. *Id.*

184. See *Biden Says Putin Wants to “Reestablish the Former Soviet Union”*, CNN (Feb. 24, 2022, 2:12 PM), www.cnn.com/europe/live-news/ukraine-russia-news-02-24-22-intl/h_ad7e103d301f349a5c88f77627e20317 [<https://perma.cc/S924-N8TM>]; John Haltiwanger, *Putin Wants to Rebuild Soviet Union, Former Head of British Army Warns*, NEWSWEEK (Nov. 16, 2017, 5:45 PM),

with the U.S. and its European allies. Indeed, Russia's invasion of Ukraine was based, in part, on a claim that Ukraine was "entirely and fully created by Russia" and thus Russia was justified in taking back parts of Ukraine that allegedly belonged to it.¹⁸⁵ China also sees itself as being in a conflict with the United States over political and economic power,¹⁸⁶ particularly over control of the South China Sea.¹⁸⁷ It has also begun to export its

www.newsweek.com/putin-wants-rebuild-soviet-union-former-head-british-army-warns-714301 [https://perma.cc/JD8U-UDY3]; Curt Mills, *Panetta: Putin Wants to Restore the Soviet Union*, U.S. NEWS, (Dec. 1, 2016, 11:21 AM), www.usnews.com/news/world/articles/2016-12-01/vladimir-putin-wants-to-restore-the-soviet-union-former-secretary-of-defense-says; *Vladimir Putin: The Rebuilding of 'Soviet' Russia*, BBC NEWS (Mar. 28, 2014), www.bbc.com/news/magazine-26769481 [https://perma.cc/Q2QF-YG2B]; Harasymiw, *supra* note 14, at 18-19 (noting that Putin is a "practitioner of *realpolitik*" and wishes "Russia to be treated as an autonomous great power, to be taken into account in international affairs"). As these sources show, this has been Putin's goal for most of the last two decades.

185. See Michael Schwirtz et al., *Putin Calls Ukrainian Statehood a Fiction*, N.Y. TIMES, www.nytimes.com/2022/02/21/world/europe/putin-ukraine.html (Aug. 27, 2022) [https://perma.cc/VTN7-YL4E].

186. See OFF. OF THE SEC'Y OF DEF., *supra* note 148, at III (noting that China's goal is to "match or surpass U.S. global influence and power" and to "revise the international order to be more advantageous to Beijing's authoritarian system and national interests"); *id.* (noting that China views itself as being in "a rivalry among powerful nation states, as well as a clash of opposing ideological systems" and views itself at odds with a United States that it believes is trying to contain its power); see also Kaplan, *supra* note 67 (noting that the US and China are also at odds over economic factors, including Chinese theft of intellectual property, currency manipulation, and government support to the private sector).

187. See Kaplan, *supra* note 67.

authoritarianism to other countries,¹⁸⁸ which brings it into conflict with the United States and its allies.¹⁸⁹

Even though this new cold war is not a conflict between capitalism and communism, this is still a conflict of opposing ideologies although now it is a conflict between liberal democracy and authoritarianism.¹⁹⁰ For example, in November 2017, President Xi Jinping of China said that Chinese authoritarianism should be a model for those countries disenchanted with liberal democracy, suggesting that he sees this conflict as being between

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188. See Charles Edel & David O. Shullman, *How China Exports Authoritarianism: Beijing's Money and Technology Is Fueling Repression Worldwide*, FOREIGN AFFS. (Sept. 16, 2021), www.foreignaffairs.com/articles/china/2021-09-16/how-china-exports-authoritarianism [<https://perma.cc/ZN26-X9EX>]; Caitlin Dearing Scott & Adam George, *As China Promotes Authoritarian Model, the Resilience of Its Democratic Targets is Key*, JUST SEC. (Dec. 18, 2020), www.justsecurity.org/73925/as-china-promotes-authoritarian-model-the-resilience-of-its-democratic-targets-is-key/ [<https://perma.cc/5NUF-Y5T3>]; see also Anne-Marie Brady, *Authoritarianism Goes Global (II): China's Foreign Propaganda Machine*, 26 J. DEMOCRACY 51, 51 (2015) (discussing China's efforts to use soft power and diplomacy to expand China's influence in the world).
189. See Kaplan, *supra* note 67 (arguing that American leaders from both parties are becoming increasingly "repelled" by the authoritarianism displayed by China's current leader Xi Jinping).
190. See *id.* ("The philosophical divide between the American and Chinese systems is becoming as great as the gap between American democracy and Soviet Communism."); Michael J. Abramowitz, *Authoritarian Repression Anywhere Is a Threat to Democracy Everywhere*, DEMOCRACY: A JOURNAL OF IDEAS, <https://democracyjournal.org/magazine/62-special-issue/authoritarian-repression-anywhere-is-a-threat-to-democracy-everywhere/> (arguing that authoritarianism and democracy are naturally in conflict and that increases in authoritarianism result in decreases in democracy and freedom) [<https://perma.cc/9PTE-TQQB>]; Patrick Quirk & David O. Shulman, *Putin and Xi Are Accelerating Their Push Against Democracy. Here's How the US Can Fight Back*, ATLANTIC COUNCIL (May 6, 2022), www.atlanticcouncil.org/blogs/new-atlanticist/putin-and-xi-are-accelerating-their-push-against-democracy-heres-how-the-us-can-fight-back/ (noting that both Russia and China see democracy and democratic movements as a threat to their power and both have worked to undermine democracy around the world, sometimes working together to do so) [<https://perma.cc/EVP4-GPV7>].

democracy and authoritarianism.¹⁹¹ President Biden has similarly framed this cold war as a contest between democracy and authoritarianism,¹⁹² and Vladimir Putin has consistently acted to shore up authoritarian regimes and undermine democratic ones.¹⁹³ Thus, while this cold war is not exactly like the original cold war, it still pits opposing ideologies against one another.

C. *Threat of Nuclear War*

The final feature of the original cold war was the ever-present threat of nuclear war.¹⁹⁴ The end of the original cold war appeared to end that threat, at least for a while.¹⁹⁵ The nuclear weapons themselves, however, never went away,¹⁹⁶ and there has recently been a resurgence of the threat of nuclear war, particularly as a result of the conflict in Ukraine. Early in the war, Russia put its nuclear forces on high alert, which was viewed as both a threat and an escalation by the United States.¹⁹⁷ Then, when Finland indicated it planned to join NATO in response to Russia's

191. Economy, *supra* note 164.

192. Abramowitz, *supra* note 190.

193. German Lopez, *Putin vs. Democracy*, N.Y. TIMES (Feb. 27, 2022), www.nytimes.com/2022/02/27/briefing/putin-democracy-ukraine.html (noting that President Putin has consistently undermined democratic governments and movements, including in Syria and Belarus, while also meddling in Western elections and supporting other authoritarian regimes) [<https://perma.cc/3TS8-XL2V>].

194. *See, e.g.*, Robert T. Schatz & Susan T. Fiske, *International Reactions to the Threat of Nuclear War: The Rise and Fall of Concern in the Eighties*, 13 POL. PSYCH. 1, 1-2 (1992) (noting that during the 1970s and 1980s the “fear of nuclear war rose to a level unparalleled since the atomic bomb was detonated over Hiroshima and Nagasaki” and that by the early 1980s 50% of respondents in the United States believed that a nuclear war was “very likely” or “fairly likely” within 10 years).

195. *See supra* text accompanying note 22.

196. *See Status of World Nuclear Forces, supra* note 129 (noting that “the world’s combined inventory of nuclear warheads remains at a very high level: nine countries possessed roughly 12,700 warheads as of early-2022”).

197. *Putin Puts Russia’s Nuclear Deterrent Forces on High Alert, Raising Tensions Further*, RADIO FREE EUR. (Feb. 27, 2022), www.rferl.org/a/putin-russia-nuclear-deterrent-forces-alert/31726441.html [<https://perma.cc/77LK-DSGU>].

aggression, Russia threatened to place nuclear weapons on Finland's border.¹⁹⁸ Russia has also threatened to escalate the conflict in Ukraine into a nuclear one if the United States tries to punish Russia too harshly for its aggression.¹⁹⁹ More recently, President Putin has warned that parts of Ukraine that have been illegally annexed by Russia constitute part of the Russian state and that he is willing to use nuclear weapons to protect Russian territory.²⁰⁰ These threats are almost certainly a bluff,²⁰¹ but they have increased fears of the use of nuclear weapons.²⁰²

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198. See Guy Faulconbridge, *Russia Warns of Nuclear, Hypersonic Development if Sweden and Finland Join NATO*, REUTERS, www.reuters.com/world/europe/russia-warns-baltic-nuclear-deployment-if-nato-admits-sweden-finland-2022-04-14/ (Apr. 14, 2022, 4:44 PM) [<https://perma.cc/KPS3-J2CP>].
199. See Alex Traub, *A Top Russian Official Threatens the U.S. with the 'Wrath of God' Over War Crimes Investigations*, N.Y. TIMES (July 6, 2022), www.nytimes.com/2022/07/07/world/europe/a-top-russian-official-threatens-the-wrath-of-god-in-response-to-war-crime-investigations.html [<https://perma.cc/F9KK-2XXK>]; see also Gustav Gressel, *Shadow of the Bomb: Russia's Nuclear Threats*, EUR. COUNCIL ON FOREIGN RELS. (July 7, 2022), <https://ecfr.eu/article/shadow-of-the-bomb-russias-nuclear-threats/> [<https://perma.cc/V8MH-9AD2>].
200. See Guy Faulconbridge, *Putin Escalates Ukraine War, Issues Nuclear Threat to West*, REUTERS, www.reuters.com/world/europe/putin-signs-decree-mobilisation-says-west-wants-destroy-russia-2022-09-21/ (Sept. 21, 2022) (noting that Putin had accused the West of plotting to destroy his country and engaging in "nuclear blackmail" and quoting him as saying "[i]f the territorial integrity of our country is threatened, we will without doubt use all available means to protect Russia and our people - this is not a bluff" and "those who try to blackmail us with nuclear weapons should know that the weathervane can turn and point towards them") [<https://perma.cc/EUZ3-Y6AJ?type=image>].
201. See Matthew Sussex, *Putin's Persistent Nuclear Threats a Well-Worn Bluff*, ASIA TIMES (July 29, 2022), <https://asiatimes.com/2022/07/putins-persistent-nuclear-threats-a-well-worn-bluff/> (noting that Russia has a habit of making nuclear threats when it does not get what it wants, but that these are almost certainly bluffs intended to intimidate its adversaries) [<https://perma.cc/CF9N-ZRBK>].
202. See *id.* (noting that Russia's threats have increased fears that Russia might use nuclear weapons); Gressel, *supra* note 199 (noting that "[f]ear of nuclear escalation is even more apparent in some western European capitals than in Washington"); Faulconbridge, *supra* note 200 (noting that the conflict in Ukraine had "triggered

At first glance, the threat of nuclear war with China appears to be remote. For one thing, China has historically had a relatively small nuclear arsenal²⁰³ and has formally committed to a “no-first use” policy.²⁰⁴ At the same time, however, it is undergoing a significant expansion and modernization of its nuclear arsenal amid signs that it may be reconsidering its no first use policy.²⁰⁵ The expansion of China’s nuclear arsenal poses new risks of a nuclear confrontation in Asia.²⁰⁶ Moreover, it has become more common for Chinese officials to threaten to use nuclear weapons preemptively. For example, in May 2021, in response to a statement by the Japanese Prime Minister that Japan would help defend Taiwan against a Chinese invasion, a CCP approved video channel with links to the People’s Liberation Army released a video calling on China to abandon its no first use policy and threatening to use “nuclear bombs continuously” on Japan until its unconditional surrender if Japan intervened in Taiwan.²⁰⁷ The videos were removed several days later, but clearly

the worst confrontation with the West since the 1962 Cuban Missile Crisis, when many feared nuclear war imminent.”).

203. See *Status of World Nuclear Forces*, *supra* note 129.
204. Tom O’Connor, *China Says U.S. Bringing World Closer to Nuclear War After U.S. Military Report*, NEWSWEEK (Nov. 4, 2021, 12:29 PM), www.newsweek.com/china-says-us-bringing-world-closer-nuclear-war-after-us-military-report--1645931 [<https://perma.cc/466C-D2Z7>].
205. See *id.*; see also Schuman, *supra* note 120 (noting that the new nuclear forces being built by China do not match its expressed nuclear policy of maintaining a purely defensive nuclear force).
206. See Schuman, *supra* note 120; James Anderson, *Opinion, China’s Arms Buildup Threatens the Nuclear Balance*, N.Y. TIMES (July 29, 2020), www.nytimes.com/2020/07/29/opinion/russia-china-nuclear-weapons.html [<https://perma.cc/F98E-288G>]; see also John Feng, *Could China Use Nuclear Weapons in War Over Taiwan?*, NEWSWEEK (June 2, 2022), www.newsweek.com/china-taiwan-war-nuclear-weapons-1712332 (reporting the results of a war game involving former US government officials which simulated a Chinese invasion of Taiwan and quickly escalated to the use of nuclear weapons) [<https://perma.cc/CCL5-DQ3Y>].
207. See Jamie Seidel, *China Threatens to Nuke Japan if Country Intervenes in Taiwan Conflict*, NEWS.COM.AU (July 19, 2021, 12:14 PM), www.news.com.au/technology/innovation/military/china-threatens-to-nuke-japan-if-country-intervenes-in-taiwan-conflict/news-

struck a nerve with the Chinese people and were viewed millions of times.²⁰⁸ In September 2021, Chinese officials also threatened to make Australia a target for “possible nuclear attacks in the future” in response to it purchasing nuclear-powered submarines.²⁰⁹ Thus, even though China has officially adopted a “no first use” policy, it is significantly expanding its nuclear arsenal while also becoming more comfortable with making nuclear threats.

The US, for its part, has a massive nuclear arsenal²¹⁰ and has not committed to a no first use policy. Instead, it prefers a policy of “tailored deterrence with flexible capabilities, including an appropriate mix of nuclear capability and limited, graduated response options.”²¹¹ Although the US is unlikely to use nuclear weapons first, it could use them in response to a nuclear attack on its allies, although it is likely to use more conventional options first.²¹² The US has, however, stated that the consequences of a Russian use of nuclear weapons would be “catastrophic” for Russia.²¹³

story/d9af14dc6b90628082e79ab4c77629e1[https://perma.cc/22HU-DHW8].

208. *See generally id.*

209. *See* Ben Graham, ‘Brainless’ Australia a Target for ‘Nuclear War’, Warns Top China Expert, NEWS.COM.AU (Sept. 21, 2021, 12:14 PM), www.news.com.au/technology/innovation/military/brainless-australia-a-target-for-nuclear-war-warns-top-china-expert/news-story/4652ab802a01b677c6df6de51479bd8d [https://perma.cc/J9DV-BDEH].

210. *See Status of World Nuclear Forces, supra* note 129.

211. *See* David Vergun, *DOD Outlines U.S. Nuclear Deterrence Strategy*, U.S. DEP’T OF DEF. (Sept. 2, 2020), www.defense.gov/News/News-Stories/Article/Article/2334600/dod-official-outlines-us-nuclear-deterrence-strategy/ [https://perma.cc/Z487-29CL].

212. *See* Ken Dilanian et al., *What Will Biden Do if Putin Goes Nuclear? Experts Say a Nuclear Response Is Unlikely but Not Impossible*, NBC NEWS (June 13, 2022, 4:31 AM), www.nbcnews.com/politics/national-security/will-biden-putin-goes-nuclear-experts-say-nuclear-response-unlikely-no-rna32756 [https://perma.cc/BUX7-YGD5].

213. *See* Alexander Smith, *U.S. Warns Russia of ‘Catastrophic’ Consequences if It Uses Nuclear Weapons*, NBC NEWS (Sept. 26, 2022, 6:25 AM), www.nbcnews.com/news/world/russia-catastrophic-consequences-nuclear-weapons-ukraine-us-warns-rna49365 [https://perma.cc/PV6X-V2L9]. Although the US has declined to state what those consequences would be, the US has

The likelihood of a nuclear war remains very low in the short term,²¹⁴ but nuclear saber-rattling and the risk of a nuclear war have returned. Moreover, as noted above, any direct military confrontation between the US and Russia or China carries the risk of unintended escalation.²¹⁵ Thus, just like the original cold war, this new cold war will also play out under the threat of nuclear war.

To put this in perspective, the Doomsday Clock, run by the Bulletin of the Atomic Scientists, was created in 1947 to warn the public about the threat of nuclear war.²¹⁶ For much of the original cold war, it ranged between 2 and 10 minutes to midnight.²¹⁷ It abruptly moved from 6 minutes to midnight in 1988 to 17 minutes to midnight in 1991, reflecting the significantly decreased risk of nuclear war caused by the end of the original cold war.²¹⁸ That is the furthest it has ever been from midnight and it has steadily moved closer to midnight since then as tensions between the US, China, and Russia have increased.²¹⁹ By 2019, it was again 2

said that it has “spelled out in greater detail” what that would mean to Russia in private communications. *Id.*

214. See J. Peter Scoblic & David R. Mandel, *Opinion: How to Assess the Risk of Nuclear War Without Freaking Out*, CNN (June 28, 2022, 4:32 AM), www.cnn.com/2022/06/28/opinions/nuclear-war-likelihood-probability-russia-us-scoblic-mandel/index.html (noting that several forecasters have put the likelihood of nuclear war in the immediate future to be between .1% and 2%) [<https://perma.cc/Y5NM-HH4M>]; see also Uri Friedman, *What's the Likelihood of Nuclear War?*, THE ATLANTIC (Mar. 23, 2022), www.theatlantic.com/ideas/archive/2022/03/ukraine-russia-nuclear-weapons-cold-war/627587/ (surveying Cold War historians and finding that most of them believed the current situation was less perilous than the darkest days of the original Cold War although they also noted the risk of unintended escalation resulting from mistakes and misperceptions) [<https://perma.cc/TS7S-U8VR>].
215. See *supra* text accompanying notes 106-20.
216. *FAQ: What Is the Doomsday Clock?*, BULL. OF THE ATOMIC SCIENTISTS, <https://thebulletin.org/doomsday-clock/faq/> [<https://perma.cc/UQ9H-CQAZ>].
217. See *Timeline*, BULL. OF THE ATOMIC SCIENTISTS, <https://thebulletin.org/doomsday-clock/timeline/> [<https://perma.cc/K4KD-KUKZ>].
218. *Id.*
219. See *id.*

minutes to midnight, the same as during the mid-1950s and more dangerous than during most of the original cold war.²²⁰

On a related note, it also appears that we are once again faced with the prospect of large-scale conventional wars between peer or near-peer adversaries. The current conflict in Ukraine is just such a large-scale conventional conflict and is now the largest and bloodiest conflict in Europe since the end of WWII.²²¹ There is also the risk that it will spill over into a conventional conflict between NATO and Russia.²²² Similarly, any future conflict between the US and China over Taiwan would be a conventional conflict between peer or near-peer adversaries.²²³ For the US military, this represents a shift from the irregular conflicts in Iraq and Afghanistan that have marked the last two decades, and a return to the threats the US prepared for during the original cold war.²²⁴

VI. SIMILAR BUT NOT THE SAME

The original cold war featured: 1) a cold war; 2) between rival superpowers; 3) with opposing ideologies; and 4) the threat of nuclear war. As this Article demonstrates, the new cold war

220. *Id.* Having said that, the Doomsday Clock now also takes into account the threat of climate change, so it is no longer solely a measure of the risk of nuclear war, but it is still driven largely by nuclear risks. *See e.g., 2021 Doomsday Clock Statement*, BULL. OF THE ATOMIC SCIENTISTS (Jan. 27, 2021), <https://thebulletin.org/doomsday-clock/2021-doomsday-clock-statement/> [<https://perma.cc/7S4B-ANXE>].

221. *See* Helene Cooper, *Heavy Losses Leave Russia Short of Its Goal, U.S. Official Say*, N.Y. TIMES (Aug. 11, 2022), www.nytimes.com/2022/08/11/us/politics/russian-casualties-ukraine.html/ (“Still, American officials say the conflict [in Ukraine] has become the bloodiest land war in Europe since World War II.”) [<https://perma.cc/K8AM-PD3A>].

222. *See supra* text accompanying notes 82-84, 106-11.

223. *See supra* text accompanying notes 86-94, 147-58; *see also* Tonner-Robinson et al., *supra* note 114.

224. *See* DEP’T OF DEF., SUMMARY OF THE 2018 NATIONAL DEFENSE STRATEGY OF THE UNITED STATES OF AMERICA 1 (2018) (acknowledging that “[i]nter-state strategic competition, not terrorism, is now the primary concern in U.S. national security” and particularly focusing on the potential threat posed by Russia and China).

between the US, Russia, and China has all these features.²²⁵ There are other similarities as well.²²⁶ For example, the conflicts in Ukraine²²⁷ and Syria²²⁸ are reminiscent of the proxy wars that were a feature of the original cold war²²⁹ and there has been an increase in the risk of large-scale conventional conflicts like the ones the US prepared for during the cold war.²³⁰ Thus, this new cold war is not just a cold war. It does mimic, in some important ways, the original cold war. Those similarities mean that we may be able to draw lessons about this new cold war from the experiences of the earlier one.²³¹ However, at the same time, we must be aware of the differences²³² and be careful what lessons we draw from the experiences of the original cold war.²³³ This Section will explore the differences between the original cold war and the new one.

First, the overall trajectory of this new cold war could be different from the original cold war. In the original cold war, the Soviet Union was a military and economic superpower early in

225. *See supra* Sections IV-V.

226. *See, e.g.*, Legvold, *supra* note 96, at 76 (noting that that, like during the original cold war: 1) the participants in this new cold war have framed the conflict in unforgiving terms; 2) each side seeks to blame the other for the conflict; 3) neither side sees much value in cooperating or negotiating with the other; and 4) the US has resorted to “Cold War-style reprisals” to punish Moscow for its transgressions).

227. *See supra* text accompanying notes 82-84 (describing the conflict in Ukraine).

228. *See* Anne Barnard & Karam Shoumali, *U.S. Weaponry Is Turning Syria Into Proxy War With Russia*, N.Y. TIMES (Oct. 12, 2015), www.nytimes.com/2015/10/13/world/middleeast/syria-russia-airstrikes.html [<https://perma.cc/6CXQ-URWH>].

229. *See supra* text accompanying note 15.

230. *See supra* text accompanying notes 221-24.

231. Brands & Gaddis, *supra* note 96, at 17 (noting that while there is always uncertainty about how the future will play out, it may be possible to make some predictions about the course of this new cold war from the lessons learned during the original cold war).

232. *Cf.* Harasymiw, *supra* note 14, at 26 (arguing that the new cold war has more “changes than continuities” with the original cold war).

233. Legvold, *supra* note 96 (arguing that mistakenly assuming that this cold war will be exactly like the earlier cold war would be a mistake as it could lead policymakers to pursue “the wrong, even dangerous strategies”).

the conflict but its economic might faded as the conflict wore on. Eventually, the Soviet Union imploded, in part due to its failing economy.²³⁴ China's situation is quite different. It is not yet a military superpower but has set itself the goal of becoming one in the coming years.²³⁵ At the same time, it is already an economic superpower²³⁶ and boasts one of the longest periods of sustained economic growth the world has ever seen.²³⁷ The US, on the other hand, has had much slower economic growth recently²³⁸ and has seen its democracy come under increasing attack from within²³⁹ and without.²⁴⁰ While continued economic growth is not

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234. *See supra* text accompanying notes 16-19.
235. *See supra* text accompanying notes 147-58.
236. *See supra* text accompanying note 144.
237. *See* Congressional Research Service, *China's Economic Rise: History, Trends, Challenges, and Implications for the United States* 1 (2019) (noting that since 1979 China's GDP grew at an average annual rate of nearly 10% per year, which is the "fastest sustained expansion by a major economy in history").
238. *See, e.g.*, MARC LABONTE, CONG. RSCH. SERV., R46200, *RECENT SLOWER GROWTH IN THE UNITED STATES: POLICY IMPLICATIONS* i (2020) (noting that during the economic expansion from 2009 to 2017, the US experienced the "lowest economic growth rate of any expansion since World War II, averaging 2.2%").
239. *See* Darrell M. West, *Trump Is Not the Only Threat to Democracy*, BROOKINGS (July 25, 2022), www.brookings.edu/blog/fixgov/2022/07/25/trump-is-not-the-only-threat-to-democracy/ [<https://perma.cc/K4PT-5ECB>]; Sarah Repucci, *Reversing the Decline of Democracy in the United States*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2022/global-expansion-authoritarian-rule/reversing-decline-democracy-united-states> [<https://perma.cc/6LH9-43NA>]; *see also* Larry M. Bartels, *Ethnic Antagonism Erodes Republicans' Commitment to Democracy*, 117 PNAS 22527, 22527 (2020) (noting that increasing numbers of self-identified Republicans were less committed to democratic principles).
240. For example, US democracy has come under attack by Russia. *See, e.g.*, Eric Tucker & Mary Clare Jalonick, *Senate Panel Finds Russia Interfered in the 2016 Election*, PBS NEWS HOUR (Aug. 18, 2020, 4:49 AM), www.pbs.org/newshour/politics/senate-panel-finds-russia-interfered-in--the-2016-us-election [<https://perma.cc/T99F-6BJW>]; *see also* *Russian Interference in 2016 U.S. Election*, FBI, www.fbi.gov/wanted/cyber/russian-interference-in-2016-u-s-elections (describing indictments of 12 Russian military intelligence officers for interfering with US elections) [<https://perma.cc/FF87-65R9>]. China is also reportedly trying to

guaranteed²⁴¹ and there are potential cracks in the Chinese economic juggernaut,²⁴² it appears that the trajectory of this new cold war could be different from the first one.²⁴³ China is likely to become stronger both militarily and economically over time, whereas the Soviet Union weakened over time. So, unlike the original cold war, where the balance of power slowly shifted towards the US, this new cold war could see the balance of power shift towards China over time. At the least, this is what China's leaders expect.²⁴⁴

influence US elections. See Jeff Mason & Daphne Psadedakis, *Trump Security Adviser Says China has Biggest Election-Interference Program*, REUTERS, www.reuters.com/article/us-usa-election-china/trump-security-adviser-says-china-has-biggest-election-interference-program-idUSKBN25V2NY (Sept. 4, 2020) [<https://perma.cc/X7MK-ZW9F>]; see also Wray, *supra* note 68.

241. The rate of growth of the Chinese economy is expected to slow in the coming years as the economy faces “structural constraints” like declining labor force growth and slowing productivity. See *The World Bank in China: Overview*, THE WORLD BANK, www.worldbank.org/en/country/china/overview (Sept. 29, 2022) [<https://perma.cc/NC2G-KUUE>].
242. See WAYNE M. MORRISON, CONG. RSCH. SERV., RL33534, CHINA'S ECONOMIC RISE: HISTORY, TRENDS, CHALLENGES, AND IMPLICATIONS FOR THE UNITED STATES 1 (2019) (noting that the Chinese economy faces problems that could “dampen future growth” including distortive economic policies, a weak banking system, widening income gaps, growing pollution, and weak respect for the rule of law). China also faces a serious demographic problem as its population will age dramatically in the coming decades, resulting in fewer working age adults and increased pressure on its pension and health care systems. See Carl Minzner, *China's Doomed Fight Against Demographic Decline*, FOREIGN AFFS. (May 3, 2022), www.foreignaffairs.com/articles/china/2022-05-03/chinas-doomed-fight-against-demographic-decline [<https://perma.cc/KF6V-DCUC>].
243. See Mastel, *supra* note 96, at 57 (arguing that China does not present a significant military threat to the US, but does present a serious economic threat, which is almost the exact opposite of the threat posed by Russia in the original Cold War).
244. China's leaders believe that autocracy is superior to democracy and that democratic countries like the US are “doomed to fail” over time. See Ken Moritsugu, *China's Communists Bash US Democracy Before Biden Summit*, ABC NEWS 4 (Dec. 4, 2021), <https://abcnews4.com/news/nation-world/chinas-communists-bash-us-democracy-before-biden-summit> [<https://perma.cc/TUB4-4XY4>]; see also President Joe Biden, Remarks at a Democratic

A second difference between the new cold war and the original one is the extent to which the main protagonists are economically interconnected. China's economic strength has been built, to a significant degree, on exporting manufactured goods to the rest of the world.²⁴⁵ As a result, the United States is deeply entwined economically with China and vice versa.²⁴⁶ This represents a difference from the original cold war as the US and Chinese economies are far more connected than the US and Soviet economies were.²⁴⁷ Thus, any significant negative impact on the

National Committee Fundraiser in Seattle (Apr. 21, 2022), www.whitehouse.gov/briefing-room/speeches-remarks/2022/04/21/remarks-by-president-biden-at-a-democratic-national-committee-fundraiser-3/ (noting that President Biden had spoken to Xi Jinping extensively and that he “doesn’t think that democracies can be sustained in the 21st century”) [<https://perma.cc/4C7B-TFWS>]. President Xi has said recently that, due in part to failing US leadership, “time and momentum are on our side.” See Rush Doshi, *The Long Game: China’s Grand Strategy to Displace the American Order*, BROOKINGS (Aug. 2, 2021), www.brookings.edu/essay/the-long-game-chinas-grand-strategy-to-displace-american-order/ [<https://perma.cc/VU4T-ZWRZ>].

245. China has consistently produced the largest amount of manufactured goods of any country for the last decade. See Wang Zheng, *China’s Manufacturing Value-Added Ranks First in the World for 11 Years*, PEOPLE’S DAILY ONLINE (Sept. 16, 2021), <http://en.people.cn/n3/2021/0916/c90000-9897054.html> (claiming that China has been the world’s largest manufacturing hub for the last 11 years and accounts for nearly 30 percent of global manufacturing output) [<https://perma.cc/ZYJ3-MFH2>]. Figures from the World Bank support this claim and indicate that China has by far the largest manufacturing value added. See *Manufacturing, Value Added*, THE WORLD BANK, https://data.worldbank.org/indicator/NV.IND.MANF.CD?most_recent_value_desc=true [<https://perma.cc/R7HA-UJQL>].
246. China is the largest supplier of goods to the United States, supplying more than \$450 billion worth of goods in 2019, which is more than both our nearest neighbors (Mexico and Canada) and our closest allies (including Japan and Germany). See *Countries and Regions*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/countries-regions> [<https://perma.cc/RF8X-SL9K>].
247. See Mastel, *supra* note 96, at 57 (arguing that this cold war is different from the first one because the US and Russia had limited economic interaction while the US and China are the two largest

Chinese economy would also result in harm to the US economy and vice versa. On its face, this would seem to make it less likely that the US and China would engage in direct hostilities, but China is also determined to reunify with Taiwan and establish its dominance in Asia.²⁴⁸ This could lead to conflict with the US even if such a conflict would harm both countries' economies.

The conflict in Ukraine demonstrates this risk. Russia invaded Ukraine despite the fact that Europe is one of its largest trading partners²⁴⁹ and it expected to be sanctioned for the invasion.²⁵⁰ Europe has supported Ukraine and sanctioned Russia despite being heavily dependent on Russian oil and gas.²⁵¹ It is facing significant economic headwinds as a result of the invasion,²⁵² but that has not yet deterred most European countries from supporting Ukraine. In short, despite what many people hoped, the deep economic connections between Europe and Russia did not prevent the invasion of Ukraine.²⁵³ Similarly, if

economies in the world and have an enormous trade and investment relationship).

248. See *supra* text accompanying notes 86-91.

249. See *Russia: EU Trade Relations with Russia*, EUR. COMM'N, https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/russia_en (noting that in 2020, 36.5% of Russia's imports came from the EU and 37.9% of its exports went to the EU) [<https://perma.cc/WT5L-UN45>].

250. See Huileng Tan, *It's No Surprise Russia Is Weathering the West's Sanctions: Putin Has Been Preparing for Them for Nearly a Decade*, BUS. INSIDER (June 18, 2022, 9:00 AM), www.businessinsider.com/russia-putin-preparing-west-sanctions-decade-since-ukraine-crimea-annexation-2022-6 [<https://perma.cc/Z27W-NDJP>].

251. See *How Europe Became so Dependent on Putin for Its Gas*, BLOOMBERG NEWS, www.bloomberg.com/news/articles/2021-11-10/how-europe-has-become-so-dependent-on-putin-for-gas-quicktake#xj4y7vzkg (July 26, 2022, 1:24 PM) [<https://perma.cc/9YL3-D6GR>].

252. See *Summer 2022 Economic Forecast: Russia's War Worsens the Outlook*, EUR. COMM'N (July 14, 2022), https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4511 [<https://perma.cc/T92B-WJSF>].

253. See Katrin Bennhold, *The Former Chancellor Who Became Putin's Man in Germany*, N.Y. TIMES (Apr. 23, 2022), www.nytimes.com/2022/04/23/world/europe/schroder-germany-russia-gas-ukraine-war-energy.html [<https://perma.cc/Q8CF-LLGG>].

China strongly believes that seizing Taiwan by force is essential to its national goals, then the economic costs of a war will probably not stop it.

A third difference between the new cold war and the original one is that the world is not as bipolar as it was during the original cold war.²⁵⁴ In 1950, at the beginning of the original cold war, there were only 60 member states in the United Nations and many of them were allies of either the US or the Soviet Union.²⁵⁵ This grew over time as the process of decolonization resulted in the creation of many new states.²⁵⁶ There were 99 members by 1960 and 127 members by 1970.²⁵⁷ Countries have continued to be added since the end of the cold war and today there are 193 UN members.²⁵⁸ Moreover, many of these new countries in the developing world are experiencing strong economic growth that makes them less dependent on the superpowers.²⁵⁹ The result is a multipolar world.²⁶⁰

A multipolar world makes it harder for the superpowers to achieve their goals as power and influence are spread over a larger number of countries.²⁶¹ Countries in the developing world could

254. See Legvold, *supra* note 96, at 75.

255. See generally *Growth in United Nations Membership*, UNITED NATIONS, www.un.org/en/about-us/growth-in-un-membership [<https://perma.cc/CS57-KMCT>].

256. *Decolonization of Asia and Africa, 1945-1960*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1945-1952/asia-and-africa> [<https://perma.cc/95RP-7ZYV>].

257. *Id.*; *Growth in United Nations Membership*, *supra* note 255.

258. *Growth in United Nations Membership*, *supra* note 255. There were 159 members in 1990, so there have been another 34 countries added since the end of the original cold war.

259. See Samuel Ojo Oloruntoba, *Euro-Africa Relations and Development in a Multi-Polar World: Nigeria and South Africa in Comparative Perspectives*, in THE PALGRAVE HANDBOOK OF AFRICAN POLITICAL ECONOMY 573, 575-576 (Samuel Ojo Oloruntoba & Toyin Falola eds., 2020) (noting that many of the fastest growing economies in the world are in Africa); Stephen, *supra* note 36, at 486-87.

260. See Andrew F. Cooper & Daniel Flemes, *Foreign Policy Strategies of Emerging Powers in a Multipolar World: An Introductory Review*, 34 THIRD WORLD Q. 943, 943 (2013).

261. See Berthold Kuhn & Dimitrios Margellos, *On the Way to a Multipolar World Order*, DEV. & COOP. (Aug. 12, 2022), www.dandc.eu/en/article/chinas-rise-means-us-and-europe-need-adjust-

benefit from this multipolarity as they selectively engage with both superpowers while “balancing ties to maximise their own advantages.”²⁶² Emerging countries may also choose to engage with each other directly in addition to engaging with the superpowers.²⁶³ This multipolar world will make it harder for the superpowers to achieve their goals by fiat and require them to engage in more negotiation and bargaining with developing countries.²⁶⁴ It may also give emerging countries the ability to stay at arm’s length from this new cold war.

This dynamic can already be seen in the global response to the conflict in Ukraine. Many emerging countries are trying to stay out of the conflict.²⁶⁵ This includes wealthy countries like India, Brazil, and Saudi Arabia. India, for example, has a higher GDP than Russia, Brazil’s GDP is almost the same as Russia, and Saudi Arabia is not far behind.²⁶⁶ India has tried to stay out of the current conflicts, balancing its ties to the US against its need for Russian weapons and oil, and its concern about having China on its northern border.²⁶⁷ Brazil has also decided not to

their-foreign-policy-avoid-losing-geopolitical
[<https://perma.cc/Z2T8-Y4SD>].

262. *Id.*

263. *See* Oloruntoba, *supra* note 259, at 575-76 (noting that many African economies are engaging directly with other emerging economies like India, Turkey and Brazil).

264. *See* Cooper & Flandes, *supra* note 260, at 947 (noting that the loss of its hegemonic power means the US “must negotiate and bargain” to get what it wants rather than “laying down the law”); *see also* Joshua Eisenman & Eric Heginbotham, *Building a More “Democratic” and “Multipolar” World: China’s Strategic Engagement with Developing Countries*, 19 CHINA REV. 55, 55 (2019) (noting that China sees engagement with the developing world as central to achieving its strategic objectives).

265. *See* Kuhn & Margellos, *supra* note 261; *see also* Marco Carnelos, *Cold War 2.0: Who Will Shape the New World Order?*, MIDDLE EAST EYE, www.middleeasteye.net/opinion/cold-war-world-order-shape-who (Aug. 17, 2022, 10:42 AM) [<https://perma.cc/C3KN-28Q4>].

266. *See* *GDP (Current US\$)*, THE WORLD BANK, https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?most_recent_value_desc=true [<https://perma.cc/Y7D3-A2WN>].

267. *See* Mujib Mashal, *As World Rebukes Russia, India Tries to Stay Above the Fray*, N.Y. TIMES (Mar. 1, 2022), www.nytimes.com/2022/03/01/world/asia/india-russia-united-states-ukraine.html [<https://perma.cc/5D4E-T3UR>]; Seema Mody, *India Isn’t Likely to*

take sides in the conflict.²⁶⁸ The members of the Gulf Cooperation Council, which includes Saudi Arabia, have tried to “sit on the fence and resist being drawn into” the conflict between the US and Russia.²⁶⁹ They are also heavily dependent on China, which is their largest trading partner and biggest purchaser of oil, making them hesitant to side with the US against China.²⁷⁰

One result of the new economic and political power of developing countries is that they may play a much larger role in this new cold war than they did in the original one. Of course, the rise of multipolarity has echoes of the Non-Aligned Movement from the original cold war, when many newly-created countries resisted siding with either the US or the Soviet Union,²⁷¹ but it is not exactly the same as there are many more countries now than there were during the original cold war and many of them have large economies and thus more ability to affect change than did the members of the NAM.²⁷² China has recognized this and made building economic, cultural, social, and diplomatic relationships with developing countries a key part of its foreign policy.²⁷³

There are undoubtedly other differences between this new cold war and the original cold war, but three differences stand out. First, the overall trajectory of this new cold war could be different with the balance of power tipping toward China over

Stop Buying Russian Oil Any Time Soon. Here's Why, CNBC, www.cnn.com/2022/07/08/india-isnt-likely-to-stop-buying-russian-oil-any-time-soon-heres-why.html (July 8, 2022, 2:48 PM) [<https://perma.cc/A8T2-8B2L>].

268. *See Brazil Won't Take Sides Over Russia's Invasion of Ukraine – Foreign Minister*, REUTERS, www.reuters.com/world/brazil-wont-take-sides-over-russias-invasion-ukraine-foreign-minister-2022-03-08/ (Mar. 8, 2022, 9:17 AM) [<https://perma.cc/2JBL-FYVY>].

269. *See Ahmed Aboudouh, Russia's War in Ukraine Is Making Saudi Arabia and the UAE Rethink How They Deal with US Pressure Over China*, ATLANTIC COUNCIL (Apr. 26, 2022), www.atlanticcouncil.org/blogs/menasource/the-ukraine-war-is-making-saudi-arabia-and-the-uae-rethink-how-they-deal-with-us-pressure-over-china/ [<https://perma.cc/LXV6-32GC>].

270. *See id.*

271. *See Afsah, supra* note 3, ¶ 21.

272. *See Cooper & Flemes, supra* note 260, at 948-49 (arguing that the current multipolarity is substantively different from the situation of the NAM during the original cold war).

273. *See Eisenman & Heginbotham, supra* note 264, at 62-63.

time.²⁷⁴ Second, China and the US are far more connected economically than the US was with the Soviet Union. This means that the US cannot damage China's economy without harming its own and vice versa, although this interconnectedness is not likely to prevent conflicts if either country believes a conflict is in its national interest.²⁷⁵ Finally, we live in a multipolar world and the two superpowers will find it harder to achieve their goals as more countries have power and influence.²⁷⁶ The US and China will have to use negotiation and bargaining to persuade these emerging powers to support them. The emerging powers in the developing world, however, may avoid taking sides and engage with both superpowers while not aligning fully with either.

VII. CONCLUSION

The principal conclusion of this Article is that the United States is now in a cold war with China and Russia. This conflict has many of the same features as the original cold war between the United States and the Soviet Union.²⁷⁷ It features a cold war between rival superpowers, a contest between competing ideologies, and the threat of nuclear war.²⁷⁸ Of course, there are also differences. This time, the principal adversary of the US is China rather than the Soviet Union,²⁷⁹ and the current conflict pits liberal democracy against authoritarianism rather than capitalism against communism.²⁸⁰ Nonetheless, the current cold war does share many of the key features of the original cold war.

It is hard to pinpoint the exact start of this new cold war. Russia and China have been working to constrain the US since the early 2000s and US relations with both countries have declined over time,²⁸¹ but it could not be described as a cold war until more recently. The US and Russia have been locked in a

274. *See supra* text accompanying notes 234-43.

275. *See supra* text accompanying notes 245-53.

276. *See supra* text accompanying notes 254-73.

277. *See supra* Section II (describing the original cold war).

278. *See supra* Sections IV-V.

279. *See supra* Section V(A).

280. *See supra* Section V(B).

281. *See supra* Section III.

cold war since the Russian invasion of Crimea in 2014,²⁸² while relations between the US and China have declined steadily since President Xi came to power in 2012.²⁸³ Thus, the beginning of this cold war probably lies in the mid-2010s. In short, this new cold war is not actually so new and has existed for nearly a decade already, although the recent invasion of Ukraine has brought the conflict into sharp relief.

While the conflict in Ukraine represents a high intensity period of this new cold war, it is important to realize that, just like the original cold war, it is likely that the intensity of the new cold war will fluctuate over time.²⁸⁴ Moreover, the course of the original cold war suggests that this is likely to be a marathon rather than a sprint. The original cold war lasted more than 40 years.²⁸⁵ The current cold war could also be a conflict that spans generations.

While a cold war between nuclear-armed superpowers is bad for almost everybody, it would be considerably worse if those superpowers engaged directly in armed conflict.²⁸⁶ Thus, it is very important that this does not become a hot war because the risk of a conventional conflict escalating into a nuclear war is substantial.²⁸⁷ Just like in the original cold war, diplomacy will play an important role as the parties try to manage the risks of this cold war.²⁸⁸ For example, a number of arms control treaties were negotiated during the original cold war as the superpowers sought to lower the risk of war, including the 1963 Nuclear Test

282. *See supra* text accompanying notes 102-05.

283. It is harder to point to a particular event that demonstrates that the US is in a cold war with China, but it does appear to be linked with Xi Jinping becoming President of China. President Xi has made China more assertive in its foreign policy, modernized its military, increased its nuclear arsenal, and overseen a sharp turn towards authoritarianism and repression internally. *See supra* Sections IV-V.

284. *See supra* text accompanying notes 16-17.

285. *See supra* Section II.

286. *See supra* Section IV (discussing the risks of a hot war).

287. *See supra* text accompanying notes 106-19.

288. *See supra* text accompanying note 120.

Ban Treaty,²⁸⁹ the 1967 Outer Space Treaty,²⁹⁰ the 1971 Seabed Arms Control Treaty,²⁹¹ the 1972 Biological Weapons Convention,²⁹² the 1972 SALT I Interim Agreement,²⁹³ and the 1972 Anti-Ballistic Missile Treaty.²⁹⁴ This new cold war may require the US and China to engage in similar arms control negotiations.²⁹⁵ Unfortunately, the US and China can barely talk to one another because of their mutual suspicion and animosity.²⁹⁶

Despite having some important similarities with the original cold war, this new cold war also has some key differences. First, the trajectory of this cold war could be different from the original one. China is already an economic superpower and will likely become a military superpower in the coming decades.²⁹⁷ Moreover, China has had consistently high levels of economic growth.²⁹⁸ The United States, on the other hand, has had relatively low growth

289. See Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, Aug. 5, 1963, 14 U.S.T. 1313.

290. See Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205

291. See Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof, Feb. 11, 1971, 23 U.S.T. 701, 955 U.N.T.S. 115.

292. See Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Apr. 10, 1972, 26 U.S.T. 583, 1015 U.S.T.S. 163.

293. See Treaty on the Reduction and Limitation of Strategic Offensive Arms, U.S.-U.S.S.R., July 31, 1991, S. TREATY DOC. NO. 102-20, 102-32 (not in force).

294. Treaty on the Limitation of Anti-Ballistic Missile Systems, U.S.-U.S.S.R., May 26, 1972, 23 U.S.T. 3435.

295. See David C. Logan, *Trilateral Arms Control: A Realistic Assessment of Chinese Participation*, THE STIMSON CTR. (Aug. 9, 2021), www.stimson.org/2021/trilateral-arms-control-a-realistic-assessment-of-chinese-participation/ (noting that the Biden administration is interested in arms control talks with China) [<https://perma.cc/G2LM-N5XD>].

296. See Perlez, *supra* note 68.

297. See *supra* Section V(A).

298. See *supra* text accompanying note 237.

for several decades.²⁹⁹ This presents the possibility that the balance of power will shift towards China over time.³⁰⁰ This would mark a change from the original cold war, where the Soviet Union's economy weakened over time, tilting the balance in favor of the United States.

This new cold war is also marked by strong economic ties between the main participants, unlike the original cold war.³⁰¹ China is the largest supplier of goods to the US. This suggests that both sides have reasons to avoid a complete breakdown in relations because any serious trade war would hurt both countries.³⁰² Having said that, as Russia's invasion of Ukraine has shown, economic ties do not necessarily prevent conflict.³⁰³ Russia's invasion highlights the need for both sides to engage in robust diplomacy to avoid the cold war becoming a hot war.

A third difference between the new cold war and the original one is that the world is now multipolar rather than bipolar.³⁰⁴ The last two decades have seen the rise of new emerging powers among the developing states.³⁰⁵ These new powers may want to avoid becoming involved in this new cold war, preferring instead to engage with the US and China while not becoming fully aligned with either.³⁰⁶ Because of this multipolar reality, it will be harder for the superpowers to achieve their goals as power and influence are spread over a larger number of countries. This will force the superpowers to engage with these new emerging powers through negotiation and diplomacy rather than fiat.³⁰⁷

Although predicting the future is inherently speculative, how might this new cold war end? There are several possibilities.³⁰⁸ One is that China's economy crashes and this breaks the

299. *See supra* text accompanying note 239.

300. *See supra* Section VI.

301. *See supra* Section VI.

302. *Id.*

303. *Id.*

304. *See supra* Section VI.

305. *See* Stephen, *supra* note 36, at 484.

306. *See supra* text accompanying notes 255-61.

307. *See* Stephen, *supra* note 36, at 484.

308. This is not an exhaustive list of all the possible ways this new cold war could end. Rather, this section considers some of the most likely outcomes.

stranglehold of the CCP on power. It may not be possible for China to continue its high levels of growth, but the CCP has staked much of its reputation on continuing China's economic success.³⁰⁹ If the economy faltered, the Chinese regime could collapse.³¹⁰ A second possibility is an American collapse. The US economy has had relatively low levels of growth for some time³¹¹ and the country is becoming increasingly polarized.³¹² Moreover, democracy and the rule of law are under attack.³¹³ This could result in the end of liberal democracy in the United States.³¹⁴ It is not possible to determine if an American collapse is more or less likely than a Chinese one, but either could bring the new cold war to an end and leave the last surviving superpower as the winner. Neither of these outcomes is desirable, however, as the collapse of either superpower would have terrible consequences both in the collapsing country and worldwide.³¹⁵

309. Maizland & Albert, *supra* note 51.

310. This outcome might look somewhat like the end of the original cold war, where economic weakness ultimately undermined the Communist Party's hold on the Soviet Union. *See supra* text accompanying note 18-22.

311. *See supra* text accompanying note 238.

312. *See e.g.*, Michael Dimock, *America Is Exceptional in its Political Divide*, PEW (Mar. 29, 2021), [www.pewtrusts.org/en/trust/archiv e/winter-2021/america-is-exceptional-in-its-political-divide \[https://perma.cc/96CW-GK25\]](http://www.pewtrusts.org/en/trust/archiv e/winter-2021/america-is-exceptional-in-its-political-divide [https://perma.cc/96CW-GK25]).

313. *See supra* text accompanying notes 239-40.

314. *See, e.g.*, Thomas Homer-Dixon, *The American polity is Cracked, and Might Collapse. Canada Must Prepare*, THE GLOBE & MAIL, www.theglobeandmail.com/opinion/article-the-american-polity-is-cracked-and-might-collapse-canada-must-prepare/ (Jan. 2, 2022) (arguing that the U.S. is becoming increasingly ungovernable and that liberal democracy might not survive) [<https://perma.cc/NUC3-JU4F>].

315. *See, e.g.*, Chi Wang, *The US Is Pushing Back Against China. What Happens If We Succeed?*, THE DIPLOMAT (Apr. 19, 2019), <https://thediplomat.com/2019/04/the-us-is-pushing-back-against-china-what-happens-if-we-succeed/> ("China currently holds more than one-sixth of the world's population. And, due to globalization, China's economy is intertwined with that of the rest of the world more than ever before. China's collapse, or even decline, would ripple across the Asia-Pacific and the world.") [<https://perma.cc/8M64-4ATL>].

A third possibility is a hot war. This is unlikely but is by far the worst of the possibilities. Any conventional war between the US and Russia or China would result in large numbers of casualties, massive destruction of equipment and infrastructure,³¹⁶ economic dislocation,³¹⁷ and the possibility of escalation into a nuclear conflict.³¹⁸ The US, China, and Russia will presumably work hard to avoid such an outcome, but lack of information and misperceptions about an opponent's goals and actions can lead to unintended results.³¹⁹ This outcome is probably the least likely, at least in the short term.

A fourth possibility is that the parties negotiate a peaceful resolution of the conflict. This might entail the US agreeing to share power with China globally and allowing China to be preeminent in Asia.³²⁰ This would probably mean conceding Taiwan to China,³²¹ but the US and China could build upon their deep economic connections³²² to develop a less antagonistic and more constructive relationship going forward. This would not mean that China would have to become a democracy. Rather the US would have to come to terms with China as it is – an authoritarian regime controlled by the CCP – and agree to share power with it.³²³ This outcome is not likely in the short term,

316. The conflict in Ukraine is an example of the costs of modern large-scale conventional conflicts. *See supra* text accompanying notes 138-43.

317. *See supra* text accompanying notes 245-48.

318. *See supra* text accompanying notes 106-19.

319. *See supra* note 108.

320. It is China's long-term goal to dominate, politically and militarily, the area around it. *See supra* text accompanying notes 147-57. Any negotiated solution to this new cold war would probably have to permit China to realize this goal.

321. China views reunification with Taiwan as essential to its national identity. *See supra* text accompanying notes 85-94. It is unlikely that China's leaders would negotiate an end to this new cold war without resolving the situation of Taiwan in China's favor.

322. *See supra* text accompanying note 245-47.

323. The CCP is committed to maintaining control over China and that is unlikely to change in the foreseeable future. *See supra* note 51; *see also supra* text accompanying notes 163-69.

however, because none of the participants are willing to engage in meaningful negotiations to end the cold war at this time.³²⁴

The last possibility is that the parties simply maintain the status quo. The new cold war would continue. This would mean political tensions, trade wars, diplomatic posturing, espionage, proxy wars, and propaganda.³²⁵ The participants might even develop modern versions of the Truman and Brezhnev doctrines that create mutually antagonistic spheres of influence.³²⁶ This future might look something like the middle years of the original cold war.³²⁷ If history is a guide, such a status quo could be stable for several decades.³²⁸ While a decades-long cold war between nuclear-armed superpowers is not in anybody's best interest, it is both the most likely outcome in the short to medium term as well as one of the least worst possibilities. Thus, preserving the status quo for the foreseeable future may be the best we can hope for.

324. Even negotiations about arms control, which would be just a small part of any larger resolution of the new cold war, have encountered numerous hurdles. *See* Logan, *supra* note 295 (describing Chinese opposition to meaningful talks about arms control).

325. *See supra* text accompanying note 15 (noting that these were features of the original cold war).

326. *See supra* text accompanying note 5 (describing the Truman doctrine). The Soviet Union developed a similar theory – called the Brezhnev Doctrine – committing it to preventing communist states from being overthrown. *See* Stephen G. Glazer, *The Brezhnev Doctrine*, 5 INT'L LAWYER 169, 169 (1971).

327. *See supra* Section II (describing the original cold war).

328. *Id.* (noting that the original cold war lasted more than 40 years).

