

*Journal of*

# INTERNATIONAL RELATIONS

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ISABELLA MCCALLUM | *Should the United States Discourage the Proliferation of Indigenous Nuclear Weapons in South Korea?*

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Volume 22  
Spring 2020

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- The journal focuses primarily on research conducted by undergraduates, but graduate students who are members of SIR may submit a paper for review.
- All work must be original.
- Papers should be between 2,000 and 6,000 words in length.
- For formatting guidelines, please refer to our webpage.

Submission for the 2021 Edition of the Journal are due on or before **January 31, 2021**.

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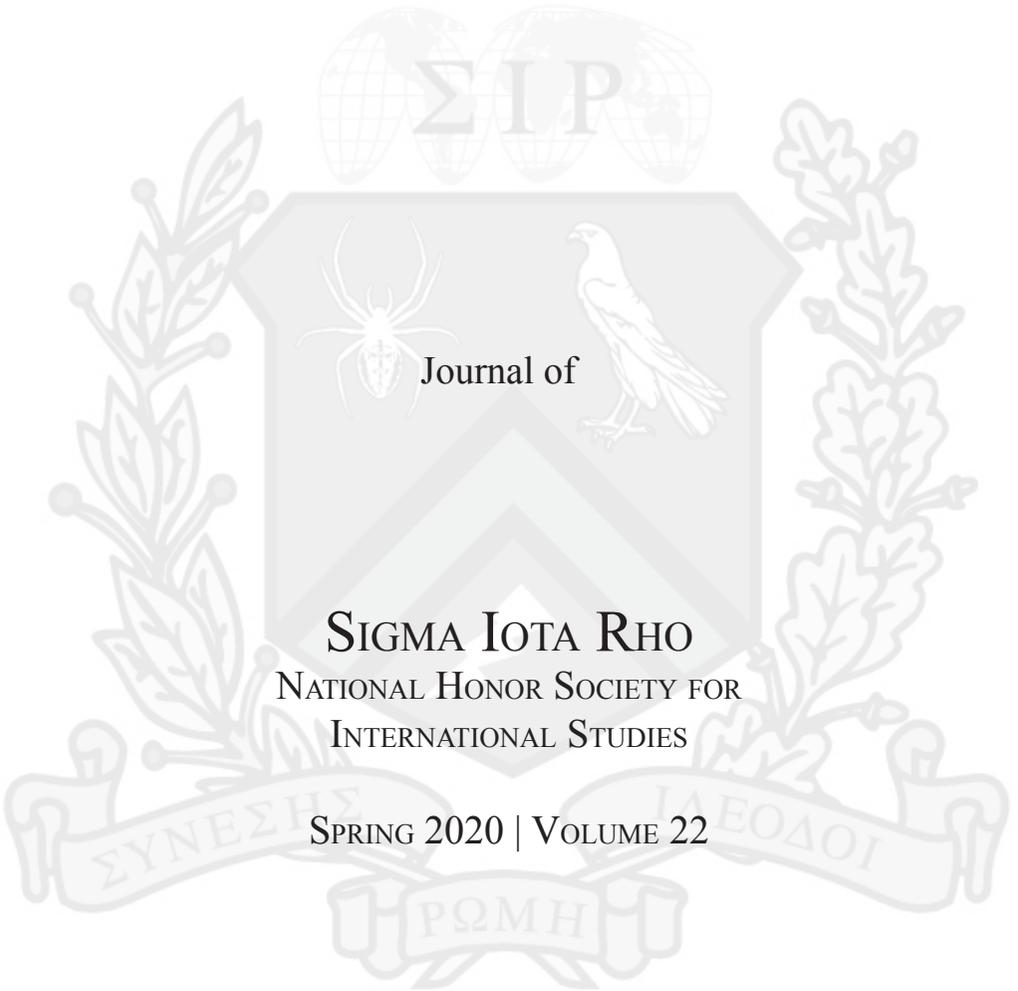
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Dear Reader:

I am honored to present the twenty-second edition of the Sigma Iota Rho Journal of International Relations. The Journal brings together leading undergraduates in the field of international relations, proudly displaying their commitment to research and interest in learning more about our world. This year's articles continue a well-earned reputation of academic rigor and excellence, drawn from a highly competitive pool of submissions around the world. The Journal's unique place within the scholarly community offers a seminal forum for undergraduates to debate issues like United Nations peacekeeping, the crisis of European refugees, and the management of the Chinese economy. I also invite you to peruse our online journal at [SIRjournal.org](http://SIRjournal.org) for opinion, blog and research pieces that contribute to SIR's mission to encourage open forum discourse on international affairs. Our online Editor-in-Chief, Francesca Arruda de Amaral, has made a truly phenomenal contribution to the online journal this year by continuing to publish important articles offering critical perspectives on the challenges facing our world today.

This year, we are honored to publish former Deputy Secretary General to the North Atlantic Treaty Organization, Ambassador Alexander Vershbow. Contemporary challenges in American democracy have been precipitated by a lack of transparency. Central to these shortcomings are American political relationships in Russia and Ukraine, which Ambassador Vershbow addresses in his speech at the Johns Hopkins School of Advanced International Studies. Reflecting on his time as United States Assistant Secretary of Defense and Ambassador to Russia, Ambassador Vershbow brings a clear and honest perspective to the importance of democracy and transparency in Ukraine in order to uphold the international rules-based order and propagate global leadership guided by democratic values.

Following the transcript of Ambassador Vershbow's speech, the Journal features nine undergraduate articles that contribute their research to the field of international studies. This year's topics span a wide range of contemporary global phenomena, including nuclear proliferation in South Korea, the Chechen conflict, and an examination of Turkey's foreign policy in Cyprus. I hope that these pieces challenge you to think critically and evaluate your perspectives on important affairs in world politics.

Finally, I would like to recognize the contributions of numerous individuals whose hard work was instrumental to the publishing of this year's journal. I wish to thank Dr. Frank Plantan, National President of SIR, Dr. Tomoharu Nishino, Journal Faculty Advisor, and Mark Castillo and Marisol Arcaya, SIR Senior Liaison Officers, for their invaluable guidance and support. Above all, I would like to thank Deputy Editor Aaron Chen, and the rest of the staff for the countless hours they have committed to the Journal.

Sincerely,



Justin Melnick  
Editor-in-Chief, Journal of International Relations

I saw an illuminating Facebook post today that read, “Imagine if during the London Blitz there’d been a whole bunch of people going “I’LL LEAVE MY LIGHTS ON IF I FEEL LIKE IT!” Setting aside politics for a moment I wonder just how many people today would even get the historical reference point? Consider too that this meme also implied some knowledge of constitutional history, law and legal interpretation of the Bills of Rights, and the ability to evaluate contending theories of pandemic management against the flood of conspiracy bloggers, foreign government disinformation campaigns, and the clash of “mainstream media” vs. social media. What are the skills a person would need to interpret the meme and build an argument for or against its implication for one’s political position and perhaps even how a person might vote in the next election? This illustrates the importance of a broad, interdisciplinary, liberal arts education; one that can put current events in historical context, that connects the sociological and economic conditions that shape politics, and that can see the global implications and feedback loops on the local experience and impact of COVID-19.

I have never been more convinced and committed to the goals and mission of Sigma Iota Rho—the advancement and promotion of the study of international affairs among the student body on campus, and the education of the community and the wider society about the challenging dynamics (whether in dealing with a pandemic or concerns about nuclear proliferation) that impact us all today. This requires an education that characterizes the studies of our membership embedding a curiosity about how the world works within a program of study that values the testing of theories and hypotheses with empirical data and the ability to interpret and explain or explicate one’s position in well-constructed essays or oral argumentation. SIR members are the *crème de la crème* of all students in international studies, international relations, global studies and all related fields from law to sustainable development. If past is prologue, they are our future managers, directors, CEO’s, creators and founders of start-ups, and the next generation of leadership in government administration, policy circles and think tanks, and the political leadership of the nation.

Now, in this time of despair for so many, it is my hope that our members -- particularly graduating seniors who must feel they were dealt an unfair hand by fate with the denouement of their senior year with the loss of all the joyful tears of farewells, the rewards of recognition for a job well-done, and the heart break of having internships and jobs withdrawn as you begin your post-graduate life – will demonstrate the resolve, resilience and leadership that have taken you this far in your education to keep moving forward. More than ever we need a new generation of rational, reasoned, informed citizens and a leadership that will value expertise over expediency and help us renew our social contract and assume America’s historical leadership in the world community. I want to assure you that your talents will be doubly in-demand in the post-crisis global economy rebound.

However, I recognize that my cheerleading of you from afar may seem platitudinous to some for whom no amount of encouragement or good cheer will clear away any dark clouds or the foggy view of the future under which COVID-19 has shrouded us. At a time when people are questioning so many of our fundamental values I would suggest that a bit of existential self-reflection to understand the difference between an existential crisis and an existential dilemma. We must keep in mind that times like this are transitory, even while experiencing seemingly interminable weeks of self-isolation and social distancing. Many are questioning the meaning of life, values shared or internalized, or the purpose of four years of study in a way puts the immediate experience in high relief and diminishes the cumulative aggregative development of ones’ mind, life, and experience. Philosophy has distinguished the difference between existential crisis and existential dilemmas by showing

LETTER FROM THE PRESIDENT

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that the latter is a healthy and necessary questioning of the problematics of surviving and moving ahead in life, seeking a path that leads to fulfillment, self-actualization, and at the most basic level, happiness. We face such existential dilemmas throughout our lives as we search for meaning and the internal satisfaction of a job well-done or a day lived to its fullest. And because we live in multi-layered communities from local to global and share this planet, how we resolve these questions helps determine not only our choices and outcomes, but that of the wide world around us. This is, in essence, the *raison d'être* of Sigma Iota Rho and how we can make the world a better place one individual at a time.

Our planet needs the care and attention that a healthy system of international cooperation and peaceful resolution of disputes and a political economy that will sustain us into the indefinite futures of our children and grandchildren. As we move forward in the post-COVID-19 world I am expecting all of you to lead the way forward and wish you much continued success in life.

Best regards,

Frank Plantan

A handwritten signature in black ink, appearing to read "Frank Plantan". The signature is written in a cursive, flowing style.

President, Sigma Iota Rho



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# Russia vs. Ukraine: War Without End?

**ALEXANDER VERSHBOW<sup>1</sup>**

UNITED STATES AMBASSADOR

February 2020 marked the sixth anniversary of Russia's illegal annexation of Crimea and the launch of its undeclared war in the Donbas region of Eastern Ukraine. The war has claimed the lives of more than 13,000 Ukrainians despite the ceasefire and peace agreements reached in Minsk in February 2015.

2014 was the starting point of Russia's open aggression against Ukraine. However, Moscow's hybrid war started long before that, with the Kremlin interfering in Ukraine's 2004 elections, exploiting corrupt business connections, harassing civil activists, and imposing trade embargoes on Kyiv. The destabilization campaigns orchestrated by Russia in Crimea and Donbas did not start with the "little green men" – the Russian soldiers without insignias that seized parts of Ukraine's sovereign territory six years ago; they long preceded them.

However, by illegally annexing Crimea and invading Eastern Ukraine, Putin effectively threw away the international rule book. In Crimea and Donbas, Russia openly and fundamentally challenged international law and the sovereignty of its neighbors, flagrantly violating the UN Charter, the Helsinki Final Act, and many post-Cold War agreements.

While relations with Moscow were going downhill well before 2014, Russia's aggression also marked the end of efforts by the United States and Europe to form a strategic partnership with Russia following the end of the Cold War.

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<sup>1</sup> Alexander Vershbow is a Distinguished Fellow in the Brent Scowcroft Center on Strategy and Security at the Atlantic Council in Washington DC, and the Howard Wolk Distinguished Visiting Fellow at Perry World House at the University of Pennsylvania. During his 40-year career as a professional diplomat, he served as NATO Deputy Secretary General (2012-2016), US Assistant Secretary of Defense for International Security Affairs (2009-2012), and US Ambassador to NATO (1997-2001, Russia (2001-2005) and the Republic of Korea (2005-2008). This article is adapted from a speech delivered on March 4, 2020 at John Hopkins School of Advanced International Studies in Washington DC.

Today's Russia is no longer interested in partnership or integration into the Euro-Atlantic community. President Putin seems to revel in confrontation with the West aimed at rolling back the post-Cold War settlement and undermining the international rules-based order. Ukraine is the main front, but not the only front, in Russia's war against the West.

With the recent impeachment of President Trump and his attempted coercion of Ukrainian President Zelenskyy to dig up dirt on Trump's main political rival, Ukraine has been the target of disinformation and negative propaganda in the United States. Americans hear that it is allegedly the world's most corrupt country and underserving of American support; that it was Ukraine not Russia that interfered in the 2016 US elections despite the preponderance of evidence to the contrary.

In this article, I would like to look beyond the propaganda and recall why Russia's war against Ukraine matters to the United States, our European allies and all other democratic nations who still believe in a world based on the principles of freedom, state sovereignty, peaceful resolution of disputes and the rule of law. And I will provide an analysis of what are the main drivers of Russia's ongoing aggression against Ukraine and what, if anything, the United States and its allies can do to help bring the conflict to an end.

I visited Kyiv in February 2020 with several other former Ambassadors and senior US officials as part of a "reassurance tour" organized by my think-tank, the Atlantic Council. The message of our bipartisan delegation was that, despite the false narratives being spread by Rudy Giuliani, President Trump, and many of his supporters, bipartisan support for Ukraine remains strong in the United States, particularly in the US Congress.

This was highlighted by the \$50 million increase in military aid authorized by the Congress in December 2019 and the imposition of sanctions on the Nord Stream 2 natural gas pipeline. These sanctions blocked completion of the pipeline for at least a year two, denying Russia the ability to bypass Ukraine's gas pipeline system for its exports to Europe, which would have cost Ukraine billions of dollars in lost transit fees. The sanctions forced Russia to agree to a five-year gas-transit deal that benefits Ukraine financially and strengthens its energy security and that of Europe.

In the delegation's meetings with senior officials in President Zelenskyy's administration, as well as with members of Ukraine's parliament and civil society, all our interlocutors made clear that Ukraine still counts on – and truly depends on – US support going forward. They also had a good story to tell about the progress the new Ukrainian government had been making on reforms and the battle against corruption.

This was the message that Western leaders heard from President Zelenskyy himself at the annual Munich Security Conference in mid-February, where he also laid out an ambitious plan to jumpstart diplomacy aimed at ending the war in the Donbas before it hardens into

another “frozen conflict.”

The progress Ukraine has made would be hard enough under normal circumstances for a country still struggling to overcome its Soviet past. It’s even harder to build a prosperous, law-based state in the face of determined efforts by Moscow to make Ukraine a failed state.

### **What are Moscow’s motivations and objectives in Ukraine?**

Six years since the start of the conflict, Putin’s goals in Ukraine remain largely unchanged. He hasn’t been able to fully achieve those objectives thanks to Ukrainian resolve and Western support, including military assistance and holding the line on sanctions. Putin wildly over-estimated the degree to which Russian-speakers in Ukraine wanted to join Russia, and under-estimated Ukrainians’ readiness to fight to preserve their independence.

Putin has also been hesitant to launch an all-out military assault on Ukraine, knowing that the war is unpopular and that the Russian public is averse to casualties. That is the main reason he continues to deny that Russian forces are even present in Donbas and that Russia is just a bystander, rather than the aggressor in this inter-state conflict.

Nevertheless, despite these constraints, Russia’s goal is still to deprive Ukraine of its sovereignty and independence and to block its path to integration with the European Union and NATO. That is why Putin intervened to stop former President Viktor Yanukovich from signing an Association Agreement and Free Trade Agreement with the European Union in the fall of 2013.

Yanukovich’s decision enraged the Ukrainian public, who were counting on closer ties with Europe in parallel with continued good-neighborly relations with Russia. His decision triggered the Euro-Maidan protests, or Revolution of Dignity. And it is why Putin seized Crimea and fomented separatism in the East when violent repression – also encouraged by Moscow -- failed to stop the revolution and led Yanukovich to flee the country.

Six years later, Putin still is determined to re-subordinate Ukraine to Moscow’s sphere of influence as part of a new Yalta agreement or “Soviet Union Lite,” undoing US- and European-led efforts over the past three decades to establish a Europe “whole, free and at peace.”

That is what is at stake for the West and why ensuring that Putin does not succeed is essential to the future of the international rules-based order that the United States and its allies have forged and defended since 1945. It is why Ukraine’s fight for freedom is our fight as well.

Putin’s effort to subjugate Ukraine is driven by a number of motives. As noted earlier, he wants to roll back the changes that took place after the fall of the Berlin Wall in 1989, in-

cluding the 1991 dissolution of the Soviet Union itself – which he considers the “greatest political catastrophe of the 20th century” – and to restore the Russian empire at least on the territory of the former USSR.

Styling himself as the heir to the Tsars and to Stalin, who expanded the territories under Moscow’s dominion, Putin wants to recover large parts of Ukraine that he considers to be “ancient Russian lands” – Crimea, the southeast (which Putin in 2014 started calling “Novorossiia,” New Russia, as in tsarist times) and the Black Sea coast including the major port city of Odessa. He also aims to reestablish hegemony over Belarus and parts of Georgia, Kazakhstan and Moldova.

Underpinning these territorial claims is Putin’s unshakeable view that Ukrainians and Belarusians are part of a single Russian nation and therefore undeserving of independence. In Putin’s logic, Ukraine is the separatist project that needs to rejoin Mother Russia.

Another motivation is Putin’s desire to restore Russia’s status as a global superpower, which is enhanced by demonstrating the ability to take decisive military actions – as seen in Ukraine and in Syria – in ways that the West is unable to stop. In his effort to “make Russia great again,” Putin defines Moscow’s interests in opposition to a hostile West which, according to Russian official propaganda, is blinded by hatred of all things Russian and is trying to tear Ukraine away from its rightful owner.

While these imperial ambitions are important, Putin’s primary motivation in his undeclared war against Ukraine, in my view, is maintaining and consolidating the power of his own kleptocratic regime. Weakening Ukraine, calling its nationhood into question, stoking inter-ethnic and religious tensions, violating its sovereign borders, hacking its critical infrastructure, undermining its reforms, fueling its corruption, discouraging Western investment – all of these are means to diminish the appeal of Ukraine as a model for the Russian people and make it an unattractive candidate for the European Union and NATO.

By describing Ukraine as a failed state ruled by fascists, by disparaging its pursuit of democracy and Euro-Atlantic integration, and by discrediting democracy itself across the Euro-Atlantic space through disinformation and election interference, Putin seeks to prevent Ukraine from becoming the catalyst for a Euro-Maidan-style revolution in Russia.

In short, what Putin fears most in Ukraine is not the expansion of the EU or NATO, but the penetration of Western ideas – democracy, individual liberty and the rule of law – that could cement Ukraine’s reorientation toward Europe and away from Russia. The watershed events for Putin were the Rose and Orange revolutions in Georgia and Ukraine in 2003 and 2004, the Arab Spring in 2011, and the Bolotnaya Square protests that greeted Putin’s own return to the Presidency that same year. These people’s revolutions (which he attributes to plots by Western intelligence services) demonstrated the power of Western

ideas to trigger regime change, Putin's worst nightmare.

Putin is pursuing in Ukraine the same strategy Russia has pursued in Georgia and Moldova since the frozen conflicts first erupted in those countries in the early 1990s. But Ukraine is far more important for Putin, given its size, strategic location, and historic and cultural ties to Russia. Putin undoubtedly agrees with Zbigniew Brzezinski's famous line that "with Ukraine, Russia can be an empire again," whereas "without Ukraine, Russia ceases to be an empire."

Unfortunately, millions of Russians share Putin's view that not only Crimea, but most of Ukraine, is "ours" and must sooner or later return to the fold. As a consequence, Putin is not likely to scale back his ambitions any time soon.

### **What is to be Done?**

In these circumstances, Ukraine and its Western allies must do everything possible to raise the costs to Putin for his aggression, deter further escalation, and increase the pressure on him to withdraw from Ukrainian lands. Without additional pressure, Putin could well conclude that he can sustain the current low-level violence indefinitely, jeopardizing stability in Ukraine and the wider region for years to come.

For the West, increasing the pressure means not just maintaining but tightening sanctions, continuing to back Ukraine politically, economically and militarily, and deepening Ukraine's partnerships with the EU and NATO – showing Putin that time is not his ally.

For Ukraine, better resisting Russian aggression requires fully implementing its reform and anti-corruption agenda, boosting its energy independence, and enhancing its resilience against conventional and hybrid threats, such as cyber-attacks, political subversion and disinformation. A strong, democratic Ukraine with a strong and vibrant civil society, governed by the rule of law, will make it harder for Russia to succeed in its destabilization strategy.

At the same time, Ukraine needs to maintain its commitment to a diplomatic solution in Donbas and, in the longer term, in Crimea that would fully restore Ukrainian sovereignty and territorial integrity. Putin may not be prepared to negotiate in good faith anytime soon, but Ukraine should continue to challenge Moscow to fulfill its side of the 2015 Minsk agreements and not let Moscow portray Kyiv as the recalcitrant party to the conflict.

President Zelensky is correct to focus on convincing Russia to take the steps necessary to permit the holding of credible local elections in the occupied territories as early as this October. Local elections are the pivot point under the Minsk agreements in terms of opening the way to restoration of Ukrainian sovereignty over the occupied portions of Donbas.

Conditions for elections that would accord with Ukrainian law and OSCE standards include a long-term ceasefire (the first requirement of the parties that Moscow has never upheld), withdrawal of heavy weapons and all Russian-led forces, unhindered access for OSCE monitors, and return of control over the international border to Kyiv before local elections can take place.

This last point is the most difficult. Moscow wants Kyiv to agree to sham elections, with Russian and separatist forces still present in the Donbas, that would legitimize the puppet leaders, preserve Moscow's control over the self-declared people's republics, and lead, at most, to their reintegration into Ukraine as a kind of Russian-controlled Trojan Horse.

At the December 2019 Summit meeting of the so-called Normandy Format (Ukraine, France, Germany, Russia), Zelenskyy called for flexibility in interpreting Minsk, with cautious support from German Chancellor Angela Merkel. Putin, not surprisingly, insisted on sticking to the letter of Minsk, which states that Ukraine can only regain control of the international border at the end of the process, after local elections have been held.

This was and remains a non-starter for Kyiv, since it would allow Russian forces to continue to intimidate the local population and impede the return of displaced persons, Ukrainian media and political parties that would be essential if local elections are going to meet international standards.

In fact, some form of neutral security presence – ideally a multinational peacekeeping force under UN Security Council mandate with troops from non-NATO states like Finland, Austria, or Serbia – would be the best way to ensure that elections achieved a minimum level of credibility. An international peacekeeping force could allow credible local elections to be held in accordance with Ukrainian law and OSCE standards, as Minsk stipulates, while postponing the return of Ukrainian forces to the international border until the end of the process, as Putin insists.

The presence of armed peacekeepers to maintain order in the now-occupied territories would deprive Putin of his argument that the early withdrawal of Russian-led forces would lead to a “Srebrenica”-style massacre of Russians and Russian-speakers in Donbas. It would put the onus squarely on Moscow for the lack of progress in the negotiations.

There are other options that Kyiv is reportedly considering, such as an internationally vetted joint police force drawn from the Ukrainian population on both sides of the Line of Contact, that could assume responsibility for security in place of Russian and proxy forces. Thus far, however, there is no sign Russia is prepared even to discuss, much less accept, any ideas of this kind.

Putin's suggestion of international peacekeepers in 2017 was much more narrowly focused

– essentially envisaging armed bodyguards to accompany the OSCE civilian monitors who would be confined to the Line of Contact, while leaving Russian-led occupation forces in place. Putin’s proposal would likely have frozen rather than resolved the conflict by turning the Line of Contact into a hard border.

Still, despite Russia’s obstructionism, Ukraine should stay on the diplomatic offensive, and continue to offer creative ideas in support of its proposal to hold local elections in Donbas at the same time such elections are held in the rest of Ukraine in October of 2020, however ambitious that may be.

Strong US support and high-level engagement in the diplomatic process remain essential to persuading Russia to negotiate in good faith, especially after the US impeachment drama has called the Trump Administration’s support for Ukraine into question.

Secretary Pompeo’s visit to Ukraine in early February of 2020 was long overdue and it remains imperative that President Trump receive President Zelenskyy in the White House without further delay as a sign of US support for a democratic, reformist Ukraine. The United States should also get a Senate-confirmed Ambassador to Kyiv as soon as possible, after the shameful ouster of Marie Yovanovitch.

The Ukrainians would also benefit from the designation of a senior US diplomat to work in tandem with them and the other Normandy Format countries on ways to implement Minsk. This doesn’t need to be a full-time special envoy (the role played by former Ambassador Kurt Volker until he was compelled to resign because of his role in activities that led to Trump’s impeachment). But active and visible US engagement is needed to showcase Washington’s political commitment to a just settlement and to ensure that Ukraine’s other Western allies refrain from pressuring Ukraine to make one-sided concessions).

The US point-person could engage face-to-face with the Kremlin’s new Ukraine “curator” for the Donbas issue, Dmitriy Kozak, as Volker did with Kozak’s predecessor Vladislav Surkov, and make crystal clear to Moscow that sanctions will only be lifted when Ukrainian sovereignty is restored. The need to fight the coronavirus in no way justifies acquiescing in Russian aggression and violations of international law.

### **What if diplomacy remains stalemated?**

Taken together, these steps can keep Moscow on the defensive, but I am not so optimistic to suggest that they will be sufficient to change Putin’s calculus, at least in the short term. Although he is keen to get out from the pressure of sanctions, which continue to limit the growth of the stagnant Russian economy, Putin may hope that EU unity on maintaining the sanctions will crack and that a reelected President Trump will weaken the sanctions as part of a grand bargain with Russia.

Even in the longer term, Putin may view the status quo of “no war, no peace,” and perhaps a protracted frozen conflict in Donbas similar to those in Moldova or Georgia, as preferable to handing back Donbas to Ukraine, which would be seen as a political defeat. He may hope that the passage of time will weaken Zelenskyy’s and the West’s resistance to sham elections in today’s unacceptable conditions that would turn the Donbas into a permanent fifth column or Trojan horse.

If Putin proves to be inflexible, Ukraine and its Western backers will need to hold firm to their redlines and be prepared to hunker down for the long haul, keep the pressure on, and show Putin that time is not on his side.

In this case, Ukraine would have no choice but to shift to a containment strategy under which it would: acknowledge that the reintegration of Donbas isn’t achievable for now; work to limit the violence as much as possible by pursuing further prisoner exchanges and de-escalation measures along the Line of Contact; and seek to establish a more comprehensive and durable ceasefire while diplomacy is put on the back burner.

Containment shouldn’t be seen as abandoning Donbas, however. Ukraine would want to continue its outreach to the beleaguered population of the occupied territories, making clear Kyiv’s concern for the well-being of all its citizens despite the diplomatic deadlock, and underscore its determination to see every prisoner, refugee and displaced person returned to their homes.

To this end, Ukraine should make it easier for citizens on both sides to travel across the Line of Contact for trade and humanitarian purposes, expand Russian-language broadcasting to weaken the effect of Russian propaganda, and devise other ways to win the hearts and minds of Donbas citizens and promote reconciliation.

### **Don’t forget Crimea**

Finally, while the hot war in Donbas is the focus of attention and of diplomatic efforts, Crimea should not be forgotten. Whatever the Russian media says, there has been no economic miracle in Crimea since its illegal annexation and occupation six years ago, despite Putin’s promises. Rather, Crimea is a huge drain on the Russian budget and the economy is stagnating even more than the rest of Russia’s.

Occupied Crimea has become a repressive police state where the rights of the Ukrainian minority and the indigenous population – the Crimean Tatars – are constantly and blatantly violated through intimidation, political persecution, and abductions. Many Crimean Tatars are being forced to flee their native land, bringing back memories of the forced

expulsion of the entire Crimean Tatar population by Stalin during World War II.

Russia's construction of the Kerch bridge that links Russia to Crimea is also very disturbing. To protect the bridge, Moscow illegally seized three Ukrainian ships and their crews at the end of 2018 and is increasingly interfering with Ukrainian and international shipping to and from the important port of Mariupol along the Sea of Azov in Ukrainian-held portions of Donbas.

The militarization of the occupied Crimean Peninsula and surrounding area has also been accelerated: Moscow has inserted a new marine brigade in the region and deployed new submarines, Backfire bombers and S-400 missile defense systems to impede access by NATO to the area. Russia may be reintroducing nuclear weapons in violation of the Non-proliferation Treaty. All of these moves enable Russia to penetrate deep into Ukraine and they threaten the territory of America's NATO allies in the region, in particular Romania and Turkey.

In response to Russia's actions, we need to keep Crimea on the agenda in several ways.

First, our Crimea non-recognition policy needs to be beefed up and effectively enforced. Secretary Pompeo's Crimea Declaration of July 2018 was a good start. As his predecessor Sumner Welles had done in 1940 in refusing to recognize the Soviet annexation of the Baltic States, Pompeo stated unequivocally that the United States will never accept or recognize Russia's attempted annexation of Crimea.

Pompeo should persuade President Trump to make a similar declaration, to dispel doubts that have been created by some of his earlier statements conveying uncertainty about his rejection of Russian claims to Crimea.

Congress could make its own declaration, perhaps in the form of an updated version of the 1959 Captive Nations Resolution, affirming US support for the sovereignty and territorial integrity of Ukraine and the other former Soviet states with portions of their territory under Russian occupation – Georgia and Moldova – and upholding the right of all states to chart their own course without interference from Moscow.

EU members should also reinforce their Crimean non-recognition policy and pursue it on an everyday basis, upholding sanctions and punishing those who violate them, including politicians and businessmen who visit the occupied peninsula without Kyiv's approval.

As part of a long-term non-recognition policy, the West should continue to raise the Crimea issue in its interactions with Moscow. Russia treats it as a *fait accompli* and refuses to discuss it, hoping that in time the United States and its allies will acquiesce in Russian aggression. We must not let them get away with this.

We should more forcefully debunk the Russians' bogus historical narrative about the events of 2013-2014, and we should refute the specious legal arguments they have advanced to justify the annexation and the sham referendum that preceded it.

The only coup d'état that took place in Ukraine in 2014 was in the Crimean capital of Simferopol, where Moscow's puppets took power, backed up by illegally deployed Russian soldiers without insignias. The subsequent referendum therefore was illegal under Ukrainian law and international law and there is no basis to describe it as a case of self-determination.

Especially outrageous is Russian Foreign Minister Lavrov's misrepresentation of the terms of the 1994 Budapest Memorandum, in which Russia guaranteed Ukraine's territorial integrity in return for its renunciation of nuclear weapons. Lavrov claimed that Russia only pledged not to use nuclear weapons against Ukraine, whereas the text states clearly that Russia promised not to use military force of any kind against Ukraine. This sort of blatant falsification should be challenged publicly.

We should continue to remind the Russians that the Helsinki Final Act of 1975 states that frontiers in Europe can only be changed by peaceful means, and that the West – and indeed, almost the entire international community – continues to regard Crimea and its surrounding waters as Ukrainian territory. In this connection, we should support Ukrainian legal claims for compensation for the theft and illegal exploitation of Ukrainian economic assets, including offshore energy deposits.

NATO should maintain its heightened naval presence in the Black Sea to protect freedom of navigation. The Alliance should also strengthen its cooperation with Ukraine and Georgia on Black Sea security to offset the Russian build-up on the occupied peninsula.

In addition, given the mounting human rights abuses, we should press for greater humanitarian access by the UN or OSCE to occupied Crimea. This is needed, at a minimum, to monitor the instances of human rights violations, bring them to the attention of the world public, and apply pressure on Moscow to end their abuses.

### **Taking the Long View**

To conclude, when it comes to the war in Donbas and the occupation of Crimea, we need to take the long view. Both are fronts in Putin's war against the West and his efforts to disrupt the international rules-based order. Increased pressure may ultimately alter his calculus, but the current deadlock both in Donbas and in Crimea may continue for several years, with solutions possible only after Putin departs the scene and more enlightened leaders reemerge in Russia.

The best we may be able to do in relations with Moscow at the present time is to manage the strategic competition: continuing to bolster NATO's defense and deterrence posture against direct aggression; maintaining sanctions to impose costs for unacceptable behavior; and using Cold War tools like arms control and risk-reduction measures to minimize the risk of military conflict.

Steps to manage the competition with Moscow should go hand in hand with stronger efforts to support Ukraine – and other post-Soviet states threatened by Moscow who don't have the protection of a NATO Article 5 guarantee – including lethal military assistance and training, together with help in countering cyber-attacks, subversion and other forms of hybrid warfare.

As emphasized earlier, a strong, prosperous, democratic Ukraine, with strong ties of partnership with the European Union and NATO, may be the best counterweight to Russian aggression in the long term and create more favorable conditions for diplomacy down the road.



# Should the United States Discourage the Proliferation of Indigenous Nuclear Weapons in South Korea?

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## Abstract

*Recent intercontinental ballistic missile (ICBM) and submarine-launched ballistic missile (SLBM) test launches by North Korea<sup>1</sup> have challenged regional stability in East Asia and shaken alliances. For South Korea, the allure of building a nuclear arsenal and forgoing the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) cannot be understated. This threat is further legitimized through the worsening of United States-South Korea relations, specifically after President Trump requested a \$5 billion investment from the ROK in military cost-sharing negotiations earlier this fall.<sup>2</sup> Though an indigenous nuclear weapons program has always been a fringe conservative idea in South Korea, it is now increasingly easy to imagine a reality in which South Korea decides to develop nuclear weapons. If this occurs, there are a range of policy options with which the United States can choose to respond. This policy paper will discuss three such options: The US unilaterally supports Seoul's effort to produce nuclear weapons, the US stations American tactical nuclear weapons in South Korea, and the US fully discourages the proliferation of nuclear weapons in South Korea. Ultimately, this paper will argue that the US should discourage all development of indigenous nuclear weapons in South Korea. This is the most strategic way Washington can decrease the likelihood of full-scale nuclear warfare.*

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1 Kuhn, Anthony. "North Korea May Have Taken Step Toward Submarine-Launched Ballistic Missile." NPR. NPR, October 2, 2019. <https://www.npr.org/2019/10/02/766324902/north-korea-missile-test-may-have-been-launched-from-a-submarine>.

2 Lee, Joyce. "U.S., South Korea Resume Defense Cost-Sharing Talks amid Protests of 'Robbery'." Reuters. Thomson Reuters, November 18, 2019. <https://www.reuters.com/article/us-southkorea-usa-talks/u-s-south-korea-resume-defense-cost-sharing-talks-amid-protests-of-robbery-idUSKBN1XS0HD>.

## Brief Historical Context

To examine why the nuclear deterrence situation in East Asia is at its current crossroads, we must first look to the nuclear history of the region. The idea of indigenous South Korean nuclear weapons gained traction under Park Chung Hee's administration (1963-1979), which attempted to develop tactical nuclear weapons, as outlined in a declassified US Department of State study.<sup>3</sup> This development brought Seoul massive international backlash and worsened economic relations between the ROK and the United States.<sup>4</sup> Moreover, the influence of the United States and its nuclear arsenal was a major factor in deciding the nuclear ambition of South Korea. From 1958 to 1991, the U.S. deployed tactical nuclear weapons in South Korea, pledging to protect their close allies under a "nuclear umbrella".<sup>5</sup> As such, South Korea has not since obtained nuclear weapons and has signed the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) in 1975, Comprehensive Nuclear Test Ban Treaty (CTBT) in 1996, and joined the Nuclear Suppliers Group and the Zangger Committee.<sup>6</sup> After the NPT was signed, the US and Soviet Union responded by announcing The Intermediate-Range Nuclear Forces (INF) Treaty, eliminating and permanently forswearing all of their nuclear and conventional ground-launched ballistic and cruise missiles with ranges of 500 to 5,500 kilometers.<sup>7</sup> Under the INF, the US and USSR withdrew of all naval and land-based tactical nuclear weapons deployed abroad, which the Soviet Union also reciprocated for North Korea. This therefore changed the nature of the US's "nuclear umbrella," shifting the means of protection from tactical to strategic nuclear weapons. These actions prompted South Korea to announce the Declaration on the Denuclearization of the Korean Peninsula, which would promise to ban the possession, production, deployment, or storage of nuclear weapons in North or South Korea.<sup>8</sup> These actions have both solidified South Korea's dedication to nuclear nonproliferation and strengthened the US-ROK alliance.

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3 "Park Chung Hee, the CIA & the Bomb > Articles." Park Chung Hee, the CIA & the Bomb > Articles | . Accessed December 10, 2019. [http://www.globalasia.org/v6no3/feature/park-chung-hee-the-cia-&-the-bomb\\_peter-hayes](http://www.globalasia.org/v6no3/feature/park-chung-hee-the-cia-&-the-bomb_peter-hayes).

4 "Park Chung Hee, the CIA & the Bomb"

5 "South Korea." Nuclear Threat Initiative

6 "South Korea." Nuclear Threat Initiative

7 "Fact Sheets & Briefs." The Intermediate-Range Nuclear Forces (INF) Treaty at a Glance | Arms Control Association. Accessed December 10, 2019. <https://www.armscontrol.org/factsheets/INFtreaty>.

8 "Joint Declaration of South and North Korea on the Denuclearization of the Korean Peninsula." Nuclear Threat Initiative - Ten Years of Building a Safer World. Accessed September 26, 2019. <https://www.nti.org/learn/treaties-and-regimes/joint-declaration-south-and-north-korea-denuclearization-korean-peninsula/>.

## Support for Nuclear Weapons in South Korea

Public support for the development of indigenous nuclear weapons has reached record highs in recent years, as shown in a 2017 Gallup poll that found 60 percent of South Koreans supported nuclear armament, whereas just 35 percent were opposed.<sup>9</sup> Since the abandonment of the nuclear program under the Park administration, the continuation of a such a program was considered a fringe conservative idea even under the administration of his own daughter, Park Geun-hye.<sup>10</sup> After Park's impeachment, South Korean nuclear ambitions were further weakened with the election of Moon Jae-in, a progressive politician with heavy leanings toward non-proliferation in Korea.<sup>11</sup> Despite the progressivism of the Moon administration, there is evidence that support for nuclear weapons is arising amongst some mainstream voices. For example, former South Korean Minister of Foreign Affairs Song Min Soon recently published an editorial advocating that South Korea develop its own nuclear program if the United States continues to be willing to forgo its security commitments to South Korea if it does not pay more for the stationing of US troops. As a center-progressive former Minister of Foreign Affairs, Soon's support for this radical idea is evidence of political and popular backing to the controversial strategy. Although it is gaining traction, such a policy would only be passed under a conservative administration. The election of such an administration is not unthinkable. Moon Jae-In's current approval rating is at an all-time low in South Korea (39%),<sup>12</sup> despite his over 80% approval rating upon his arrival into the office.<sup>13</sup> The potential of a conservative president is one of many reasons the US should value the issue of nuclear weapons in South Korea.

### Policy Option I

The first policy option for United States would be to assist its ally, South Korea, in the de

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9 Johnson, Jesse. "South Korea Developing Its Own Nukes One Solution to U.S. Cost-Sharing Demands, Ex-Top Diplomat Says." *The Japan Times*. Accessed December 10, 2019. <https://www.japantimes.co.jp/news/2019/11/12/asia-pacific/nuclear-weapons-cost-sharing-south-korea/#.Xe-rWpNKjGI>.

10 "North Korea Will 'Collapse' If It Pursues Nuclear Weapons, South Korean President Says." *Los Angeles Times*. Los Angeles Times, February 16, 2016. <https://www.latimes.com/world/asia/la-fg-korea-south-korea-20160216-story.html>.

11 "South Korean President Rules out Developing Nuclear Weapons." *South China Morning Post*, July 20, 2018. <https://www.scmp.com/news/asia/east-asia/article/2117935/south-korean-president-moon-jae-rules-out-developing-nuclear>.

12 Lee, Jihye. "South Korea's Moon Sees Approval Rating Hit New Low Amid Scandal." *Bloomberg.com*. Bloomberg, October 17, 2019. <https://www.bloomberg.com/news/articles/2019-10-18/south-korea-s-moon-sees-approval-rating-hit-new-low-amid-scandal>.

13 Lee, Jihye "South Korea's Moon Sees Approval Rating Hit New Low Amid Scandal."

velopment of indigenous nuclear weapons. As a response to the nuclear stockade under development in North Korea, South Korea could decide to develop his own nuclear arsenal, seeking support from its ally and major trading partner, the United States. The US could aid in the development of these weapons in multiple ways: sending specialists, resources, funding, and providing political legitimacy for South Korea's decision.

#### Pros

The first major benefit would be the US saves money on its military costs in South Korea. As recently as November 2019, the US has demanded Seoul takes on a greater share of the cost of stationing troops as deterrence against North Korea. Trump has specifically demanded a \$5 billion dollar<sup>14</sup> increased investment from President Moon, entering cost-sharing negotiations this year over the issue. US-ROK relations are already tenuous after differences in military pacts and Seoul's withdrawal from (and later rejoining of) the General Security of Military Information Agreement (GSOMIA)<sup>15</sup>, a deal negotiated between Seoul and Tokyo that ensured the sharing of essential military information. GSOMIA is viewed as important to regional security by US officials<sup>16,17</sup>, and its near dismantlement<sup>18</sup> only worsened relations between the two nations. By South Korea investing in its own nuclear program, the calls for increased cost sharing by the Koreans are answered.

As an additional benefit to the US, Washington's support of a nuclear program in South Korea could show the its commitment to US-ROK relations and offset the global rise of China. After the US's calls for increased investment from Korea, relations have worsened between the two nations, leaving space for improved Sino-ROK relations as shown in Foreign Minister Wang Yi's recent visit to South Korea.<sup>19</sup> Leaving space for China to grow in

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14 Lee, Joyce. "U.S., South Korea Resume Defense Cost-Sharing Talks amid Protests of 'Robbery'." Reuters. Thomson Reuters, November 18, 2019. <https://www.reuters.com/article/us-southkorea-usa-talks/u-s-south-korea-resume-defense-cost-sharing-talks-amid-protests-of-robbery-idUSKBN1XS0HD>.

15 "US-South Korea Alliance Under Pressure as Deadlines for Military Pacts Approach ." Voice of America. Accessed December 9, 2019. <https://www.voanews.com/east-asia-pacific/us-south-korea-alliance-under-pressure-deadlines-military-pacts-approach>.

16 "US-South Korea Alliance Under Pressure as Deadlines for Military Pacts Approach ." Voice of America.

17 Botto, Kathryn. "Japan Must Accept South Korea's Olive Branch over GSOMIA Security Pact." Nikkei Asian Review. Nikkei Asian Review, November 29, 2019. <https://asia.nikkei.com/Opinion/Japan-must-accept-South-Korea-s-olive-branch-over-GSOMIA-security-pact>.

18 Writer, Staff. "South Korea Reverses Decision to End GSOMIA Intel Pact with Japan." Nikkei Asian Review. Nikkei Asian Review, November 22, 2019. <https://asia.nikkei.com/Spotlight/Japan-South-Korea-rift/South-Korea-reverses-decision-to-end-GSOMIA-intel-pact-with-Japan>.

19 "China's Top Diplomat to Visit South Korea as Beijing Seeks to Repair Ties." South China Morning Post, December 4, 2019. <https://www.scmp.com/news/china/diplomacy/article/3040433/chinas-top-diplomat-wang-yi-visit-south-korea-beijing-seeks>.

the region could prove yet another leverage point for Beijing over Washington. A strengthening of support from the US, especially in the development of an indigenous nuclear arsenal, could prove useful for the improving of US-ROK relations.

### Cons

One of the major cons to this strategy is the renegeing of promises made in the Nuclear Non-Proliferation Treaty (NPT). The three pillars of NPT were a reduction of nuclear weapons in nuclear states, a promise to keep non-nuclear states without nuclear weapons, and a commitment to peaceful use of nuclear resources<sup>20</sup>. By violating the conditions of NPT, the United States could prove untrustworthy to its international signatories, opening the door for many other nations to leave the agreement. Additionally, the proliferation of nuclear weapons on the Korean Peninsula could prove disastrous for both regional and global stability. Entering a nuclear war on the Korean Peninsula would mean certain negative economic, social, and political implications for both the two Koreas and the United States.

Moreover, the cost of entering a full-scale nuclear war between South Korea and North Korea is undeniable, and certainly more costly than any amount the U.S. would save by supporting a domestic nuclear weapons program in South Korea. As explored in a study by the Rand Corporation, a Noncombatant Evacuation Operation (NEO) of the Seoul metropolitan area would result in the evacuation of nearly 27 million people.<sup>21</sup> Leading to a massive transportation crisis, involving necessary cooperation between the US, China, and Japan. Additionally, a nuclear conflict on the Peninsula would almost certainly spell the end for Kim Jon-Un's regime, resulting in a massive refugee crisis, relocating nearly 25 million North Koreans.<sup>22</sup> Lastly, the nuclear fallout of such an attack would impact countries globally. The impacts of nuclear war due to increased proliferation of nuclear weapons on the Korean Peninsula<sup>23</sup> have never been seen before and would certainly have a number of unintended and unexpected implications.

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20 "Nuclear Non-Proliferation Treaty an 'Essential Pillar' of International Peace, Says UN Chief | UN News." United Nations. United Nations. Accessed December 9, 2019. <https://news.un.org/en/story/2018/07/1013682>.

21 Gentile, Gian, Yvonne K. Crane, Dan Madden, Timothy M. Bonds, Bruce W. Bennett, Michael J. Mazarr, and Andrew Scobell, *Four Problems on the Korean Peninsula: North Korea's Expanding Nuclear Capabilities Drive a Complex Set of Problems*. Santa Monica, CA: RAND Corporation, 2019. <https://www.rand.org/pubs/tools/TL271.html>.

22 "North Korea Population (LIVE)." Worldometers. Accessed December 9, 2019. <https://www.worldometers.info/world-population/north-korea-population/>.

23 "Prospect of a Nuclear War 'Higher than It Has Been in Generations', Warns UN | UN News." United Nations. United Nations. Accessed December 10, 2019. <https://news.un.org/en/story/2019/04/1035941>.

## Policy Option II

Rather than total support or total opposition for a South Korean nuclear program, the United States could take a more nuanced approach to this policy. The US could offer to bring American tactical nuclear weapons back to South Korea. Starting in 1958, the US stationed about 100 nuclear weapons in the ROK. This agreement was ended in 1991 when George H.W. Bush signed the Presidential Nuclear Initiatives after the establishment of the INF Treaty, withdrawing all nuclear weapons abroad.<sup>24</sup> After President Trump announced he would not be extending the INF Treaty in 2018<sup>25</sup>, the option for the US to station tactical nuclear weapons in South Korea is now viable. By stationing nuclear weapons on the Peninsula once again, the United States could provide South Korea with the hard power they request against North Korea.

### Pros

A return of US tactical nuclear weapons to South Korea would not violate the terms of NPT, as it does not increase the number of nuclear weapons owned by the United States and it does not (in theory) arm the South Koreans (as the weapons are still owned by the United States). After President Trump's choice not to extend the INF Treaty, the option for staging US tactical nuclear weapons in Asia is favorable to many Americans. Stationing tactical nuclear weapons in Asia would arguably give the US a strategic offensive advantage against China and Russia, two of its most powerful competitors. Additionally, both Japan<sup>26</sup> and the Philippines<sup>27</sup> have publicly opposed the option of the US stationing tactical nuclear weapons, especially with their relative geographic proximity to China. Compared to the US-supported development of indigenous South Korean nuclear weapons, this option would be viewed rather favorably.

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24 Fifeild, Anna. "South Korea's Defense Minister Suggests Bringing Back Tactical U.S. Nuclear Weapons." *The Washington Post*. WP Company, September 4, 2017. [https://www.washingtonpost.com/world/south-koreas-defense-minister-raises-the-idea-of-bringing-back-tactical-us-nuclear-weapons/2017/09/04/7a468314-9155-11e7-b9bc-b2f7903bab0d\\_story.html](https://www.washingtonpost.com/world/south-koreas-defense-minister-raises-the-idea-of-bringing-back-tactical-us-nuclear-weapons/2017/09/04/7a468314-9155-11e7-b9bc-b2f7903bab0d_story.html).

25 "Fact Sheets & Briefs." *The Intermediate-Range Nuclear Forces (INF) Treaty at a Glance* | Arms Control Association. Accessed December 10, 2019. <https://www.armscontrol.org/factsheets/INFtreaty>.

26 Mochizuki, Mike. "Analysis | Three Reasons Why Japan Will Likely Continue to Reject Nuclear Weapons." *The Washington Post*. WP Company, February 14, 2018. <https://www.washingtonpost.com/news/monkey-cage/wp/2017/11/06/japan-is-likely-to-retain-its-non-nuclear-principles-heres-why/>.

27 Hille, Kathrin. "Philippines Warns of China Threat after US Nuclear Pact Exit." *Subscribe to read | Financial Times*. Financial Times, February 21, 2019. <https://www.ft.com/content/a352ba2e-3358-11e9-bd3a-8b2a211d90d5>.

## Cons

Though not explicitly violating the terms of NPT, the stationing of nuclear weapons in South Korea would increase global nuclear proliferation by expanding the spread of nuclear weapons globally. Even if the number of nuclear weapons globally does not increase, global stability will decrease. Studies have shown that the presence of nuclear weapons in a country influences strategy and political behavior.<sup>28</sup> In countries with nuclear weapons, “their challenges are reciprocated more often, while their desire to demonstrate their nuclear clout makes them substantially less likely to concede when facing a challenge.”<sup>29</sup>

The addition of tactical nuclear weapons in South Korea could also prove destabilizing for North Korea. Tensions between North Korea and the United States have remained fraught in recent years, especially in light of recent nuclear tests by North Korea. Weapons such as Hwasong-12 and Hwasong-14 demonstrated an ability to reach US military bases and potentially the West coast of the United States.<sup>30</sup> However Hwasong-15, reached an altitude of 4,500km<sup>31</sup>, proving that when used in armed conflict, the weapon could reach New York City and beyond. While an indigenous South Korean weapons program could provoke the DPRK to attack Seoul, the staging of nuclear weapons could prompt direct North Korean nuclear aggression at the United States. Moreover, in terms of diplomatic potential, the US would squander any chance of effectively negotiating North Korea’s nuclear program. The North has already been largely unwilling to negotiate its nuclear weapons program with any nation, especially the United States. With this clear act of antagonism towards the Kim administration, North Korea would be even more resistant to entering negotiations with the US.

Lastly, there is no place to store tactical US nuclear weapons in South Korea. After the withdrawal of US tactical nuclear weapons from the ROK under George H.W. Bush, nuclear weapon storage fell into disuse and was considered obsolete.<sup>32</sup> It would take years to rebuild these bunkers and significant funding from either the US or South Korea, which would add to tenuous diplomatic relations.

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28 Horowitz, Michael. “The Spread of Nuclear Weapons and International Conflict.” *Journal of Conflict Resolution* 53, no. 2 (2009): 234–57. <https://doi.org/10.1177/0022002708330388>.

29 Horowitz, Michael. “The Spread of Nuclear Weapons and International Conflict.”

30 “North Korea’s Missile and Nuclear Programme.” BBC News. BBC, October 9, 2019. <https://www.bbc.com/news/world-asia-41174689>.

31 “North Korea’s Missile and Nuclear Programme.” BBC News

32 Wolfsthal, Jon, and Toby Dalton. “Seven Reasons Why Putting U.S. Nukes Back in South Korea Is a Terrible Idea.” *Foreign Policy*. Foreign Policy, October 11, 2017. <https://foreignpolicy.com/2017/10/11/putting-u-s-nukes-back-in-south-korea-is-a-terrible-idea/>.

### Policy Option III

Following their previously established stance on nuclear proliferation in non-nuclear states, the United States could decide to discourage the adoption of indigenous nuclear weapons in the ROK. This discouragement could take many forms, such as economic sanctions on South Korean goods, trade tariffs, or travel bans. As the strategy most aligned with President Trump's current trajectory and the most aligned with the US's foreign policy goals, this policy would be the most likely to be adopted.

#### Pros

The likelihood of the US pursuing a strategy of nonproliferation is twofold. First, the US maintains its commitment to NPT and nuclear nonproliferation. Second, the US maintains its stance on the need for South Korea to share the burden of military costs. As such, one can assume if South Korea decides to develop nuclear weapons, the US would not want to increase nuclear investment, especially if the US wants to continue to its promises as outlined in NPT.

The benefit of such a strategy would be that the United States would continue to adhere to its promise of promoting nuclear non-proliferation, maintaining its alliances with various NPT signatories such as the United Kingdom and Russia.<sup>33</sup> This would grant the US increased global credibility and secure its partnerships with NPT signatories. Additionally, a US commitment to NPT would show countries such as Japan and the Philippines that the US's commitment to nuclear stability and regional security in the region is legitimate.

The destabilizing effects of nuclear proliferation in South Korea would extend far beyond Japan and North Korea. As the biggest economic force in the region, China would respond negatively to the development of indigenous nuclear weapons in South Korea. As a signatory of NPT<sup>34</sup>, China has demonstrated its commitment to nuclear non-proliferation in its nuclear doctrine, stating its desire to limit nuclear weapons in the region<sup>35</sup> and famously instating a no first-use policy<sup>36</sup>. China's aversion to US-supported improvements to South Korea's military capabilities was most notably seen in its reaction to the deployment of the

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33 "Treaty on the Non-Proliferation of Nuclear Weapons (NPT) – UNODA." United Nations. United Nations. Accessed December 9, 2019. <https://www.un.org/disarmament/wmd/nuclear/npt/>.

34 "Treaty on the Non-Proliferation of Nuclear Weapons (NPT) – UNODA." United Nations. United Nations. Accessed December 9, 2019. <https://www.un.org/disarmament/wmd/nuclear/npt/>.

35 China's Non-Proliferation Policy Positions and Measures. Accessed December 9, 2019. <https://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/hplyhn/t127620.htm>.

36 Kim, Patricia M. "Chinese Perceptions on Nuclear Weapons, Arms Control, and Nonproliferation." Council on Foreign Relations, June 21, 2018. <https://www.cfr.org/report/chinese-perceptions-nuclear-weapons-arms-control-and-nonproliferation>.

United States' Terminal High Altitude Area Defense (THAAD) ballistic missile defense system in South Korea.<sup>37</sup> Despite the system's defensive nature, after THAAD was deployed in 2017, China responded with the banning of Korean TV shows, consumer products, and travel packages to Korea. Additionally, China shut down 75 of its 99 Lotte Marts nationally, with Chinese safety inspectors citing supposed safety violations.<sup>38</sup> The economic and political ramifications imposed on South Korea over a defense system shows what reaction Seoul could expect from the creation of indigenous nuclear weapons

Lastly, if the US chooses a strategy of total discouragement, it would be hugely beneficial for US-North Korea nuclear weapons negotiations. If the US were to support a nuclear program in the ROK or station tactical nuclear weapons in South Korea, the Kim regime would certainly respond negatively, ending all possibilities of an amicable end to North Korea's nuclear weapons program.

### Cons

The economic implications of tariffs or sanctions could prove to be damaging for the US economy. During the late 20th and early 21st centuries, US and Korea have maintained very significant and mutually beneficial economic ties. In 2019, Korea is the 6th largest trade partner of the United States, importing \$80.9 billion of US goods in 2018<sup>39</sup>. Additionally, America is the 6th largest consumer of Korean goods<sup>40</sup>, with major companies such as Samsung, Hyundai, and Kia becoming major staples in the US marketplace<sup>41</sup>. If the US discontinues these close relationships, it is highly likely China would be able to increase their influence in South Korea. China's regional dominance is evident in many East Asian countries, with their unparalleled ability to invest in projects such as the One Belt

One Road Initiative and its recent developments in the South China Sea. With its economic ties to South Korea already significant, tariffs and sanctions could prove fatal for American influence in the area. More than hypothetical, China has purposely tried to repair and

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37 Lee, Chung Min, and Kathryn Botto. "President Moon Jae-in and the Politics of Inter-Korean Détente." Carnegie Endowment for International Peace, 2018. Accessed December 10, 2019. <https://carnegieendowment.org/2018/11/16/president-moon-jae-in-and-politics-of-inter-korean-d-tente-pub-77730>.

38 Lee, Chung Min, and Kathryn Botto. "President Moon Jae-in and the Politics of Inter-Korean Détente." Carnegie Endowment for International Peace, 2018. Accessed December 10, 2019. <https://carnegieendowment.org/2018/11/16/president-moon-jae-in-and-politics-of-inter-korean-d-tente-pub-77730>.

39 "Korea." United States Trade Representative. Accessed December 9, 2019. <https://ustr.gov/countries-regions/japan-korea-apec/korea>.

40 "Korea." United States Trade Representative.

41 "Korea." United States Trade Representative.

strengthen relations with South Korea<sup>42</sup>, sending Wang Yi, the Chinese Foreign Minister to visit South Korea this month. Additionally, South Korea has directly sought help from China in securing nuclear stability in the region, calling for “strategic communication” in this critical period.<sup>43</sup>

## Policy Recommendation

The US should discourage the adoption of indigenous nuclear weapons in the ROK. The proliferation of nuclear weapons on the Korean Peninsula would be disastrous for many reasons. Regardless of whether Korea decides to produce indigenous nuclear weapons or the US decides to station tactical US nuclear weapons, increased nuclearization on the Korean Peninsula should be avoided at all costs. As politics in North Korea still a largely unknown variable, many experts on North Korea speculate that Kim Jong-Un could default to nuclear weapons as a first-response strategy to a foreign threat.<sup>44</sup> The humanitarian impact of full-scale nuclear warfare on the Peninsula cannot be understated. Most immediately, the populations of South Korea and North Korea (around 51.47 and 25 million respectively) would be under imminent threat, whether that threat is death, injury, radiation, or displacement, the humanitarian crisis would be undeniable. Radiation in these regions could carry globally, with impacts of a full-scale nuclear war largely unknown.<sup>45</sup> The effects of such a crisis would certainly have impacts on both Korea’s immediate neighbors, China and Russia, as they would likely experience an influx of refugees.<sup>46</sup>

The United States’ political repercussions for choosing to discourage nuclear armament in South Korea would be negligible when compared to the global impact of a nuclear stand-off. The US would strengthen its relations with Russia, the United Kingdom, and China by adhering to NPT, which would create international leverage to further discourage South Korea from gaining nuclear weapons. South Korea is interested in pursuing economic ties with each of these countries, as its economy is directly reliant upon an export-based struc-

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42 “China’s Top Diplomat to Visit South Korea as Beijing Seeks to Repair Ties.” South China Morning Post, December 4, 2019. <https://www.scmp.com/news/china/diplomacy/article/3040433/chinas-top-diplomat-wang-yi-visit-south-korea-beijing-seeks>.

43 “Moon Calls for China’s Help on Nuke Arms.” <https://the-japan-news.com/news/article/0006214521?fp=3ffc2ec47547ac325322f4c523ac46e2>. The Japan News, December 7, 2019. <https://the-japan-news.com/news/article/0006214521?fp=3ffc2ec47547ac325322f4c523ac46e2>.

44 Drezzen, Yochi. “Here’s What War with North Korea Would Look Like.” Vox. Vox, February 8, 2018. <https://www.vox.com/world/2018/2/7/16974772/north-korea-war-trump-kim-nuclear-weapon>.

45 Gentile, Gian, Yvonne K. Crane, Dan Madden, Timothy M. Bonds, Bruce W. Bennett, Michael J. Mazarr, and Andrew Scobell, *Four Problems on the Korean Peninsula: North Korea’s Expanding Nuclear Capabilities Drive a Complex Set of Problems*. Santa Monica, CA: RAND Corporation, 2019. <https://www.rand.org/pubs/tools/TL271.html>.

46 Gentile et al

ture, leading globally as the world's fifth-largest export economy.<sup>47</sup> South Korea's ties with NPT signatories are exemplified in its close trade relations with the US, UK, and China, as exemplified in the recent signing of a Continuity of Trade agreement between the United Kingdom and South Korea in September 2019<sup>48</sup>.

Additionally, an unintended implication of the adoption of nuclear weapons in South Korea could be the proliferation of nuclear weapons in Japan. In September 2019, there was a warning issued about the possibility for Japan to build a nuclear arsenal. US Special Representative to North Korea, Stephen Biegun, cautioned that as a response to growing aggression in East Asia, Japan could consider nuclear armament.<sup>49</sup> If South Korea decides to pursue an agenda of indigenous nuclear weapons, stability in the region would only decrease further, pushing Japan to the defensive. Although Japan has previously opposed staging tactical nuclear weapons within its borders, this possibility was legitimized for the US after Trump chose not to renew the INF treaty in 2019. The exiting of this treaty leaves the door open for the US to stage tactical nuclear weapons in South Korea and for Japan to reexamine its stance on staging weapons its territory (especially when considering the relative proximity of China). As stated previously, any increased nuclearization in the region would be further cause for concern, as threats of attack become more legitimate with the heightened intensity of nuclear weapons. The United States can set an example for Japan by discouraging South Korea's nuclear program, which would also help ensure stability in the region.

In regards to China, the potential for the PRC to support an indigenous nuclear program in South Korea is slim. Following their Non-Proliferation Policy, the Chinese government is publicly "opposed to the proliferation of weapons of mass destruction (WMD) and their delivery means. As a state party to a series of international non-proliferation treaties... China strictly abides by its treaty obligations, supports and participates actively in the international efforts to maintain and strengthen global non-proliferation regime."<sup>50</sup> Additionally, when examining the ramifications of the deployment of THAAD, a defense system, it would be easy to assume that the development of offensive nuclear weapons would

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47 Pikkell, "South Korea." OEC. Accessed December 9, 2019. <https://oec.world/en/profile/country/kor/>.

48 Trade, Department for International. "Summary of UK-South Korea Trade Agreement." GOV.UK. GOV.UK, September 9, 2019. <https://www.gov.uk/guidance/summary-of-uk-south-korea-trade-agreement>.

49 Fitzpatrick, Mark. "How Japan Could Go Nuclear." Foreign Affairs. Foreign Affairs Magazine, October 7, 2019. <https://www.foreignaffairs.com/articles/asia/2019-10-03/how-japan-could-go-nuclear>.

50 China's Non-Proliferation Policy Positions and Measures. Accessed December 9, 2019. <https://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/hplyhn/t127620.htm>.

be highly unfavorable for China and lead to certain economic sanctions. These sanctions would be crippling for South Korea, with 25% (\$149 billion)<sup>51</sup> of South Korea's exports sent to China. This more than double the amount South Korea's exports to the United States<sup>52</sup> and more than quadruple of those destined for Japan<sup>53</sup>. Seoul's commitment to trade with Beijing is further emphasized when examining their response to Free and Open Indo-Pacific (FOIP)<sup>54</sup>. Endorsed by the US, FOIP hoped to strengthen economic ties in the Indo-Pacific region, indirectly looking to offset China's geopolitical influence in the region. Both Japan and Australia were ardent supporters of FOIP, but South Korea was reluctant to join, even though the mission of FOIP seemed to align with its New Southern Policy, a plan that also aimed to connect countries in that region. In many ways, South Korea was essential for FOIP's success, serving as a major economic force in the region. Despite these factors, South Korea has largely avoided FOIP out of worry over economic relations with China. If South Korea cannot be persuaded to join regional economic alliances out of fear of retaliation, it is highly unlikely to antagonize China with the development of nuclear weapons.

## Conclusion

In light of worsening US-ROK relations and recent nuclear testing by North Korea, the reality of a South Korea armed with nuclear weapons should not be overlooked. Historically, the promise of a non-nuclear South Korea was largely outlined by international actors and supported by the United States. As such, the US should follow its stated promises outlined in the NPT and continue pursuing a strategy of nuclear non-proliferation, especially in the Korean Peninsula. The implications of nuclear warfare on the Peninsula are too extreme to ignore, such as a massive loss of life, refugee crisis, and nuclear fallout. Diplomatically, there are two undeniable advantages if the US discourages of an indigenous South Korean nuclear program. First, it would prove the US's strength and dedication to its allies. Second, it would further push Japan to stay non-nuclear, ensuring regional stability. Finally, China is unlikely to encourage the proliferation of nuclear weapons in the ROK, especially after its highly negative reaction to THADD. Moreover, the threat of China's economic and political influence on South Korea is very legitimate, as proven by South Korea's aversion to FOIP. In summary, the United States should take an active role in discouraging indigenous nuclear weapons in South Korea, as ignoring this issue could have massive global repercussions.

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51 Pikkel, "South Korea." OEC. Accessed December 9, 2019. <https://oec.world/en/profile/country/kor/>.

52 OEC.

53 OEC.

54 U.S. Department of Defense Indo-Pacific Strategy Report: Preparedness, Partnerships, and Promoting a Networked Region. (Washington, 2019) <https://media.defense.gov/2019/Jul/01/2002152311/-1/-1/1/DEPARTMENT-OF-DEFENSE-INDO-PACIFIC-STRATEGY-REPORT-2019.PDF>

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# The Chechen Conflict and its Influence in Future Transnational Conflict

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## Abstract

*The conflict between Russia and the Chechen Republic has persisted for hundreds of years. Geographic, religious, and cultural differences separate the republic in the Northern Caucasus from the rest of Russia. In addition, globalization and the rise of the transnational nature of international conflict have led to many foreign recruits flooding into the region. The incorporation of Arab funding and foreign fighters into the Chechen conflict broke down the initial movement of independence and created another branch of the international Jihadist movement. Similarly, many Chechens joined the Mujahideen and fought in foreign conflicts such as those in Syria and Iraq. The Chechen Conflict is a perfect example of how social movements and ideology can change once foreign fighters are introduced to the region. It also shows how deeply rooted the ideology of the international Jihadist movement can become in individuals not previously radicalized, creating an epic transnational movement across the globe. This network of Jihadists, recently involving ethnic Chechens and Northern Caucasians, has increased Russian incentive to militarily assert itself in Arab affairs and conflicts.*

## Research Question

How has the ongoing Russian-Chechen conflict affected terrorist networks in other parts of the world and Russia's foreign policy towards them? This paper will be looking at the history of the conflicts in Chechnya since the fall of the Soviet Union, explaining the transnational, and mainly Arab, involvement within the region, how it shaped the Chechen Civil Wars, and the Russian response. In addition, this paper will look at the Chechen involvement in later international conflicts such as the Syrian Civil War, explore Russian foreign policy towards said conflicts, and highlight the ways in which social movement theory drives these events. More specifically, this paper will analyze how opportunity, organization, and collective action steered the decisions and outcome of the Chechen Conflict. It is likely that Russian foreign policy is motivated by Arab involvement in Chechnya and vice versa (Chechen involvement in Arab conflicts). It is also likely that the large scale of Arab involvement in Chechnya increased the motivation for Chechens to

fight in Syria.

### Conflicts in Chechnya

Chechnya is a republic of the Russian Federation located in the Northern Caucasus region of the country, bordering Georgia. Although a part of Russia, Chechnya has an ethnic majority of Chechens, not Russians. In addition, Chechens speak their own language along with Russian, and the majority of Chechens practice Islam. These factors divide Chechnya from the rest of Russia and explain their 200-something year fight for independence. Until the second Chechen War, Russia did not have much justification for its military involvement in the region other than the guise of attempting to stabilize the region from violence. Russia's motivations can be speculated towards the amount of oil in the Chechen region and the amount they have profited from said oil.<sup>1</sup> More recently, Russia has been able to frame its military involvement in the region as anti-Jihad and anti-extremism measures.<sup>2</sup>

The conflict between Russia and Chechnya has persisted for hundreds of years, but for the sake of this paper, only the conflicts after the fall of the Soviet Union will be analyzed. When the Soviet Union was dissolved in 1991, Chechnya declared itself an independent state with a president and a parliament.<sup>3</sup> The Chechen conflicts after the fall of the Soviet Union, especially the Second Chechen War, saw an uptick in foreign fighters involved. Foreign fighters are defined as “noncitizens of conflict states who join insurgencies during civil conflicts”.<sup>4</sup> Specifically in Chechnya, there was an uptick of Arab foreign fighters who, more often than not, were radical Jihadists. The problem that came with this was the taking over of the original Chechen resistance movement. This fight was no longer solely about Chechen independence from Russia, but it had now become a much more complicated part of the global Jihadist movement.

The foreign fighters that joined the resistance in the Northern Caucasus provided necessary resources to the local resistance in Chechnya, such as monetary funding, skilled fighters, and training centers.<sup>5</sup> These donations helped keep the resistance alive when they likely may not have had the capital and experience to do so otherwise. The training centers

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1 Encyclopædia Britannica, s.v. “Chechnya.”

2 Ben Rich and Dara Conduit, “The Impact of Jihadist Foreign Fighters on Indigenous Secular Nationalist Causes: Contrasting Chechnya and Syria,” *Studies in Conflict & Terrorism* 35, no. 2 (2015): 119.

3 “Chechnya Profile - Timeline,” BBC News, January 17, 2018, <https://www.bbc.com/news/world-europe-18190473>.

4 David Malet, *Foreign Fighters: Transnational Identity in Civil Conflicts* (Oxford: Oxford University Press, 2013), 9.

5 Rich and Conduit, “The Impact of Jihadist Foreign Fighters on Indigenous Secular-Nationalist Causes,” 115.

were also invaluable resources for the many Chechen fighters who did not have any formal combat training. Along with these benefits, the foreign fighters also brought many negative effects on the overall success of the Chechen resistance with them. Chu and Braithwaite note that “Resources gained from foreign fighters is important but the liabilities they bring outweighs this usually.”<sup>6</sup> The introduction of extremist Jihadist ideology in Chechnya created serious divides within the resistance. While some jumped on board with this new radical movement, others were more hesitant and preferred to stick with the original goal of the movement, which was solely independence from Russia. Chechnya eventually adopted Sharia law, a stark departure from their original policy of religious freedom and secularism.<sup>7</sup> These changes created intense stratification and divide within the resistance, making the movement weaker and even more susceptible to outside threats.

The presence of foreign fighters also created more unnecessary violence throughout the conflict. Clayton and Bacon state that “Because foreign fighters lack roots in the local communities, they may be less restrained in their use of violence”.<sup>8</sup> The foreigners fighting with the Chechen resistance did not have any of the emotional or cultural knowledge of the region that would help them restrain unnecessary violence. Along with this, the foreign fighters used tactics which relied more heavily on radical Islamic terrorist groups meant to promote fear, instead of the guerilla warfare tactics of the original Chechen resistance. Moore and Tumelty note that the most significant change in fighting tactics happened during the Second Chechen War, when the largest number of Arab foreign fighters were participating.<sup>9</sup> It can be seen that foreign fighters, in general, tend to rely more on violence instead of meaningful participation in civil conflicts for many different reasons. Mendelsohn makes the argument that many foreign fighters are unfamiliar with the terrain and language and lack fighting skills, making them poor assets and more similar to liabilities in foreign civil conflicts.<sup>10</sup>

While the majority of the Arab foreign fighters in Chechnya did have fighting skills, they lacked knowledge about the region and the culture to help the Chechens win their independence.

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6 Tiffany S. Chu and Alex Braithwaite, “The Impact of Foreign Fighters on Civil Conflict Outcomes,” *Research & Politics* 4, no.3 (2017): 2.

7 Rich and Conduit, “The Impact of Jihadist Foreign Fighters on Indigenous Secular-Nationalist Causes,” 115.

8 Alexander Clayton and Tricia Bacon, “Foreign Fighters and Lethality in Civil Conflicts,” (2018): 2

9 Cerywn Moore and Paul Tumelty, “Foreign Fighters and the Case of Chechnya: A Critical Assessment,” *Studies in Conflict & Terrorism* 31, no. 5 (2008): 425.

10 Barak Mendelsohn, “Foreign Fighters – Recent Trends,” *Orbis* 55, no. 2 (2011): 195.

Instead, the Arab foreign fighters ruined the legitimacy of the resistance and fueled international support for Russian military presence in the region. Russia was no longer fighting against Chechen independence. They were bravely and selflessly continuing the global fight against terrorism. This frame allowed Russia to gain enough support to increase their military action in Chechnya and squash the resistance as well as the global Jihadist movement all at the same time. It is clear that the foreign fighters in Chechnya completely destroyed the movement the Chechen resistance had begun. While they did receive necessary funding from the Arabs, their movement was hijacked and delegitimized, the overall violence in the region increased, and Russia could spin the issue and gain support against Chechnya.

### **Social Movement Theory**

Social movement theory encapsulates the study of movements, insurgencies, and many conflicts. When looking at the conflict within Chechnya, applying the lens of Social Movement Theory to both the resistance itself along with the influx of foreign fighters involved adds a new level of complexity. As mentioned at the beginning of this paper, the most important or prevalent social movement theory tools present during the Chechen Conflict are opportunity, mobilization, and collective action. These tools come from Tilly's components of collective action which consist of "Interest, organization, mobilization, opportunity, and collective action itself."<sup>11</sup> Interest consists of a common goal or ideology shared between groups, organization is the physical structure of a group, and mobilization is the way in which groups obtain resources needed. Opportunity and collective action are the hardest elements to define and describe, so this paper will default to Tilly's original statements on the two. Opportunity, as Tilly states, "concerns the relationship between a group and the world around it," and collective action "consists of people's acting together in pursuit of common interests. Collective action results from changing combinations of interest, organization, mobilization, and opportunity."<sup>12</sup> There was also a diffusion of ideology and tactics from the Arab foreign fighters to the Chechen resistance. Brakke argues that this diffusion is an important part of social movements and the incorporation of foreign recruits.<sup>13</sup>

Opportunity, mobilization, and collective action have been chosen as the most important elements of the social movement in Chechnya, mainly because of the way in which foreign fighters took control of the movement as a whole. As stated above, mobilization is the gaining of resources necessary to have a successful social movement. The Arab foreign fighters

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11 Sidney G. Tarrow, *Power in Movement: Social Movements and Contentious Policies* (Cambridge: Cambridge University Press, 2011), 7.

12 Ibid.

13 Kristin M. Bakke, "Copying and Learning from Outsiders? Assessing Diffusion from Transnational Insurgents in the Chechen Wars," in *Transnational Dynamics of Civil War*, ed. Jeffrey T. Checkel (Cambridge: Cambridge University Press, 2013), 7.

that joined the conflict in Chechnya were the main providers of resources to the resistance. Between monetary funding, fighters, and training centers, the foreign fighters in Chechnya provided resources that the locals could not on their own. While the Arab insurgents essentially destroyed the Chechen independence movement, it is likely that the resistance would have ceased to exist without the help of the Arabs.

Opportunity also played a monumental role in the involvement of foreign fighters in Chechnya. The Arabs saw an opportunity to take a conflict and use it to further their goals of a global Jihad. The Chechen fight for independence was exploited by Arab Jihadist groups because they saw the opportunity in the region and took it. Some may argue that interest or collective ideology motivated the foreign fighters to join the Chechen resistance, but that argument is void considering the difference in goals between the two groups. The Chechens and Arab foreign fighters shared the same religion of Islam, which could have played some kind of role in gaining Arab support in the region. However, beside a shared religion, there were no other common characteristics between the Chechens and the Arab foreign fighters. The Arabs more likely saw a failing movement that could not survive without Arab funding and help, and the common religion served only as their gateway to take the movement for their own.

Collective action explains the direction in which the Chechen conflict ended up turning, and the possible connection between Arab foreign fighters in Chechnya leading to Chechens fighting in Arab conflicts. Collective action is the most complex of the elements because it is reliant on all of the other elements coming together as one. While some of the other elements did not play as large of a role as others, they were still part of the combination that led to the overall collective action of the movement. The foreign fighters completely changed the trajectory of the Chechen conflict and created a transnational network of Chechen fighters around the globe. Jasper and Goodwin argue that “Some movements affect the broader culture and public attitudes, perhaps paving the way for future efforts. Others leave behind social networks, tactical innovations, and organizational forms that other movements can use. At the extreme, some movements may simply arouse such a backlash against them that they lose ground.”<sup>14</sup> The conflict in Chechnya managed to do all of the above.

### **Chechen Involvement in Syria and Russian Reaction**

In response to the radicalization of many individuals in the Northern Caucasus region, a large number of Chechen foreign fighters participated in the Syrian Civil War. Northern

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<sup>14</sup> Jeff Goodwin and James M. Jasper, *The Social Movements Reader: Cases and Concepts*, (Oxford: Blackwell Publishers, 2009), 411.

Caucasian Jihadists joined the international Mujahideen to fight for the spread of Islam. The participation of Chechens in foreign civil conflicts is significant to the scale in which conflicts have become transnational. Historically, Chechen fighters have been nationalistic and wary of fighting for causes other than their own independence.<sup>15</sup> Souleimanov states that “According to some estimates, the North Caucasus has contributed the second largest group of foreign fighters, following non-Syrian Arabs — a disproportionately high number relative to their demographics.”<sup>16</sup> This network of Chechen and Northern Caucasian foreign fighters in Syria stems from Arab involvement within the Chechen Conflict.

Russian foreign policy in Syria is rather complex but can be boiled down to Russia’s relationship with Israel and the motivation to stop Chechen Jihadists. Israel comes into play because Putin promised that he would push the Assad regime to expel Palestinian extremists from Syria.<sup>17</sup> In order for this to happen, Russia needed to continue supporting the Assad regime in hopes of persuading them in favor of Israel. Moore and Tumelty also argue that “The level of Chechen involvement in extra-territorial activities has, however, been grossly exaggerated, obscuring the nuances in a set of very specific, varied, and complex relationships.”<sup>18</sup> While this may be true to an extent, the number of Chechen foreign fighters in Syria is still significant considering the relationship in which local Chechens had with Arab foreign fighters in the Chechen conflict. Chechen fighters in foreign conflicts such as Syria are also significant for their role in Russian foreign policy in the region. Roy Allison explains that Chechen involvement in Syria increased Russian motivation to become involved in the region. He states that “Yet for Putin himself, some have argued, Syria is reminiscent of Chechnya during its former years of struggle with Moscow; Putin perceives Syria as ‘the latest battleground in a global, multi-decade struggle between secular states and Sunni Islamism’.”<sup>19</sup> Along with the Assad regime supporting Putin on many occasions, Russia’s motivation for involvement in Syria comes down to a second chance at defeating Chechen Jihadists and furthering the global war on terror.

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15 Guido Steinberg, “A Chechen al-Qaeda? Caucasian Groups Further Internationalise the Syrian Struggle,” *Stiftung Wissenschaft und Politik* (2014): 7.

16 Emil A. Souleimanov, “Globalizing Jihad? North Caucasians in the Syrian Civil War,” *Middle Eastern Policy* 21, no. 3 (2014): 1.

17 Mark N. Katz, “Putin’s Foreign Policy toward Syria,” *MERIA: Middle East Review of International Affairs* 10, no. 1 (2006): 53-62.

18 Moore and Tumelty, “Foreign Fighters and the Case of Chechnya,” 424.

19 Roy Allison, “Russia and Syria: Explaining Alignment with a Regime in Crisis,” *International Affairs* 89, no. 4 (2013): 813.

## Conclusion

It is clear that the introduction of foreign Arab fighters into the Chechen Conflict essentially destroyed the original independence movement from Russia and dragged out violence throughout the region and abroad. The “catch-22” of the Chechen Conflict is that if not for the foreign fighter’s resources, the resistance would not last, but with the Arab resources, the resistance was hijacked by the global Jihadist movement. This exploitation of the Chechen resistance and grab of opportunity by the Arabs created a network of transnational Jihadist fighters across the Northern Caucasus. We can see this network come to life in the Syrian Civil War, where many Chechen Jihadists chose to fight within the Mujahideen, tossing away their previous nationalistic and isolationist views on conflict. Russian foreign policy in the Arab region and specifically Syria, while complex, can be stemmed back to the original fight against the Chechen resistance in their own country. Syria acts as a Russian proxy war on multiple fronts including Israel and the United States, but ultimately the psychological factor of a continued Chechen Jihadist movement in Syria has motivated Russian military interference in the region.

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Rich, Ben, and Dara Conduit. "The Impact of Jihadist Foreign Fighters on Indigenous Secular-Nationalist Causes: Contrasting Chechnya and Syria." *Studies in Conflict & Terrorism* 38, no. 2 (2015): 113-131.

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# Transnational Corporations: The Duty Bearers of International Human Rights in the 21st Century

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## Abstract

*Over the past two decades, the global community has assembled to address cyclical poverty, lack of education, and human rights abuses. The United Nations (UN), along with other international bodies such as the International Labor Organization (ILO), have set out legal parameters in which states are obliged to uphold and protect human and labor rights standards. However, given that many underdeveloped countries have begun to privatize their industries to engage in global neoliberal trade, transnational corporations (TNCs) are also implicated in reported human rights abuses within supply chains. Modern attempts to acknowledge or pre-emptively address human rights abuses in this area are superficial or applicable only to sovereign states. For example, global initiatives such as the UN Guiding Principles on Business and Human Rights do not enforce appropriate labor rights standards, nor do they penalize TNCs when workers are treated unjustly. This paper analyzes the concepts that enable this gaping legal loophole to exist, along with the challenges to ensuring TNCs commitments to human rights. Finally, this paper proposes alternatives that follow legal precedence in national and international court cases to depict the feasibility of a world wherein all liable international actors are held accountable for their actions.*

## Introduction

The United States has been a pillar of democracy and prosperity throughout the world. In many ways, our flexible yet resilient economy has allowed us to position ourselves as a world hegemon and leader of free market trade. The modern era of globalization has ushered in numerous firms that develop technology, agriculture, clothing, etc. Even though the firms' final products (i.e. cell phones, frozen food dishes, and ready-made garments) are attractive,

the manufacturing process has repeatedly plundered low-income communities and harmed individuals within these international supply chains. Sociologists and other researchers are left to monitor the human rights abuses committed against poor working classes in developing countries. Historically, the onus for human rights protections has landed upon sovereign states. However, as underdeveloped countries privatize various industries to participate in a neoliberal, global economy, their local governments retain less supervision and therefore, responsibility over the incidents or abuses that occur in these industries. So, the international conventions regarding human rights must adapt to this new environment where living and working conditions are largely determined by major transnational corporations (TNCs) and their conglomerates. Therefore, these corporations must be held responsible for ignoring or abetting egregious human rights violations in their supply chains.

The domestic (American) and international laws in regards to businesses and human rights require further examination. For context, this paper will illustrate the scope of human rights abuses in which TNCs are implicated. Later, the discussion here will highlight the numerous ways in which TNC and national government compacts are failing in the arena of human rights. In addition to the challenges of legal obligations for TNCs at a national and international level, this paper will present alternative legal frameworks to transform TNCs into accountable duty bearers of human rights under international law.

## Scope of Human Rights Violations

According to the Universal Declaration of Human Rights (UDHR), there are many valuable human rights that must be honored, including the right to be free from forced labor or slavery. However, the scope of forced labor globally is extensive and harrowing. There are an estimated 24.9 million people coerced into forced labor as of 2016.<sup>1</sup> Of this number, leading research centers speculate that there are 14.2 million forced labor cases tied to the private economic sector.<sup>2</sup> Due to the breadth of these statistics, and the fact that the projected estimates are rising, scholars have debated the extent to which TNCs are implicated. While specific TNCs are not usually named by government reports on forced labor, industries are implicated in this human rights violation, and the respective TNCs are implicated. Isabel Mota Borges explains that child labor is commonly used in mining industries in Zambia and other parts of West Africa, and forced labor schemes have been divulged

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1 "Global Estimates of Modern Slavery: Forced Labour and Forced Marriage." Geneva, Switzerland: International Labour Organization and Walk Free Foundation, 2017. [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_575479.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf).

2 Von Elgg, Jantine Werdmuller. "Hidden in Plain Sight Modern Slavery in the Construction Industry." White Paper. London: LexisNexis Business Insight Solutions, 2016. [https://bis.lexisnexis.co.uk/pdf/whitepapers/Modern\\_Slavery\\_in\\_Construction\\_Full.pdf](https://bis.lexisnexis.co.uk/pdf/whitepapers/Modern_Slavery_in_Construction_Full.pdf).

in India and Bangladesh's footwear and ready-made garment industries. The latter two industries have been connected to companies such as Adidas, GAP, Target, and Walmart.<sup>3</sup>

Other cases wherein companies are directly complicit in international law violations have been seen in Burma and Nigeria. The *Doe v. Unocal* and the *Wiwa v. Shell* cases argued in the U.S. Supreme Court shed light on the tactics that TNCs use to aid and abet crimes to bolster their profit margins. In the former case, Burmese residents were assaulted, raped, and killed by the Burmese military to support the efforts of Unocal's oil rig projects in that region.<sup>4</sup> There were also first-hand accounts of forced labor and slave-like conditions. The latter case involved extrajudicial killings of the Ogoni 9 (environmental activists and peaceful protestors against Shell) by Sani Abacha's military regime in Nigeria. The military were working to secure the lucrative pipeline in the region encompassing the Ogoni communities.<sup>5</sup> These actions by the Burmese and Nigerian states, along with their corporate benefactors, directly violate Articles 3, 5, 10, 12, and 17 of the Universal Declaration of Human Rights, to which Burma (now Myanmar) and Nigeria are signatories.<sup>6</sup> These articles mentioned involve the right to life, freedom from torture and inhumane treatment or punishment, right to a fair trial, and right against forced displacement or imprisonment.

#### Positive Effects of TNCs

On the other hand, some proponents of TNCs have touted their ability to respect human rights. They claim that corporate neoliberal schemes improve the quality of life for people overall and are therefore not a threat to human rights security.<sup>7</sup> Companies that engage in highly controversial industries such as mining and ready-made garments usually create Codes of Conduct to protect themselves from the minute legal obligations that they have to the workers in their supply chains. This process is sometimes deemed as self-correcting and capable of auditing their policies with respect to human rights.

The issue with this mode of thought is demonstrated through two modern examples. The first involves the Wendy's corporation. Since 2011, the Alliance for Fair Food (AFF) and the Coalition of Immokalee Workers (CIW), have called upon Wendy's to join the Fair Food

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3 Borges, Isabel M. "The Responsibility of Transnational Corporations in the Realization of Children's Rights." *University of Baltimore Journal of International Law* 5, no. 1 (2016): 1-40. <https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1049&context=ubjil>

4 395 F.3d 932 (9th Cir. 2002)

5 "Wiwa v. Shell Petroleum — Settlement Agreement (S.D.N.Y. 2009)." *International Legal Materials* 48, no. 5 (2009): 972-95. Accessed March 30, 2020. [www.jstor.org/stable/25691398](http://www.jstor.org/stable/25691398).

6 United Nations. *Universal Declaration of Human Rights*. 1948.

7 Bowie, Norman. "International Business as a Possible Civilizing Force in a Cosmopolitan World." *Journal of Business Ethics* 155, no. 4 (2019): 941-950. doi:10.1007/s10551-017-3670-8.

Program (FFP), a legally binding agreement created by farmworkers. The FFP requires corporations to pay farmworkers a penny per pound of the produce they harvest, and dictates that farm owners must allow for the Fair Food Standards Council (FFSC) to audit their fields throughout the year. Since its establishment, the FFP has seen the reduction of abuse, sexual assault, and refusal to pay workers decrease by over 75%.<sup>8</sup> However, in the spirit of neoliberal discourse, Wendy's has not agreed to join this program and has created their own Code of Conduct instead. They have also shifted their consumption of tomatoes from American suppliers to Mexican suppliers and greenhouse farms- both of which are places where the FFP has not taken root.<sup>9</sup> In effect, the code of conduct approach to TNC obligations to protect human rights is being used to evade the protection of those rights when the policies do not fit their business norms.

Another example of this failure is seen in Bangladesh with The Alliance- a collection of U.S. companies utilizing garment factories in Dhaka. After the Tazreen Factory fire, where over 100 were burned alive due to horrible building construction, this organization created a comprehensive code of conduct, trainings for employees on their rights, and safety codes for the buildings. However, the Alliance's final report in 2018 identified the local government's inability or refusal to abide by these standards.<sup>10</sup> The Alliance's subsequent failure was due to two reasons: corrupt and weak institutions at the local level, and corporations' unwillingness to incorporate grass-roots worker collectives (operating outside of union politics) into their decisions. This would allow them to fulfill their duty to laborers within their supply chain while supporting civil society groups that aim to eradicate corruption. Unfortunately, the Alliance's code of conduct and safety standards remain ineffective in practice, and corporations like Walmart continue to use factories that would not be approved if the codes were implemented properly.<sup>11</sup> Since TNCs have historically and are currently benefiting from weak institutions and the human rights violations that follow, they are equally liable for the destruction that their respective industries cause.

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8 "Fair Food 2018 Update." Sarasota, Florida: Fair Food Standards Council, 2019. <https://www.fairfoodprogram.org/wp-content/uploads/2019/10/Fair-Food-Program-2018-SOTP-Update-Final.pdf>.

9 Scheiber, Noam. "Why Wendy's is Facing Campus Protests (It's about the Tomatoes)." *New York Times* (Online), Mar 7, 2019. <https://www.nytimes.com/2019/03/07/business/economy/wendys-farm-workers-tomatoes.html>.

10 "An Industry Transformed: Leaving a Legacy of Safety in Bangladesh's Garment Sector". Dhaka, Bangladesh: Alliance for Bangladesh Worker Safety, 2018.

11 Kamlani, Tarannum. "Made in Bangladesh." *The Fifth Estate*. CBC (Canadian Broadcasting Corporation), October 11, 2013. [https://www.cbc.ca/fifth/m\\_episodes/2013-2014/made-in-bangladesh](https://www.cbc.ca/fifth/m_episodes/2013-2014/made-in-bangladesh).

## Challenges to TNC Accountability

The second portion of this paper will touch on the various concerns and challenges with regulating TNCs, and obligating them to safeguard human rights. The first issue involves territorial sovereignty. Transnational corporations do not govern specific pieces of land because they do not enter social contracts with the people on that land as a sovereign state does. It follows that TNCs are not limited by the concept of territorial sovereignty. Instead, they are private entities with the liberties (and sometimes the protection) of an individual, and the power to hold international engagements like a state. Scholars demonstrate that if you enhance one part of this dichotomy and elevate TNCs to the status of a state, then you are effectively undermining state sovereignty and the state's ability to regulate human rights independently.<sup>12</sup> This concerned approach to consolidating globalization and effective human rights is termed human rights minimalism. While it is not widely accepted, it is important to note that the international policies which have developed seem to evolve out of fear for overstepping state sovereignty and TNC privileges.

The second issue revolves around superficial international accords and governing bodies. The international community at the UN created the Global Compact under Kofi Annan's direction, and later, the Guiding Principles on Business and Human Rights. The ILO also drafted the Forced Labour Convention (No.29), to which 178 countries have signed. The ILO has also developed conventions speaking directly to employers obligations to their workers (especially migrant workers). However, these labor standards are ineffective in writing and in practice.

The Global Compact is an ambitious document and has garnered the support of over 44,000 companies. Yet, the construction of this Compact is not rigid enough to compel TNCs to increase the legal obligations that become apparent with their transparency. The Compact was created to allow companies to participate on a voluntary basis with their primary responsibility being the Communication on Progress report. The reported effects of a company not communicating to the Compact are cumulative abnormal negative returns in financial markets.<sup>13</sup> Even with its decentralized structure and plethora of Local Networks to pass down valuable information on appropriate business practices, the Compact primarily serves as a moral compass for companies, and is not intended to regulate their behavior.<sup>14</sup>

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12 Rawls, John. *The Law of Peoples*. Cambridge, Mass.: Harvard Univ. Press, 1999.

13 Janney, Jay J, Greg Dess, and Victor Forlani. "Glass Houses? Market Reactions to Firms Joining the UN Global Compact." *Journal of Business Ethics* 90, no. 3 (2009): 407-423. doi:10.1007/s10551-009-0052-x.

14 Rasche, A. 2012. "The United Nations and Transnational Corporations: How the UN Global Compact Has Changed the Debate". In J. T. Lawrence, & P. W. Beamish (Eds.), *Globally Responsible Leadership: Managing According to the UN Global Compact*, 33-49. Thousand Oaks, CA: SAGE Publications, 2012.

The succeeding Guiding Principles in 2011 entered the human rights arena with more measures to enforce appropriate corporate behavior. However, scholars such as Surya Deva note that its language appeals to the norms of businesses and their status quo rather than the needs of people in their supply chains. By enumerating human rights protections as corporate “responsibility” rather than “duties” or the principles as a “consensus”, the U.N. body is implying that honoring human rights is a choice and the decision to abide by these universal values was unanimous. This is not the case since there were some dissenting views on the application of these rights in specific cultural contexts and industries; these alternate viewpoints were not consolidated in the final Guiding Principles even after consultation.<sup>15</sup> In addition, the Guiding Principles do not specify how these moral values should be enforced, or how corporations should remedy the human rights violations they caused.

The ILO Convention on Forced Labor also allows TNCs a large opportunity to evade responsibility for international crimes. Historically, this convention has been used on small and medium scale business employers. In the case of TNCs, subcontractors typically receive the blame for violating labor or human rights law, specifically when the crimes committed were in a foreign country. Companies can refer to their ambivalent status and claim that they have no jurisdiction over the business activities in a foreign country, and that the subcontractor violated their company policies. In effect, TNCs are impervious to any legal demands by states to honor this Convention because they can transfer the crime to subcontractors and disavow them in the process. When this cycle occurs repeatedly in countries with high emigration rates, an abundance of low wage jobs, and weak judicial infrastructures (i.e. Cambodia, Bangladesh, Nigeria, etc.) there is no justice. The entities with the duty, as well as the legal and monetary capacity, to create an environment of justice are TNCs. So, there must be an international jurisdictional body to hold these TNC’s accountable even in countries with a weaker rule of law.

The only legal recourse in the cases mentioned above (where corporations can be held directly liable to human rights violations or failure to uphold labor rights standards) are onerous for the victims of these crimes. In the U.S., foreign nationals have the opportunity to utilize the Alien Tort Statute- a domestic federal law that stipulates “aliens” (foreign nationals) could sue for torts committed against them in violation of the “law of nations” or a treaty of the U.S.<sup>16</sup> Overtime, the federal courts have interpreted that the torts classified under this statute include violations of the human rights enumerated in the UDHR.<sup>17</sup> They’ve also set precedents wherein corporations are classified as individuals when “universal jurisdiction”

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15 Deva, Surya, and David Bilchitz, eds. *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* Cambridge: Cambridge University Press, 2013. doi:10.1017/CBO9781139568333.

16 28 U.S.C. § 1350

17 *Filártiga v. Peña-Irala* 630 F.2d 876 (2d Cir. 1980)

is applied. So, individuals or entities that commit crimes against humanity are classified as “enemies of mankind”, and all nations are believed to have the ability to regulate their behavior.<sup>18</sup> Until 2013 when the *Kiobel v. Royal Dutch Petroleum Company* was decided in the Second Circuit, corporate liability in human rights violations could be established under the ATS simply by showing that corporations knew the crimes were being committed and did nothing to stop those crimes.<sup>19</sup> In previous cases, this led corporations to agree on multimillion dollar settlements and avoid a damning trial. Given that the *Kiobel* case has heightened the burden of proof for plaintiffs, the use of the ATS in American courts is virtually impossible. The other reason why this law is scarcely applied is due to the decreasing amount of asylum seekers allowed into the U.S. Over the past ten years, the amount of people permitted asylee status from the following countries, where exploitative labor is widely documented by the Department of State, has significantly decreased: Bangladesh, Mexico, Democratic Republic of Congo, Nigeria, and Cambodia.<sup>20</sup> This further limits the opportunities that victims who are asylum seekers have to obtain justice for themselves and those who have been affected by corporations violating international law.

The final reason for the lack of legal duties imposed on TNCs involves a general lack of national security concern. Sovereign states inevitably control the amount and types of international trade. Even though private corporations are not wholly directed by state trade policy, they are definitely affected. The U.S. has stringent stipulations on certain goods as determined by the U.S. Customs and Border Protection (CBP) Department. Alexandra Caleca explains that the trade between certain TNCs based in the U.S. (i.e. GAP, Target, and Walmart), is not hindered by corporations’ lack of oversight or complicit nature in exploitative labor schemes abroad.<sup>21</sup> Caleca also explains that state intervention on TNCs would only occur if the goods violated rules of protection mandated by the CBP: if the goods were produced by means of terrorism, were deemed illegitimate (i.e. intellectual property theft), or were not paid with appropriate fees and duties. Even though the exploitative or forced labor employed in modern supply chains require a high level of terror against vulnerable populations, the U.S. CBP department does not classify these human rights abuses as terrorism nor as illegitimate. It would be more difficult to subsume the definition of forced labor into that of terrorism. So, for the sake of effective legal measures to advance human rights, the CBP should broaden their parameters regarding trade goods

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18 Bradley, Curtis A. “Universal Jurisdiction and U.S. Law.” *The University of Chicago Legal Forum* 2001 (2001): 323-350.

19 *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013).

20 Blizzard, Brittany, and Jeanne Batalova. “Refugees and Asylees in the United States.” *Migration Policy Institute* (blog), June 13, 2019. <https://www.migrationpolicy.org/article/refugees-and-asylees-united-states>.

21 Caleca, Alexandra Rose. “The Effects of Globalization on Bangladesh’s Ready-made Garment Industry: The High Cost of Cheap Clothing.” *Brooklyn Journal of International Law* 40, no. 1 (2014): 279-320.

that are made under abhorrent or “unacceptable conditions” to include forced labor. Given the challenges to corporate accountability presented above, the remainder of this paper will highlight the potential solutions and their legal justifications.

### **Current Global Legal and Political Framework**

The international community already boasts an extensive legal framework regarding laws against forced labor or slavery. Due to the pervasiveness of abolition legislation globally, forced labor and slavery are violations of customary international law (CIL), which can be applied to states or individuals. Due to the reasons enumerated below, these CIL’s should apply via *erga omnes* to TNCs as well. Through its traditional use in international law, the term *erga omnes* applies to states’ obligations being performed and owed to all other states.<sup>22</sup>

The 1926 Slavery Convention and amendments in 1956, along with the UDHR noted previously, are the inter-state agreements enumerated by the League of Nations and the U.N. These first two conventions explicitly define slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” and serfdom as “the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.”<sup>23</sup> It is important to note, however, that modern cases of forced labor resemble serfdom more than slavery given the contexts of these two terms. The intergenerational poverty of families and communities that lead to child labor and dangerous working conditions for low pay within globalized supply chains inhibit people from changing their socioeconomic status while rendering a pre-determined service to subcontractors or corporations. A recent article published by NBC News chronicles the daily life of mica miners, some of whom are children and others who are adults. These individuals explain that they must crawl and dig in the mines of Madagascar for at least 10 hours per day to earn 40 cents per day for their back-breaking and sometimes lethal work.<sup>24</sup> Children as young as four years old are implicated in this work and expected to help their families, even though the status as impoverished is not likely to change. While the UDHR offers a less

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22 Tams, Christian J. *Enforcing Obligations Erga Omnes in International Law*. Cambridge, UK: Cambridge Univ. Press, 2005.

23 Warnshuis, A. L., Joseph P. Chamberlain, and Quincy Wright. *The slavery convention of Geneva, September 25, 1926: text of the general act for the repression of African slave trade, July 2, 1890*. Worcester, Mass: Carnegie Endowment for International Peace, Division of Intercourse and Education, 1928.

24 Cavazuti, Lisa, Christine Romo, Cynthia McFadden, and Rich Schapiro. “‘Zone Rouge’: An Army of Children Toils in African Mines.” NBC News, Nov 18, 2019. <https://www.nbcnews.com/news/all/army-children-toil-african-mica-mines-n1082916>

detailed explanation of slavery, all of these conventions are considered measures to prevent the occurrence of forced labor that equates to slavery.<sup>25</sup>

In addition to these legal documents, there are precedents within international courts to apply the current CIL's regarding slavery and forced labor to specific cases in contentious environments globally. The first case, *Prosecutor v. Kunarac*, allowed the International Criminal Tribunal for the Former Yugoslavia (ICTY) to broaden the definition of enslavement to “establishing or maintaining over persons a status of slavery, servitude or forced labour”. In these circumstances, the defendants were sentenced guilty to crimes of slavery by forcing two teenage girls into bondage of forced labor and sexual acts.<sup>26</sup> The second monumental case that contextualized slavery and forced labor occurred in the Supreme Court of India. In this case, a public interest organization filed a writ of petition alleging that the Union of India, and the Delhi Development Authority were violating labor law because their construction workers were receiving below the minimum wage. This error in payment was not caused by the Development Authority themselves, but by the hired sub-contractors known as jamadars. This case is unique in that the labor violation did not arise from direct physical abuse, bondage, or transportation as dictated by the Slavery Convention and its amendments. Even still, the judges in the Indian Supreme Court decided that payment below the minimum wage was, in fact, a form of forced labor because “any factor that deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as ‘force’, and if labour or service is compelled as a result of such ‘force’, it would be ‘forced labour’.”<sup>27</sup>

Although this case was adjudicated at the national level, the court cited the ILO Convention 29, two US peonage cases, and Article 23 of the European Convention on Human Rights as reasons to elaborate on the classification of forced labor. As a result, the judges demanded the abolition of the use of jamadars along with the direct and immediate payment of wages (above or at minimum wage) to the working members being represented. Furthermore, the Court ordered the creation of three ombudsman positions to oversee that the labor laws were being enforced appropriately. Regardless of these innovative advancements, the ILO did not fully adopt the Indian Supreme Court's decision to consider lack of payment at minimum wage a viable determination of forced labor. As a result, cases in Ireland, Chile, and other parts of the world have been unable to use this decision or the

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25 Ardit Memeti and Bekim Nuhija. “The Concept of Erga Omnes Obligations in International Law.” *New Balkan Politics* 14 (2013). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3502662](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3502662)

26 *Prosecutor v. Kunarac et al.*, International Criminal Tribunal for the Former Yugoslavia, Case No. IT-96-23 (22 February 2001) and Case No. IT-96-23/1-A (12 June 2002) (Appeals Chamber)

27 *People's Union for Democratic Rights v. Union of India*, 1982 AIR 1473, 1983 SCR (1) 456, (18 September 1982)

Conventions on which its justification rests, as reasons to admit that union members have been victims of forced labor.<sup>28</sup> The concession that the ILO still allows, however, is that offering very low wages could become “answerable for a situation it did not create.”<sup>29</sup> It may be difficult for the ILO to agree that its principles can be applied in a broad range of cases, implicating both sovereign states and TNCs alike. Nevertheless, there are still a few conceptual reasons why international bodies such as the ILO should apply their conventions and other customary international laws to TNCs.

### **Applying Customary International Law to TNCs**

The first and primary reason for the application of international conventions to TNCs is their status within the United Nations. In 2016, the Sixth Committee of the UN General Assembly approved observer status for the International Chamber of Commerce (ICC).<sup>30</sup> The ICC has corporate members of various sizes in over 130 countries, making them one of the strongest and most cohesive business organizations. One reason for this status change offered by Assembly members purported that private sector businesses in the ICC will play a vital role in advancing the United Nations goals. Within the past decade, U.N. Sustainable Development Goals include reducing poverty, good health and well-being, and increasing access to education.<sup>31</sup> Given the numerous cases mentioned above, along with the statistics regarding the amount of forced labor compelled by private sector businesses, it is reasonable to suggest that the ICC and its members will not advance the U.N. Sustainable Development Goals via cooperation, but rather through direct oversight and enforcement.

Nonetheless, the economic and political parity of ICC member states is now greater than that of individuals, and comparable to that of states. Therefore, those businesses should be held to the same level of observation and obligation as states in order to not engage in forced labor or create situations that could become forced labor. In effect, the decision upheld in the 1982 Indian Supreme Court should be applied by the ILO throughout modern conditions of exploitative or coerced labor wherein cyclical poverty and dangerous working

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28 ILO Committee of Experts on the Application of Conventions and Recommendations. “Direct Request by Ireland concerning Convention no. 29, Forced Labour (1930).” Geneva: International Labour Organization, 2001.

29 “Report of the Committee set up to examine the representation made by the Senegal Teachers’ Single and Democratic Trade Union (SUDES) under article 24 of the ILO Constitution alleging non-observance by Senegal of the Abolition of Forced Labour Convention, 1957 (No. 105).” Geneva: International Labour Organization, 1997.

30 Brunkhorst, Svenja, and Jens Martens. “World’s Largest Business Association Gets Direct Voice in UN Decision Making.” Global Policy Forum (blog), December 20, 2016.

31 Browne, Stephen. Sustainable Development Goals and UN Goal-Setting. London: Routledge, 2017.

conditions are rampant. The current international bodies' structures do not account for this change in status for businesses around the globe, even though they should. For example, the World Trade Organization (WTO) and the ICC were created to mitigate business disputes via arbitration. Neither entity was established to monitor the business ventures of their members nor to support the rule of (labor) law in underdeveloped countries. In order to meet the pressing demands of modern human rights, and the U.N. goals for the upcoming decade, the international community as a whole must consider the establishment of more effective tools of corporate accountability. The final portion of this paper will hypothesize and present ways to apply human rights conventions to the entities that need it the most.

### **Potential Alternatives**

The international community should consider the following two-fold approach to corporate accountability: 1) elevate the status and subsequent legal obligations of TNCs in federal jurisdictions, and 2) create an interstate committee to operate between the International Criminal Court, the ILO, and the International Chamber of Commerce. To address the former, countries with a strong rule of law such as the U.S. and the United Kingdom (U.K.) already have legislation mandating that corporations based within their jurisdictions become more transparent. These laws include the ATS described above and the 2015 U.K. Modern Slavery Act (aka "The Act"). The Act is touted by former Prime Minister, Theresa May, as the world's pioneering document regarding methods to identify and tackle forced labor and slave-like conditions within the global supply chain. However, prominent scholars such as LeBaron and Ruhmkorf highlight some major flaws within this Act and the larger global framework it aims to shape: there are no sanctions imposed on corporations for failing to comply with their own due diligence reports, and corporations are not considered duty bearers under international law.<sup>32</sup> If federal jurisdictions in the U.S. and U.K., which oversee numerous TNCs earning more \$40 million per year, alter the status of TNCs to that of duty bearers of customary international law, a new interstate committee could enforce these duties as a regulatory agency within the current interjurisdictional structures. This status could come to fruition when American and British public interest representatives present court cases, in violation of domestic laws, that utilize the statements from the U.N. General Assembly members regarding the ICC, ILO interpretations of Convention applications, and the court cases cited previously, as precedent for elevating the status of TNCs. Eventually, this decision being solidified within the Supreme Courts of the U.S., U.K., and France (a majority of U.N. Security Council members) will signal to other governments that they should follow suit.

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32 LeBaron, Genevieve and Andreas Rühmkorf. 2017. "Steering CSR through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance." *Global Policy* 8, Supplement 3 (May 2017): 15-28. doi:10.1111/1758-5899.12398.

The second part of a pragmatic solution to this gap in TNC human rights obligations is a regulatory body formed by representatives from the members of the ICC, International Criminal Court, and the ILO. Coordination between these three interstate bodies is vital because the ICC maintains the high-profile corporate members, the ILO has established standards for preventing and mitigating human rights abuse, and the International Criminal Court could hear and respond to potential cases of torts in violation of international law. The ICC is also connected to the United Nations, which reifies the justification for the ICC to voluntarily participate in an interstate committee geared towards protecting human rights and achieving the U.N.'s ambitious goals. Unlike other regulatory agencies or sovereign states, this committee is not designed to oversee economic matters in isolation (i.e. bribery, access to trade information or supply of goods, extent of trade, form of trade within interstate agreements) unless these concerns culminated in some form of labor abuse. In those cases, the corporations would have to respond to the international human rights violation- not a trade law or arbitration dispute. The ICC and World Trade Organization already have methods to oversee financial contestation, so this hypothetical committee would focus principally on the violations dictated by the ILO and other domestic jurisdictions that apply.

These solutions operate in concert with the other. Since the human and labor rights violations being discussed are considered and adjudicated as crimes when committed by states or individuals, it follows that TNCs should be stripped of their ambivalent status and forced to answer for similar violations to an enforcement agency- the interstate committee. The details of this hypothetical interjurisdictional body can be thoroughly discussed by the current leaders of the ICC, ILO, and the International Criminal Court (i.e. membership of judges, constitution and bylaws, burden of proof required by workers, etc.). However, the need for this committee cannot be understated. If there continues to be a lack of enforcement due to states' inability to classify TNCs as powerful bodies with legal duties to uphold human rights and customary international law, the reported cases of forced labor will continue if not increase. Even in the face of rising nationalism in the West, the North American Free Trade Agreement (NAFTA) along with numerous other liberal economic accords will flourish, creating opportunities for TNCs to extract goods and services at increasingly low prices. It is not enough for TNCs to symbolically work with civil societies in a voluntary capacity via the U.N. Global Compact, or the U.N. Guiding Principles on Business and Human Rights. As sovereign states make promises to international bodies to engage in globalization, so must TNCs keep to their promises at the U.N. and ICC to respect human rights. When they blatantly or inadvertently renege on their resolutions, they must answer to a unified body of judges, civil society groups, and sovereign states. The challenges presented here are numerous, both legally and politically, but the rewards are immeasurable as we use accountability in its purest form to make societies around the world true benefactors of economic globalization.

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# One Island, Two Cypruses: A Realist Examination of Turkey's Recent Actions in the Eastern Mediterranean

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## **Abstract**

Over the past decade, the Republic of Cyprus (ROC) has discovered vast quantities of subsurface hydrocarbon resources within its declared exclusive economic zone (EEZ). In accordance with general principles of international law, the ROC has commissioned a host of foreign energy companies to explore the potential for commercial extraction activities within its relevant maritime zones. However, since 1983, a quasi-state self-labeled as the Turkish Republic of Northern Cyprus (TRNC) has maintained a claim to independence despite receiving no recognition from the international community. Relying on permission ostensibly provided by this Turkish Cypriot state, Turkey has interfered with the drilling operations of the ROC and sent its own exploration ships to waters claimed to be within the EEZ of the TRNC. In general, Turkey has displayed aggressive behavior towards the ROC in what can be described as an attempt to coerce oil concessions from its weaker regional neighbor. This article first surveys the history of the Cyprus dispute and explores all relevant international maritime law surrounding the rights and claims of coastal states over hydrocarbon resources. This article then provides a detailed explanation of the dispute at hand and uses a realist perspective to conclude that Turkey's behavior is a result of their differential power capabilities. Finally, this article explores and proposes potential non-violent solutions to the dispute, and how these may affect the future of the region.

## **Keywords**

Cyprus, Exclusive Economic Zones, Turkey, Republic of Cyprus (ROC), Turkish Republic of Northern Cyprus (TRNC)

## Introduction

Recent oil speculation in the eastern Mediterranean region has proved both lucrative and contentious. A variety of coastal states, including Israel, Lebanon, Syria, Egypt, Turkey, and the Republic of Cyprus, have claimed some portion of the discovered oil reserves in accordance with international principles delimiting maritime zones.<sup>1</sup> However, historical enmities, the absence of clearly defined maritime boundaries, and differential power capabilities between adjacent states have threatened to escalate hostilities over the benefits that should result from the exploitation of these hydrocarbon resources. Nowhere is this potential for conflict more prominent than in the ongoing dispute between Turkey and the politically divided island of Cyprus.

The Republic of Cyprus (ROC) is widely recognized by the international community as the sole legitimate government of the island of Cyprus. As such, international law entitles the ROC to claim and exercise sovereign rights over all waters adjacent to its shores, including hydrocarbon resources within the seabed and its subsoil.<sup>2</sup> However, the self-declared Turkish Republic of Northern Cyprus (TRNC), a quasi-state unrecognized by the vast majority of the international community, has long maintained a claim to independence and sovereignty since two Turkish invasions divided the island in 1974. As a self-declared “state,” the TRNC has made claims to maritime zones in waters surrounding the island of Cyprus. Ostensibly in defense of these claims, Turkey dispatched gunships in 2018 to prevent ENI, an Italian energy company commissioned by the ROC, from drilling in waters claimed by both the ROC and the TRNC.<sup>3</sup> Furthermore, in May of 2019, Turkey sent a state-of-the-art drilling ship, the *Fatih*, to conduct exploratory activities under naval escort in waters only 39 nautical miles off the western coast of the island.<sup>4</sup>

Through these and similar actions, Turkey has demonstrated an aggressive foreign policy in its attempt to coerce oil concessions from the weaker ROC.

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1 Non-states, such as the Palestinian Territories and the Turkish Republic of Northern Cyprus, have also staked claims over some portion of the eastern Mediterranean region.

2 The extent of a nation’s maritime zones, and the rights of said state within them, is a complicated legal question that will be addressed later in this essay.

3 ENI subsequently withdrew its drilling ships from the disputed territory, and has since declared that it will not conduct oil exploration activities if met with Turkish resistance. Smith, Helena, “Turkey insists on right to drill for energy reserves off Cyprus,” *The Guardian*, May 20, 2019. <https://www.theguardian.com/world/2019/may/20/turkey-insists-on-right-to-drill-for-energy-reserves-off-cyprus>.

4 A second drilling ship, the *Yavuz*, is also operating within waters claimed by the ROC. “Turkey May Have Started Drilling in Disputed Gas Deposit near Cyprus, Report Says”, *European[views]*, July 15, 2019. <https://www.european-views.com/2019/07/turkey-may-have-started-drilling-in-disputed-gas-dep-osit-n ear-cyprus -report-says/>.

This article will examine the history of the dispute involving the island of Cyprus. It will then discuss the effects of the discovery of natural gas reserves on regional stability, and international law principles related to claims of maritime zones and the entitlement to resources contained within such zones. This article will then examine Turkey's recent actions with respect to the ROC and demonstrate, through application of realist theory, that Turkey is engaging in classic realist behavior by utilizing strong-arm tactics in conjunction with the TRNC that exploit the relative power disparity between Turkey and the ROC. However, this article will conclude by outlining the various ways in which a peaceful settlement to the dispute may be reached.

### **The Cyprus Problem: A Background**

On August 16, 1960, the eastern Mediterranean island of Cyprus won its independence from British colonial rule.<sup>5</sup> As a product of the 1960 Treaty of Nicosia, the new Cypriot constitution contained elaborate power-sharing mechanisms between the majority Greek Cypriot and minority Turkish Cypriot ethnic groups of the island.<sup>6</sup> In addition, three foreign states—the United Kingdom, Greece, and Turkey—were collectively charged with the preservation of Cypriot independence and territorial integrity.<sup>7</sup> Signed on August 16, 1960, Article I of the Treaty of Guarantee prohibited any activities by the new Cypriot state “likely to promote . . . either union with any other State or partition of the Island”.<sup>8</sup> Article II of the treaty subsequently enabled Turkey, Greece, and the United Kingdom to “undertake to prohibit” any activity promoting the union or partition of the island, but only “so far as [it] concerns them”.<sup>9</sup>

At the time of its independence, Greek Cypriots composed more than 77% of the popula

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5 Morelli, Vincent, “Cyprus: Reunification Proving Elusive,” Congressional Research Service (April 15, 2019): 3-5. <https://www.hsdl.org/?abstract&did=821478>.

6 “Treaty of Nicosia,” UN Peacekeeper (August 1960): 2-8. <https://peacemaker.un.org/cyprus-nicosia-treaty60>.

7 Morelli, “Cyprus: Reunification Proving Elusive”, 1.

8 “Treaty of Guarantee,” UN Peacekeeper (August 1960): 2-11. [https://peacemaker.un.org/sites/peacemaker.un.org/files/CY%20GR%20TR\\_600816\\_Treaty%20of%20Guarantee.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/CY%20GR%20TR_600816_Treaty%20of%20Guarantee.pdf)

9 The August 16, 1960 Treaty of Alliance also established a standing presence of foreign troops from all three guarantor parties in order to mitigate violence and maintain Cyprus's political integrity.

“Treaty of Guarantee”, 8.

tion of the island, with Turkish Cypriots forming a mere 18%.<sup>10</sup> Per the Treaty of Nicosia, the president of Cyprus must always be of Greek Cypriot descent; consequently, Archbishop Makarios III, a charismatic Greek Orthodox politician, assumed office as the republic's first chief executive.<sup>11</sup> Over the ensuing years of self-rule, intercommunal violence between the two ethnic groups increased in both size and intensity, prompting the international community to create and deploy the United Nations Peacekeeping Force in Cyprus (UNFICYP) to prevent further violence.<sup>12</sup>

By 1973, conditions on the island had significantly deteriorated. Greek Cypriots, supporting political unification with Greece (enosis), prompted Makarios to suggest constitutional modifications to increase their political relationship with Greece. Meanwhile, Turkish Cypriots, supporting the political division of the island along ethnic lines (taksim), fled to northern enclaves to avoid further persecution. In 1973, a military junta in Athens under Brigadier General Dimitrios Ioannides staged a failed coup d'état against Makarios, precipitating a regional crisis as the fate of the island reached a crucible.<sup>13</sup> Citing their responsibility to protect as a guarantor party and fearful that Cyprus would unite with its regional enemy, Turkey responded to the attempted coup and ongoing intercommunal violence with a limited military invasion of the island on July 20, 1974.<sup>14</sup> After talks between the guarantor parties and the two Cypriot factions failed to produce a satisfactory outcome, Turkey initiated a second stage of its invasion on August 14, seizing approximately 37% of the island before unilaterally declaring a ceasefire.<sup>15</sup>

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10 The exact percentages have been contested, but vary only slightly from the estimates provided by this source.

Morelli, "Cyprus: Reunification Proving Elusive," 1.

11 "Treaty of Nicosia," 1-2.

12 UNFICYP is now the longest ongoing peacekeeping mission of the United Nations. The UN-enforced buffer zone ("The Green Line") between both Cypriot states has maintained relative peace on the island since the second 1974 invasion.

"United Nations Peacekeeping Force in Cyprus," UN Missions, last modified 1 January, 2020. <https://unficyp.unmissions.org/>

13 The causes for the coup d'état were manifold, but essentially resulted from the nationalistic desire to incorporate Cyprus into a broader Greek state. The junta soon collapsed, being replaced by the Third Hellenic Republic.

Morelli, "Cyprus: Reunification Proving Elusive," 1-2.

14 This first invasion, conducted in response to the failed coup attempt, conquered only a small percent of the island's landmass.

Morelli, "Cyprus: Reunification Proving Elusive," 1-2.

15 It is widely understood that Turkey initiated the second stage of its invasion in order to secure leverage over Greece and the ROC in subsequent reunification negotiations.

Morelli, "Cyprus: Reunification Proving Elusive," 2.

Since 1974, the Turkish-occupied region of Cyprus has remained politically distinct from the internationally recognized Greek Cypriot government. The international community has disapproved of Turkey's invasion(s) and denied the legal validity of any resulting Turkish Cypriot state. United Nations Security Council Resolution (UNSCR) 360, passed by a 10-0-3 vote on August 16, 1974, announced a “formal disapproval” of the “unilateral military actions” taken against the ROC, urging an immediate withdrawal of all “foreign military personnel”.<sup>16</sup> When the post-invasion Turkish Federated State of Cyprus (TFSC) was replaced by the self-declared TRNC in 1983, UNSCR 541 castigated its “purported secession” from the broader Cypriot state and denounced such an action as “legally invalid”.<sup>17</sup> UNSCR 550 reiterated this language, calling on all states of the United Nations to “respect the sovereignty, independence, [and] territorial integrity . . . of the Republic of Cyprus” as the sole legitimate government of Cyprus.<sup>18</sup> Since 1983, only Turkey has formally recognized the independence and sovereignty of the TRNC.

Dotted line denotes UN-enforced buffer zone (“The Green Line”) between the Republic of Cyprus and the TRNC.



Source: [https://en.wikipedia.org/wiki/File:Cyprus\\_adm\\_\(%E2%80%93931960\)\\_location\\_map.svg](https://en.wikipedia.org/wiki/File:Cyprus_adm_(%E2%80%93931960)_location_map.svg)

16 “Resolution 360,” United Nations Security Council Resolutions (1974), 1-2. <http://unscr.com/en/resolutions/360>

17 “Resolution 541,” United Nations Security Council Resolutions (1983), 1-3. <http://unscr.com/en/resolutions/541>

18 “Resolution 550,” United Nations Security Council Resolutions (1983), 1-2. <http://unscr.com/en/resolutions/550>



without some complication, UNCLOS's provisions will be discussed and applied as if they are legally binding to all parties to the dispute.

The UNCLOS provisions most relevant to the dispute at issue are those that discuss the rights and entitlements of coastal states in their maritime zones, and those relating to how the boundaries of maritime zones are drawn between states with opposite or adjacent coastlines. The first important point is that UNCLOS's entitlements, particularly to exercise sovereignty or sovereign rights in maritime zones as further discussed below, is vested in coastal states. As the recognized government of the island of Cyprus, the ROC is entitled to the full panoply of the zonal rights and entitlements available to all coastal states. However, the TRNC, which is not recognized as a state by the United Nations, is not entitled to claim or otherwise exercise sovereignty or sovereign rights in maritime zones adjacent to its shores.

The maritime zones relevant to offshore hydrocarbon exploration are the territorial sea, the EEZ, and the continental shelf.<sup>23</sup> As for the territorial sea, all coastal States such as the ROC are entitled to claim a 12-nautical mile (NM) territorial sea from its baseline (typically, the low water line along the coast).<sup>24</sup> The coastal State is sovereign in the waters of the territorial sea, as well as its seabed and subsoil.<sup>25</sup> Thus, within 12 NM of its baseline, the coastal State is entitled to exercise its sovereign rights over, among other things, the subsoil, resources contained within it, and activities related to those resources. In short, the coastal State has full rights over all hydrocarbon exploratory and extractive activities in the seabed and subsoil underlying its territorial sea.

Beyond the territorial sea, a coastal State is entitled to exercise "sovereign rights" for the purpose, *inter alia*, of "exploring and exploiting . . . the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil" out to a distance of 200 NM from its baseline.<sup>26</sup> Such sovereign rights over resources, whether exercised under the coastal State's authorities in its EEZ (UNCLOS Part V) or continental shelf (UNCLOS Part VI), have precisely the same effect, which is to grant the coastal State exclusive exploration and exploitation rights over the resources in the seabed and subsoil resources out to 200 NM from its baseline.<sup>27</sup>

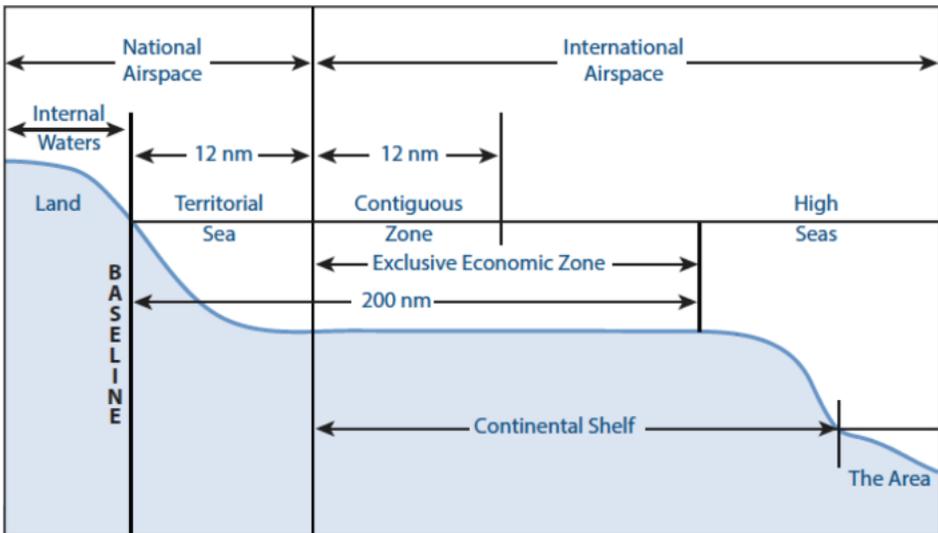
23 According to UNCLOS Article 121, island States have the same maritime zone entitlements as any other land territory.

24 UNCLOS Articles 3 and 5. Cyprus has claimed a 12 NM territorial sea. "United Nations Convention on the Law of the Sea," United Nations (1982), 23, [https://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf).

25 "United Nations Convention on the Law of the Sea," 23.

26 "United Nations Convention on the Law of the Sea," 40.

27 UNCLOS deals with the EEZ and continental shelf differently because: (1) the EEZ includes the water column, seabed, and subsoil, whereas the continental shelf only includes the seabed and subsoil; (2) the continental shelf can extend beyond 200 NM from the baseline in certain circumstances not relevant to this discussion, whereas the EEZ cannot extend beyond 200 NM;



Map depicting maritime zones under UNCLOS. Note that the exclusive economic zone overlaps with the continental shelf, with the only difference between the two being how far from the baseline a nation may claim sovereign rights over certain activities.

Source: <https://sites.tufts.edu/lawofthesea/chapter-two/>

As for the methodology for delimiting the EEZ or continental shelf between states with opposite or adjacent coasts, UNCLOS charges affected states to reach “agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.”<sup>28</sup> For UNCLOS signatory states, if no agreement can be reached within a reasonable period of time, resort shall be had to the mandatory dispute resolution procedures in UNCLOS Part XV. Since Turkey is not an UNCLOS signatory, this mandatory dispute resolution requirement and associated mechanisms are not applicable. Any other dispute resolution mechanisms, such as binding arbitration or resort to the International Court of Justice, both require the agreement of all Parties to a dispute to resort to that forum or mechanism.

and (3) whereas the EEZ’s breadth and coordinates must be claimed and filed by the coastal State, the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

“United Nations Convention on the Law of the Sea,” 49.

28 “United Nations Convention on the Law of the Sea,” 49, 52.

## Hydrocarbon Resources in the Eastern Mediterranean

The Eastern Mediterranean has eight notable basins in which hydrocarbon reserves have been discovered.<sup>29</sup> Though historically centered around Syria's vast offshore oil reserves, recent speculation has shifted to new, potentially lucrative oil fields throughout the region.<sup>30</sup> Over the past decade, the Levant Basin has emerged as one of the most commercially lucrative oil sites in the eastern Mediterranean region, providing both Israel and Cyprus with significant reserves of commercially exploitable oil.<sup>31</sup> In addition, recent discoveries in Egypt's Zohr oil field have diversified oil speculation within the region and extended the number of regional states directly involved in extraction activities.<sup>32</sup>

The ROC has discovered significant hydrocarbon reserves within its declared EEZ, and has commissioned a host of foreign energy companies to explore the potential for future extraction operations. In December of 2011, the American oil company Noble Energy discovered approximately 4.54 trillion cubic feet (Tcf) of natural gas in the Aphrodite field to the southeast of Cyprus, piquing international interest in the potential for oil extraction activities.<sup>33</sup> In February of 2018, after several years of relative inaction, the Italian oil company ENI discovered new deposits in the Calypso field to the southwest of the island, reinvigorating optimism about the viability of extraction operations.<sup>34</sup> Finally, in February of 2019, ExxonMobil and Qatar Petroleum made a major discovery in the Glaucus oil field to the southwest of the island, detecting approximately 5 to 9 Tcf of natural gas — the largest discovery ever made within the EEZ of the ROC.<sup>35</sup> This series of discoveries has vaulted the ROC to the forefront of oil-exporting states in the eastern Mediterranean region.

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29 “Overview of oil and natural gas in the Eastern Mediterranean region,” US Energy Information Administration (August 15, 2013), 1-3. [https://www.eia.gov/international/content/analysis/regions\\_of\\_interest/Eastern\\_Mediterranean/eastern-mediterranean.pdf](https://www.eia.gov/international/content/analysis/regions_of_interest/Eastern_Mediterranean/eastern-mediterranean.pdf).

30 “Overview of oil and natural gas in the Eastern Mediterranean region,” 2-4.

31 Israel and Lebanon currently disagree on the status of an undemarcated zone between both states.

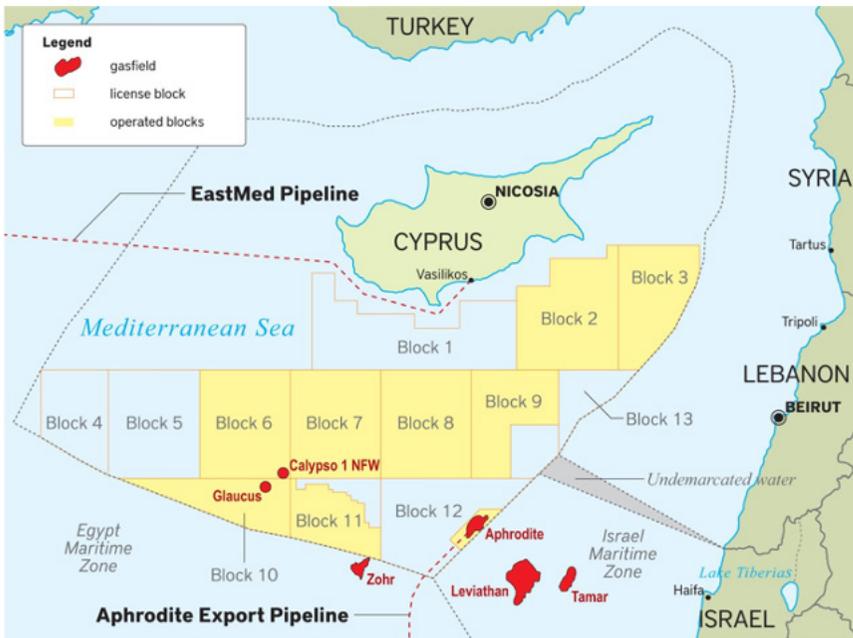
“Overview of oil and natural gas in the Eastern Mediterranean region,” 2-4.

32 “Zohr: Production Underway,” ENI, last updated 31 January, 2020. [https://www.eni.com/en\\_IT/operations/upstream/exploration-model/zohr-egypt](https://www.eni.com/en_IT/operations/upstream/exploration-model/zohr-egypt).

33 “Overview of oil and natural gas in the Eastern Mediterranean region,” US Energy Information Administration, 5.

34 “Total, Eni stake new claim in Cyprus gas and oil search,” Euractiv, September 19, 2019, <https://www.euractiv.com/section/energy/news/total-eni-stake-new-claim-in-cyprus-gas-and-oil-search/>.

35 “Exxon makes gas discovery at Glaucus-1 well, offshore Cyprus,” Offshore Oil Today, February 19, 2019. <https://www.offshoreenergytoday.com/exxon-makes-gas-discovery-at-glaucus-1-well-offshore-cyprus/>.



Map of licensing blocks in the EEZ of the Republic of Cyprus. The Aphrodite, Calypso, and Glaucus oil fields are shown in red, along with Israel's Leviathan and Tamar fields and Egypt's Zohr field.

Source: <https://www.petroleum-economist.com/articles/midstream-downstream/lng/2019/cyprus-ponders-gas-monetisation-options>.

This recent oil boon has been accompanied by a shift in the ways in which exploitable oil is transported to markets throughout Europe. Over the past several decades, Russian oil has accounted for almost 40% of the European Union's total oil imports, reaching European markets via major pipelines that run primarily through Turkey.<sup>36</sup> However, recent discoveries throughout the Eastern Mediterranean have threatened to diminish Turkey's leverage over the EU by supplanting traditional pipelines with new oil routes. Jointly proposed by Greece, Israel, and the ROC, a new 1,300-mile "EastMed Pipeline" running from Cyprus

36 Carpenter, Scott, "New Pipeline Deal Gives Europe Access To Eastern Mediterranean Gas Reserves, Angering Turkey," *Forbes*, January 20, 2020. <https://www.forbes.com/sites/scottcarpenter/2020/01/02/new-gas-pipeline-deal-gives-europe-access-to-eastern-mediterranean-reserves-angering-turkey/#619d4abe1c69>.

to Greece is expected to supply the European Union with over 4% of its natural gas imports within ten years.<sup>37</sup> In addition, bilateral agreements between Egypt and the ROC have proposed a new pipeline from the Aphrodite oil field to the Egyptian mainland, where natural gas could be liquefied and exported for sale throughout European markets.<sup>38</sup>



Map showing proposed route of the EastMed pipeline. Note its passage through waters claimed by Turkey.

Source: <https://www.bridgesforpeace.com/israel-egypt-others-announce-formation-of-eastern-mediterranean-gas-export-hub/>

Finally, in July of 2019, Israel, Egypt, the ROC, Greece, Italy, and the Palestinian territories agreed to create a new Eastern Mediterranean Gas Forum, hoping that by doing so they could create new markets, reduce the price of exports, and minimize extraction costs for oil exporters throughout the region.<sup>39</sup> Turkey, among other states, has not joined this

37 Some estimates state that the €6 billion EastMed project may meet up to 10% of the EU's energy needs over a slightly longer period of time.

Carpenter, Scott, "New Pipeline Deal Gives Europe Access To Eastern Mediterranean Gas Reserves, Angering Turkey," January 20, 2020.

38 "Overview of oil and natural gas in the Eastern Mediterranean region," US Energy Information Administration, 5.

39 "Eastern Mediterranean Gas Forum to Promote Regional Energy Cooperation," Al-Monitor, August 15, 2019. <https://www.al-monitor.com/pulse/originals/2019/08/egypt-east-med-gas-forum-founding-members-meeting-israel.html>.

international body.<sup>40</sup>

### Turkey's Maritime Claims

In June of 2012, the Turkish government ratified a map “bilaterally” delimiting the geographic extents of its continental shelf in accordance with the TRNC.<sup>41</sup> Submitted as a note verbale to the Secretary-General of the United Nations, the map reflected Turkey's unorthodox interpretation of how a nation's geologic continental shelf affects the delimitation of maritime zones.<sup>42</sup> As a non-signatory to UNCLOS, Turkey has long contested the claim that small islands resting on the continental shelf of another nation have the right to claim EEZs. Originating from its long-standing debate with Greece over islands in the Aegean Sea, Turkey has used this interpretation to claim large swaths of the Eastern Mediterranean despite the overlapping EEZ claims of island states.<sup>43</sup> In addition, due to its longer coastline, Turkey's map included maritime boundaries closer to the island of Cyprus at certain points than what would be considered “equitable” under Article 83 of UNCLOS.<sup>44</sup> The United Nations has never officially recognized Turkey's maritime map.

Turkey has long defended its rights to operate in waters claimed to be within the EEZ of the TRNC. Believing that the profits from exploitable oil resources should be divided equitably between both the southern and northern governments, Turkey has refused to recognize or respect any multilateral agreements involving the ROC and its maritime entitlements.<sup>45</sup> Additionally, Turkey has repeatedly acknowledged and acted on the assumption that the TRNC's EEZ claims are both valid and enforceable, sending drilling ships to waters within

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40 The TRNC was not invited to join the Forum.

41 Ioannidis, Nikolaos, “The Continental Shelf Delimitation Agreement between Turkey and ‘TRNC’,” *Talk!* (European Journal of International Law, May 2014): 1-5. <https://www.ejiltalk.org/the-continental-shelf-delimitation-agreement-between-turkey-and-trnc/>.

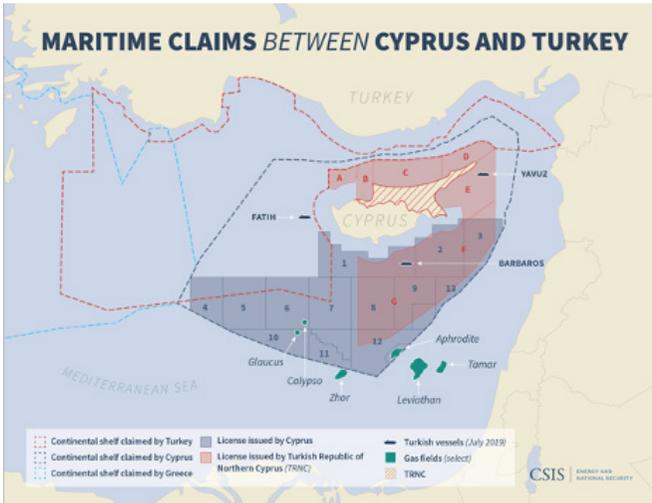
42 Ioannidis, “The Continental Shelf Delimitation Agreement between Turkey and ‘TRNC’,” pg. 1-2.

43 A similar argument about the maritime entitlements of islands on the continental shelf of other nations was made in the case of *Nicaragua v. Colombia*, brought to arbitration by the ICJ in 2001. Though complicated by several other specific points of contention, the relevant conclusions made about islands on the continental shelf of other nations implied that Turkey's similar claims about islands in the Aegean Sea are invalid. For more information about this case, visit <https://www.icj-cij.org/en/case/124>

44 “United Nations Convention on the Law of the Sea,” 52.

45 Kucuk, Ferhat, “Maritime codes covering the gas dispute in East Med,” *The Daily Sabah*, August 30, 2019. <https://www.dailysabah.com/op-ed/2019/09/30/maritime-codes-covering-the-gas-dispute-in-east-med>.

its claimed maritime zones.



Red dotted line denotes Turkey’s maritime claims; black dotted line denotes the Republic of Cyprus’s claims. Note the red zones to the north, east, and south of the island denoting the EEZ claims of the TRNC.

Source: <https://www.csis.org/analysis/east-med-tensions-rise-again>

Furthermore, in December of 2019, Turkey concluded a maritime deal with Libya’s Government of National Accord that set new maritime boundaries between both nations in the Eastern Mediterranean. Claiming vast adjacent maritime zones, the bilateral agreement overlapped with what other regional states have declared to be within their own declared maritime zones.<sup>46</sup> Most major international actors, including the European Union and the United States of America, have criticized the bilateral agreement and denied its legal validity.<sup>47</sup> However, upon completion, Turkish President Recep Tayyip Erdoğan announced that the Ankara-Tripoli deal would prohibit “Greek Cypriots, Egypt, Greece and Israel”

<sup>46</sup> Gumrukcu, Tuvan, “Erdoğan: Turkey and Libya can conduct joint explorations in eastern Med,” Reuters, December 9, 2019. <https://www.reuters.com/article/us-turkey-libya-erdogan/erdogan-says-turkey-and-libya-can-hold-joint-exploration-in-eastern-med-idUSKBN1YD23G>.

<sup>47</sup> A member of the US State Department called the deal “unhelpful” and “provocative”, while Egypt has decried the deal as “illegal”. Greece has also contested the new deal, stating that it violates Article 121 of UNCLOS. For more information on the reaction of other states, visit <https://www.reuters.com/article/us-turkey-libya/turkey-signs-maritime-boundaries-deal-with-libya-amid-exploration-row-idUSKBN1Y213I>.

from establishing “natural gas transmission line[s] ... without Turkish consent” through its maritime zone — a direct, aggressive response to the EastMed pipeline project.<sup>48</sup>



Ankara-Tripoli maritime agreement, December 2019. Note the proximity of Turkey’s maritime claims to a) islands in the Aegean Sea and b) the island of Cyprus.

Source: <https://www.maritime-executive.com/article/greece-cyprus-and-israel-sign-trans-mediterranean-gas-pipeline-deal>

### A Realist Examination

The eastern Mediterranean region, like most heavily contested bodies of water, exists in a state that borders on anarchy. For all practical purposes, the enforcement of maritime boundaries is dependent upon the means and capabilities of the coastal state affected by any infringements or violations. Given the lack of clarity regarding maritime boundaries and humankind’s historical focus on the land, conflicts over the maritime claims of other nations are not regarded as severe of a violation as, say, the invasion of a nation’s terrestrial borders. Consequently, the precedent set by the international community in response to maritime violations has showcased powerful rhetoric and condemnatory language, yet minimal substantive action. As such, every coastal state is essentially in a state of self-help; with no effective international body to arbitrate disputes or enforce compliance, the indi

48 “Why did Turkey sign a maritime deal with Libya?,” TRTWORLD, December 10, 2019. <https://www.trtworld.com/turkey/why-did-turkey-sign-a-maritime-deal-with-libya-32064>.

vidual capabilities of a coastal state are the ultima ratio for the settlement of disputes over maritime zones.<sup>49</sup> In such an environment, the use or threat - explicit or implicit - of force is the primary means towards the advancement of national interests in lieu of the effective rule of law.

As a result, it becomes clear that only a realist perspective that defines the interests of each state in terms of their relative power capabilities can fully grasp the realities of interstate affairs in the eastern Mediterranean region. Turkey's ambitions, combined with its military preeminence over the ROC, make it unlikely that Turkey will cede to international opinion or acquiesce to conventional norms and procedures of international law. Therefore, in order to more fully understand the dispute and its implications about the future of the region, this article will utilize a realist examination of Turkey's actions in the Eastern Mediterranean in relation to Cyprus in order to analyze four broad questions:

First, how critical is the role of the TRNC in Turkey's ability to claim some portion of the eastern Mediterranean oil reserves?

Second, why has the international community remained hesitant to demand more normative behavior from Turkey in its dealing with the ROC?

Third, what motivates Turkey's strong-arm tactics toward the region?

And finally, what are the prospects for a peaceful resolution?

### **The Role of the TRNC**

Since its 1974 invasions, Turkey has interacted and engaged with the TRNC as if it was an independent and sovereign state coequal to its Greek Cypriot counterpart. Most relevantly, Turkey has exploited the maritime claims, appurtenant rights, and drilling "concessions" provided by the TRNC for its own economic aggrandizement, allowing it to stake a claim over hydrocarbon resources in a region where it otherwise would have been excluded. In short, whether through fortuity or premeditated calculation, the TRNC and its claimed maritime zone entitlements have proved invaluable, and even essential, to Turkey's ongoing drilling activities off the coast of the island of Cyprus.

These "concessions" allow Turkey to maintain implausible deniability about the legality of its own drilling activities. By maintaining the fiction of the TRNC as a legitimate state actor, Turkey has afforded itself the deniability of stating that its drilling activities are both legal and justifiable under the lawful consent of a Turkish Cypriot state. This narrative, de

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<sup>49</sup> Art, Robert J, and Jervis, Robert, *International Politics: Enduring Concepts and Contemporary Issues* (New York: Pearson, 2006), 3.

rived from decades of interaction with Turkish Cypriots and rooted in Turkish nationalism, has provided nominal legitimacy to what would otherwise be recognized as overt displays of aggression in securing for itself the entitlements officially designated for the ROC. As a result, any attempt by the international community to secure Turkey's compliance with international law has fallen on deaf ears, given the fundamental and irreconcilable disagreements between both parties over the legal status of the Turkish Cypriot territories. This demonstrates that the TRNC, far from a political tool likely to be cast off at the earliest convenience, is integral to Turkey's claims to Eastern Mediterranean oil, and as such is a crucial stakeholder in any future settlement within the region.

### **The (Non)-Role of the International Community**

The TRNC benefits greatly for its concessions to Turkey; in fact, its continued existence, illusory or not, is a direct product of Turkey's political, economic, and military power, and Turkey's willingness to use such power to defend and advance its national interests. Given its strategic location on NATO's eastern front, guarding against successive threats from the Soviet Union and later the Middle East, allied states have remained hesitant to punish Turkey's actions in light of the potential geopolitical consequences. More recently, the threat of Turkey releasing large quantities of immigrants into Europe has caused Western powers and the European Union to tread all the more lightly in response to Turkey's errant behavior. Turkey's recent invasion of Syria highlights this point, demonstrating the West's permissiveness in tolerating escalatory and potentially destabilizing behavior from the recalcitrant state.

Economically, Turkey is a major power, capitalizing on expanding ties with Russia to establish itself as an energy hub for the transshipment of Russian oil to European markets. Its economic power gives it the means both to keep the TRNC afloat and weather any sanctions that may be imposed on it in response to its ongoing behavior. Militarily, no nation in the region with the exception of Israel begins to approach Turkey's military capacity. With sophisticated weaponry and a significant navy, Turkey has increasingly utilized its armed forces to coerce regional neighbors and establish itself as the region's preeminent military power. Both Greece and, dramatically more so, the ROC are enormously outclassed by Turkey's military and economic potential, and as such can offer no significant opposition to Turkey's strong-arm tactics within the region.

As such, the risks associated with punishing Turkey for its transgressions in the eastern Mediterranean region outweigh any potential benefits to nations that might otherwise consider interceding. The ROC, as a small and geopolitically insignificant nation, has thus far been unable to rally sufficient international support to successfully oppose Turkey's actions or compel its compliance with international law.

## What Underlies Turkey's Actions

Turkey's principal motive for its long-standing dispute with the ROC originates from historical enmity between ethnic Greeks and ethnic Turks. Culminating in a long series of political and military disputes, the relative power balance between "greater Greece" and "greater Turkey" has long served as a flashpoint for conflict in the eastern Mediterranean region.<sup>50</sup> In the case at hand, a stronger ROC, which has always strongly identified with Greece, enhances "greater Greece" at the expense of "greater Turkey"; as a result, Turkey has long used its superior military power to compel the ROC to acquiesce to its specific demands. The 1974 invasion, illustrative of this point, demonstrates Turkey's refusal to allow the island to form any formal political relationship with Turkey's regional enemy and thereby reduce the influence of Turkish Cypriots. In 1997, Turkey again threatened war to prevent the ROC from acquiring S-300 missiles from Russia, eventually cowing the weaker state into trading these missiles to Greece.<sup>51</sup> This pattern represents a trend that continues to this day, which has most recently manifested itself in a strong-arm policy to secure Eastern Mediterranean oil concessions from the ROC for the economic benefit of Turkey and its allies.

Over the past decade, Turkey has channeled increased nationalism under a populist political leadership to support and sustain a strident and militaristic foreign policy. Campaigning under the ultra-nationalist Justice and Development Party, President Recep Tayyip Erdoğan has escalated Turkey's aggressiveness in pursuing for itself the concessions most favorable to its national interests.<sup>52</sup> In doing so, it has strayed from comfortable alliances and normative boundaries when it deems it advantageous to do so for its unilateral gain. For instance, in July of 2019, Turkey incurred the condemnation of its powerful ally, the United States, and broke from NATO ranks by purchasing S-400 surface-to-air missile systems from Russia.<sup>53</sup> In the summer of 2019, Turkey conducted a massive, three-sea naval exercise of 131 warships, 57 warplanes, 33 helicopters, and over 25,000 military personnel,

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50 As recently as 1921, the modern Turkish state fought a conflict with Greece over the territory of Asia Minor. Prior to Turkey's 1974 invasion of Cyprus, tensions between the two states were heightened to the point where war seemed inevitable. Sussman, Paul. CNN, Cable News Network, September 6, 2001. <http://edition.cnn.com/2001/WORLD/europe/09/06/turkey.greece/>.

51 Bandow, Doug, "Lift the Arms Embargo on Cyprus," *The National Interest*, June 6, 2019. <https://nationalinterest.org/blog/skeptics/lift-arms-embargo-cyprus-61332>.

52 Cook, Steven, "Istanbul's Election: What Does Erdogan's Loss Mean for Turkey?" *Council on Foreign Relations*, June 24, 2019. <https://www.cfr.org/in-brief/istanbuls-election-what-does-erdogans-loss-mean-turkey>.

53 "Turkey May Have Started Drilling in Disputed Gas Deposit near Cyprus, Report Says", *European[views]*, July 15, 2019. <https://www.european-views.com/2019/07/turkey-may-have-started-drilling-in-disputed-gas-deposit-near-cyprus-report-says/>.

in what was a clear attempt to intimidate its regional neighbors.<sup>54</sup> Turkey's late 2019 offensive into Syria has only exacerbated its tension with nearby states, demonstrating that it can and will use overt military force to protect or advance its own national security interests. Through these and other actions, Turkey has clearly instigated a pattern of rejecting existing alliances and normative forces whenever they prove incompatible with its own national desires, straining relations with the West and creating an emergent series of alliances with unconventional partners in the process.

The discovery of subsurface hydrocarbon resources in the waters off Cyprus captured these nationalistic and militaristic impulses. Were the ROC allowed to exploit these resources to its fullest extent, the ROC would experience a fiscal boom that could enhance its power and leverage over Turkey and the TRNC. Such a relative gain, especially if ethnic Turks do not share in its benefits, would be unacceptable for Turkey as it may upset the power balance between "greater Greece" and "greater Turkey". In addition, the prospect that Eastern Mediterranean oil could bypass Turkey's existing pipelines en route to the European Union and thereby hurt its domestic economy further compels Turkey to take action to secure for itself some portion of the discovered oil reserves. These fears, combined with its rise in militaristic and nationalistic behavior, explain the ongoing escalation of tensions between Turkey and the ROC with respect to hydrocarbon resources.

### **What are the Prospects for a Peaceful Solution?**

Strong-arm tactics in relation to resources in the maritime domain are by no means unprecedented. In the South China Sea, the Republic of China has claimed ownership rights of waters within a "Nine-Dash Line" that encompasses broad swathes of the sea, including over large areas that are claimed as EEZs by other coastal states.<sup>55</sup> Despite widespread international condemnation and a decision of the International Court of Arbitration in 2016 that essentially rejected any possible legal bases for its expansive maritime claims, China has utilized its enormously superior economic, military, and political power to forcibly assert its maritime claims and exploit the rights that derive from them at the expense of smaller, weaker Southeast Asian coastal states.<sup>56</sup> Most analogously to the Eastern Mediterranean

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54 "Turkish Navy Holds Largest Military Exercise in 3 Seas, to Demonstrate Ankara's Deterrence." Daily Sabah, Daily Sabah, May 13, 2019. <https://www.dailysabah.com/turkey/2019/05/13/turkish-navy-holds-largest-military-exercise-in-3-seas-to-demonstrate-ankaras-deterrence>.

55 "Territorial Disputes in the South China Sea," Council on Foreign Relations, February 4, 2020. <https://www.cfr.org/interactive/global-conflict-tracker/conflict/territorial-disputes-south-china-sea>.

56 "The South China Sea Arbitration (The Republic of Philippines v. The People's Republic of China)," Permanent Court of Arbitration, January 22, 2013. <https://pca-cpa.org/en/cases/7/>.

dispute, China has sent exploratory drilling vessels into waters claimed by Vietnam and the Philippines, and even issued drilling leases there, while at the same time forcibly interfering with exploratory activities by vessels operating on behalf of either country.<sup>57</sup> The relative inaction of the international community in response to these actions demonstrates that little will, or can, be done to impose the rule of law in the settlement of maritime disputes on powerful nations ambivalent towards the opinions of the international community.

Though analogous, China's actions and the overall situation in the South China Sea differ from those of Turkey in the Eastern Mediterranean in several key ways. First of all, unlike coastal states in Southeast Asia, the ROC has powerful international allies and widespread regional support that put it in a relatively stronger position in its dealings with Turkey and the TRNC. As a member of the European Union, the ROC is part of the world's largest economy, the largest exporter, and the largest trading block, which encompasses 27 member states with over 500 million inhabitants.<sup>58</sup>

As previously discussed, the European Union has strongly condemned Turkey's violations of the ROC's maritime rights and denied the existence of an independent Turkish Cypriot state. As an aspiring member itself, Turkey has never successfully ascended to the international body in part because of its refusal to conform with demands made on behalf of the rights of the ROC. In addition, the European Union reduced its financial aid to Turkey by €145.8 million for 2020, proving that it will take direct punitive action to compel compliance with the laws and mandates of international law. In short, the economic and political advantages flowing to the ROC from membership in this international body are tremendous and should be taken into account when considering the future of the oil dispute.

At the regional level, the ROC has entered into multilateral agreements with a variety of regional states which effectively exclude Turkey from having a role in the future of the Eastern Mediterranean oil industry. Among others, Israel, Greece, and Egypt have concluded treaties with the ROC which delimit their respective maritime zones, foster cooperation in the extraction of hydrocarbon resources, and propose joint pipelines for the cheap transportation of exportable oil. Such nations, if for no other reason than for their own economic gain, have a stake in a peaceful resolution of the dispute that preserves the ROC's ability to continue its partnership with these nations to exploit the latent hydrocarbon wealth.

The second way in which the situation in the Eastern Mediterranean significantly differs from that of the South China sea is due to the leverage that the ROC possesses over Turkish oil transshipment routes. Despite its EEZ claims over some portion of the hydrocarbon

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57 "Territorial Disputes in the South China Sea," <https://www.cfr.org/interactive/global-conflict-tracker/conflict/territorial-disputes-south-china-sea>.

58 "The EU in Brief," [europa.eu](https://europa.eu/european-union/about-eu/eu-in-brief_en). [https://europa.eu/european-union/about-eu/eu-in-brief\\_en](https://europa.eu/european-union/about-eu/eu-in-brief_en).

resources surrounding the island, the “concessions” provided by the TRNC to Turkey do not include any of the most significant oil and gas fields discovered over the past decade. Therefore, even if both states commence drilling operations in their respectively claimed maritime zones, it is likely that the ROC will reap the lion’s share of the profits associated with hydrocarbon extraction.

Therefore, even if Turkey retains control over some portion of the hydrocarbon reserves and begins commercial extraction operations, it is unlikely that the quantity of oil produced will compensate for the loss in revenue associated with new pipelines that supplant Turkey’s existing routes. As evidenced by a series of multilateral treaties, the ROC has worked to establish transshipment routes that bypass Turkey’s conventional routes, potentially undermining Turkey’s valuable industry. Consequently, not only does the ROC retain control over a majority of the hydrocarbon resources, but it has the ability to strategically determine how exploitable oil is produced, refined, and transported to markets throughout the European Union. Doing so may allow the ROC to curb Turkey’s aggressive behavior and compel compliance from all parties in the dispute.

The third way in which the Eastern Mediterranean oil dispute differs from that in the South China Sea in a manner unfavorable to Turkey is, ironically enough, the TRNC. Since its 1974 invasions, Turkey has heavily invested in the security and wellbeing of the Turkish Cypriot community. Turkey supports the TRNC because doing so furthers Turkey’s national interests; however, it is implicitly understood that Turkey expects some return for its long-term investment, and does not wish to support the TRNC in perpetuity. Even with the maritime “concessions” that the TRNC provides, the long-term costs associated with maintaining the security and wellbeing of the TRNC outweigh any foreseeable benefits from its continued existence. The prospect of receiving a share of the hydrocarbon wealth of the eastern Mediterranean, plus a role in future transshipment nodes and lines, in return for a settlement of the Cyprus problem that allows Turkey to escape the ongoing burden of maintaining an expensive and stagnant TRNC, may provide Turkey with significant inducement to deviate from its current course of confrontation and choose a path of reconciliation and accommodation.

Therefore, in light of these observations, it is defensible to argue that the ROC is in a drastically better position in the Eastern Mediterranean than either Vietnam or the Philippines in the South China Sea. As a result, it seems evidently possible that both Turkey and the ROC may reach an agreement through diplomatic means that settles the dispute and provides for the peaceful exploitation of subsurface hydrocarbon reserves. Whether or not this outcome includes a lasting solution to the Cyprus problem is another question, but one that remains definitively within the realm of possibility.

## Conclusion

This article has demonstrated that a relative balance of power necessary to produce a non-violent outcome to the dispute at hand is both feasible and attainable. Thus far, Turkey has sought to advance its own national interests by aggressively asserting its claim to some portion of the hydrocarbon reserves in the waters surrounding the island of Cyprus. Playing off their vastly differential power capabilities, Turkey has sent drill ships to waters within the “EEZ” of the TRNC and prevented the ROC from drilling in these same areas, representing an ultra-nationalistic and militaristic shift in contemporary Turkish foreign policy. As a means to an end, the fiction of the TRNC is maintained by Turkey in order to promote its own national interests and provide nominal legitimacy to its actions, and as such is not necessarily valuable in and of itself.

However, though militarily weak, the ROC has several key advantages that may allow it to secure a favorable outcome in the region. First of all, the ROC has powerful allies in both the European Union and a host of regional states, allowing the ROC to form groups and coalitions to collectively negotiate with Turkey. Second, the ROC’s control over a majority of the hydrocarbon resources and its leverage over Turkish oil transshipment routes provide ample means with which the state can bargain for an outcome favorable to its desires. Finally, the bilateral desire to reunify the TRNC within a broader Cypriot state, albeit on specific terms, implies that any solution to the conflict must have some basis in compromise and concession. Therefore, despite the relative power disparity between Turkey and the ROC, a solution based on some semblance of equity and justice may be attainable for all parties to the conflict.

Whether or not such an outcome would settle the ongoing Cyprus problem depends on the willingness of both sides to compromise on a broader range of issues related and unrelated to the dispute at hand. Nonetheless, given the potential use of the TRNC as a bargaining chip with the ROC, it appears likely that any comprehensive solution to the dispute over Eastern Mediterranean oil would have the corollary effect of increasing areas of convergence between both Cypriot factions. In this way, a unified future for the island of Cyprus may result from the precedents set by a satisfactory conclusion between both parties in regards to oil resources.

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# Understanding United Nations Peace Operations in the 21st Century

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## Abstract

*In 2014, Secretary-General Ban Ki-moon, recognizing that UN peacekeeping operations increasingly found themselves in countries where “there was no peace to keep,” convened the High-level Independent Panel on Peace Operations (HIPPO) to find solutions to contemporary challenges to peace operations. Learning from the past and present UN engagements, the HIPPO report, published in 2015, mapped out the future of Peacekeeping by identifying “essential shifts” that the organization had to embrace. Thus, to understand the future United Nations Peace Operations, my paper takes a two-step approach. I first outline the evolution of peacekeeping through its early inceptions in the 1940s and 1950s, its decline during the height of the Cold War, its resurgence in the 1990s, and its transformation in the early 21st century. Reaching the present, this paper then analyzes the implementation of the HIPPO report’s recommendations while considering the unique challenges the UN faces today. Ultimately, I contend that, despite existing structural challenges, United Nations peacekeeping operations will grow in the 21st century, and will enter a new phase characterized by a heightened sense of regionalism and local political engagement in an increasingly multipolar world.*

## Introduction

The United Nations was established in 1945 to “save succeeding generations from the scourge of war.”<sup>1</sup> Accordingly, maintaining international peace and security is one of its main purposes. Out of this need, peacekeeping was born, and although not explicitly

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1 United Nations. United Nations Peacekeeping Operation Principles and Guidelines. 2008, 9.

provided for in the UN Charter, it has become of the organization's main tools to live up to its purpose. The UN Charter gives the UN Security Council the primary responsibility to maintain peace. Grounded in international human rights law and humanitarian law ("law of war"), the legal underpinning for such action is found in Chapters VI, VII, and VIII of the Charter.<sup>2</sup> Chapter VI, which concerns the "Pacific Settlement of Disputes," entitled the UNSC to investigate any dispute that may pose a threat to international peace and security. Chapter VII, which concerns "Action with Respect to the Peace, Breaches of the Peace and Acts of Aggression," grants the Council the power to decide on the use of armed force through the use of economic, military, and diplomatic sanctions—and if they fail, the deployment of peacekeeping missions as we know them today. In this context, Chapter VIII allows for the establishment of regional arrangements to support the maintenance of international peace.<sup>3</sup>

With the creation of Chapters VI and VII of the Charter, the first UN peacekeeping mission was established in 1948, and signaled what kind of conflicts the organization would be involved in during the first few decades since its creation.<sup>4</sup> Following the conclusion of the first Arab-Israeli War in 1948, the UN Truce Supervision Organization (UNTSO) was created, and a small number of unarmed military observers were sent to monitor the cease-fire. As both belligerents in the conflict were backed by the US and USSR, to ensure there would be no escalation, UN troops were instructed to not get involved in states' internal affairs and to comply with both sides.<sup>5</sup> In short, they were sent to manage conflicts, not resolve them.

### **Evolution of Peacekeeping**

The first 'real' UN mission would not be launched until 1956, following the Suez Crisis, where following Egyptian leader Abdel Nasser's nationalization of the Western-funded Suez Canal, French, British, and Israel forces invaded Egypt.<sup>6</sup> Owing to a mutual interest between the US and USSR to resolve the crisis quickly, all parties agreed to withdraw from Egypt. This process would be overseen by the neutral United Nations Emergency Force (UNEF I), whose mandate was approved not by the UNSC, but by the General Assembly.<sup>7</sup> Like before, peacekeepers (who were now armed) were forbidden to interfere in internal

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2 Garcevic, Vesko. "How Peacekeeping Policy Gets Made/Who Is the Boss – the UN or Members States?" 2019.

3 United Nations. United Nations Peacekeeping Operation Principles and Guidelines, 9.

4 Coning, Cedric de, and Mateja Peter. *United Nations Peace Operations in a Changing Global Order*. Springer International Publishing, 2019, 27.

5 *Ibid*, 27.

6 *Ibid*, 28.

7 *Ibid*, 28.

matters of Egypt or to engage in any activities that could influence the balance of power between belligerents.<sup>8</sup> Again, the mission was to manage—not to resolve—the conflict.

Two years later, Secretary-General Dag Hammarskjöld published a report detailing the lessons learned from UNEF I, and from it, sought to create a set of basic guidelines that would guide future operations. Hammarskjöld stressed that missions needed to comply with international law and the UN charter, and as a consequence, consent of host governments was considered a necessary requisite to deployment.<sup>9</sup> Moreover, the SG asserted the agency of host governments in consenting to the nationalities of troops on the ground to ensure impartiality of the operation, as he found that intervention in the internal affairs of a state could have a negative impact on the operation as well as on relations with the UN in general. Thus, consent, limited use of force, and impartiality/non-interference became the bedrock for UN peacekeeping operations throughout the Cold War.<sup>10</sup>

Unfortunately, for the next few decades, UN peacekeeping would be stifled by the ebbs and flows of the Cold War and US/USSR confrontations.<sup>11</sup> For its first forty years, peacekeeping essentially entailed monitoring of ceasefires and inter-state disputes. In the midst of these lost decades, however, two missions whose mandates were more in line with Hammarskjöld's vision were launched. The first—the UN Operation in Congo (ONUC)—was set up to help the newly independent Congo to stabilize itself and pave the way for a new government, but was caught up in a civil war. Besides being the first mission to be involved in an intra-state conflict, ONUC would also mark the first time the UNSC authorized the use of force for means beyond self-defense.<sup>12</sup> A few years later, the UN Security Force in West New Guinea (UNSF) was created to administer over the newly independent West New Guinea for over half a year before transferring it over to Indonesia. This was the first time in the UN's history that the organization assumed direct administrative responsibility over a territory.<sup>13</sup> While the bipolar global order effectively contained peacekeeping to monitor ceasefires, both ONUC and UNSF represented what the UN and peacekeeping missions were capable of, and predated operations that did not become a reality until the collapse of the USSR and end of the Cold War.

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8 United Nations. "FIRST UNITED NATIONS EMERGENCY FORCE (UNEF I) - Mandate." United Nations

9 Coning, Cedric de, and Mateja Peter. *United Nations Peace Operations in a Changing Global Order*, 29.

10 Ibid, 29.

11 Garcevic, Vesko. "From "traditional" UN peacekeeping to Multidimensional missions / Trends in Peace Operations 1947" 2019.

12 Coning, Cedric de, and Mateja Peter. *United Nations Peace Operations in a Changing Global Order*, 30.

13 Ibid, 31.

The twilight years and immediate aftermath of the Cold War were characterized by a growing belief in multilateralism and international organizations.<sup>14</sup> This led to a boom in peacekeeping, with 58 out of a total 71 missions being established after 1988.<sup>15</sup> This new, second generation of peacekeeping was “multidimensional, multifaceted, and multifunctional.”<sup>16</sup> Robust mandates carried out by new military, police, and civilian forces incorporated political, economic, social, and cultural elements as well as military security components and covered a multitude of tasks including monitoring, enforcement, protection of civilians, security, governance, rule of law, human rights, humanitarian assistance, and elections.<sup>17</sup> UN peacekeeping missions in El Salvador, Angola, and Cambodia were tasked with observing elections, reporting on human rights violations and state-building. Peacekeeping shifted from inter-state conflict monitoring to intra-state conflict resolving.

During the peak of this ‘liberal euphoria,’ Secretary-General Boutros Boutros-Ghali, aware of the increased expectation of peacekeeping, prepared ‘An Agenda for Peace,’ a report that outlined the distinction between peacekeeping and peace enforcement as the UNSC increasingly deployed troops into extremely fragile states, like Rwanda and Bosnia and Herzegovina, which were both embroiled in genocidal wars.<sup>18</sup> As a result of narrowly-interpreted mandates and principles, UN presence in these states amounted to inaction as civilian populations were massacred. The failure to protect in Rwanda and Srebrenica upended the optimism surrounding UN peace operations at the time, and as a result, the organization understood peacekeeping would have to adapt if it were to remain a useful tool in the 21st century.<sup>19</sup>

In 1999, Secretary-General Kofi Annan appointed an independent panel to address the shortcomings of peacekeeping operations and to make recommendations for the future. The Brahimi Report, named after the panel’s chair, called for a stronger political commitment to UN peacekeeping and recommended a clear mandate, supported by financial support, cooperation between the Secretariat and the field, and the rapid deployment of troops. Moreover, the protection of civilians, through preventive and responsive means, was stressed as central to peacekeeping mandates.<sup>20</sup>

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14 Garcevic, Vesko. “From “traditional” UN peacekeeping to Multidimensional missions / Trends in Peace Operations 1947” 2019.

15 Coning, Cedric de, and Mateja Peter. *United Nations Peace Operations in a Changing Global Order*, 31.

16 St-Pierre, Kristine. *Then and Now: Understanding the Spectrum of Complex Peace Operations*. 2008, 1.

17 *Ibid*, 1.

18 Garcevic, Vesko. “From “traditional” UN peacekeeping to Multidimensional missions / Trends in Peace Operations 1947” 2019.

19 Coning, Cedric de, and Mateja Peter. *United Nations Peace Operations in a Changing Global Order*, 33.

20 Garcevic, Vesko. “Mandate/Deployment/Robust doctrine/Brahimi’s report” 2019.

Likewise, as global order became shifted towards multipolarity, there was a growing awareness of the importance of regional knowledge and collaboration. Hybrid UN peacekeeping missions were an innovation born out of this thinking, where the UN collaborated with actors like the EU, African Union, and NATO to enhance the overall efficiency of a response, owing to comparative advantage/local knowledge and enhanced legitimacy/leverage on the ground. In 2007, UNAMID, the UN-AU Mission in Darfur was launched, representing a new regional approach to peacekeeping in the 21st century.<sup>21</sup>

## Peacekeeping Today

As UN peacekeeping operations increasingly found themselves in countries where “there was no peace to keep,” Secretary-General Ban Ki-moon convened the High-level Independent Panel on Peace Operations (HIPPO) in 2014 to find solutions to contemporary challenges to peace operations.<sup>22</sup> Its findings were published in June 2015. Having reviewed past engagements, the HIPPO report mapped out the future of UN peacekeeping by identifying four “essential shifts for peace operations” that had to be embraced if real progress was to be made.<sup>23</sup> Firstly, “politics must drive the design and implementation of peace operations,” meaning lasting peace is achieved through political solutions; secondly, “the full spectrum of United Nations peace operations must be used more flexibly to respond to changing needs on the ground,” meaning UN peace operations should tailor the operations to the situation, rather than create ones from ‘templates’; thirdly, “a stronger, more inclusive peace and security partnership is needed for the future,” meaning the UN should embrace the new era of regional strategic partnerships to make use of their local knowledge and comparative advantages; and lastly, “the United Nations Secretariat must become more field-focused and United Nations Peace Operations must be more people-centered,” meaning missions should not only protect civilians, but uplift them so they may engage in the political future of their country.<sup>24</sup> The HIPPO report represents the future of peacekeeping, and under the leadership of Secretary-General Antonio Guterres, it has served as a conceptual framework for what is to come.

Thus, despite existing structural challenges, implementation of these recommendations so far has indicated that United Nations peacekeeping operations will grow in the 21st century, and will enter a new phase characterized by a heightened sense of regionalism

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21 Garcevic, Vesko. “Interorganizational Cooperation/the UN and Regional Organizations/Complex Peace Operations” 2019.

22 van der Lijn, Jair, and Rob de Rave. Progress on UN Peacekeeping Reform: HIPPO and Beyond. 2017.

23 United Nations. Report of the High-Level Independent Panel on Peace Operations on Uniting Our Strengths for Peace: Politics, Partnership and People. 2015.

24 Ibid.

and local political engagement in an increasingly multipolar world.

Just as previous phase-shifts in global order, such as one from a bipolar world to a unipolar world at the end of the Cold War, have significantly impacted UN peace operations, so will today's shift to multipolarity. Firstly, traditional Global North-South roles that represent an anachronistic Cold War vision of international politics will change. Rising powers like India and China, the latter being a member of the UNSC P5, have contributed significantly in recent years to military and police personnel in peacekeeping operations, and are likely to continue to support UN peacekeeping as "an important instrument for managing global peace and security" as they look to play a more prominent role in policy and decision-making.<sup>25</sup> China is now the second largest financial contributor to peacekeeping and India's will likely increase relative to its economic growth, and as a result, these countries, as well as other rising powers like Brazil and South Africa who are vying for international prestige, are likely to become more assertive in influencing future peacekeeping operations.<sup>26</sup>

What this influence will likely entail is a much-needed challenge to the dominant Western neoliberal ideology of past peacekeeping.<sup>27</sup> While it is unlikely that all will agree on any one common normative approach, it is likely that UN operations will become less intrusive and more inclusive. Thus, there may be room for convergence between Western powers and rising powers, and in the place of neoliberal 'template' models for state building, peacekeeping operations will likely encourage more homegrown and tailor made bottom-up models for peace- and state-building.<sup>28</sup>

Evidence of this shift was apparent as quickly as April 2016, where after two days of thematic debates, the General Assembly and Security Council jointly adopted a resolution on sustaining peace that was considered a "significant conceptual and policy shift on the part of the [Security] Council."<sup>29</sup> The resolution's findings argue that sustaining peace should be "broadly understood as a goal and a process to build a common vision of a society ensuring that the needs of all the segments of the population are taken into account." Moreover, it also emphasizes that sustaining peace is "a shared task and responsibility that needs to be fulfilled by the government and all other national stakeholders," reflecting the 2015 findings of HIPPO.<sup>30</sup>

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25 Coning, Cedric de, and Mateja Peter. *United Nations Peace Operations in a Changing Global Order*, 303.

26 *Ibid*, 48.

27 *Ibid*, 304.

28 *Ibid*, 304-305.

29 Mahmoud, Youssef, et al. "With New Resolutions, Sustaining Peace Sits at Heart of UN Architecture." 2016.

30 United Nations. *United Nations Security Council Resolution 2282*. 2016.

Operationally, this sentiment was visible in UNSC Resolution 2301 (July 2016) which, after renewing peacekeeping operation in the Central African Republic, called for local participation and consultation.<sup>31</sup> Similarly, the June 2018 extension of the peacekeeping mission in Mali (MINUSMA), seen by the constant use of the term “support” in its operative ‘Priority Tasks,’ reflects a growing appreciation of local, people-centered knowledge and collaboration, and an awareness that peacebuilding is ultimately reliant on locals, not outsiders.<sup>32</sup> In the context of HIPPO and an increasingly multipolar global order, peacekeeping is sure to undergo foundational shifts that will take a more people-centered approach to peace and state-building, and as such, will therefore require enhanced regional presence and collaboration, a model that has been decades in the making.

Today, the UN has far more regional representation than it did fifty years ago. Having regional offices and large missions that employ thousands, often in areas in conflict, has allowed the organization to “keep its finger directly on the pulse of societies.”<sup>33</sup> As a result, the UN has become better at identifying early signs of conflict, and improved its preventative capacities. Deepened regional partnerships and a continued presence in areas of interest has not only improved the UN’s local knowledge, but has built relationships and credibility abroad.<sup>34</sup>

A sustained presence in a region is particularly conducive to the success of Peacekeeping in areas of conflict. Therefore, in the context of HIPPO recommendations for deepened regional partnerships, the establishment of regional offices like the UN Office for West Africa (UNOWA) and the UN Regional Center for Preventive Diplomacy for Central Asia (UN-RCCA) has boosted the organization’s ability to establish and maintain strong relationships on the ground, and moreover, has increased local knowledge, leverage, and credibility.<sup>35</sup>

Increased attention to regionalism has already paid dividends. HIPPO’s vision of enhanced regional presence and collaboration was best represented a year after the panel during the 2016 crisis in Gambia, where former President Yahya Jammeh refused to step down after his electoral loss to Adama Barrow.<sup>36</sup> Special Representative to the Secretary-General (SRSG) Ibn Chambas’ presence in the country ahead of the crisis was crucial to the awareness of the local situation and the subsequent quick response, but when

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31 United Nations. United Nations Security Council Resolution 2301. 2016.

32 United Nations. United Nations Security Council Resolution 2423. 2018.

33 Coning, Cedric de, and Mateja Peter. *United Nations Peace Operations in a Changing Global Order*, 76.

34 *Ibid*, 75.

35 *Ibid*, 79.

36 Hara, Fabienne. “Preventive Diplomacy in Africa: Adapting to New Realities.” 2016.

UNOWA's pressure failed, collaboration with the Economic Community of West African States (ECOWAS) proved successful in compelling him to step down.<sup>37</sup>

Operationally, a symbiotic strategic partnership between the UN and AU has continued to deepen, particularly in the backdrop of a new partnership framework signed between them in 2017.<sup>38</sup> While the UN excels at consolidating peace processes and implementing agreements, it is not well-suited to enforce these measures. In its place, the AU is shown that it is willing and capable to fill this role. Therefore, the UN/AU partnership is mutually reinforcing one that will contribute to the evolution of global peace and security architecture.<sup>39</sup>

Beyond the increased potential of operational success, sustained regional presence and collaboration can also enhance local credibility, awareness, and trust. UNOWA's reputation among local and regional actors was considered central to the success of mediating the 2016 crisis in Gambia.<sup>40</sup> This has likewise been seen in Latin America, where, in the context of the relative success of Peacekeeping missions in El Salvador and in Guatemala during the 1990's following the deepened presence of the UN Economic Commission for Latin America and the Caribbean (ECLAC), the United Nations was invited into Colombia by President Juan Manuel Santos and the Revolutionary Armed Forces of Colombia (FARC) to oversee the peace process in 2016 in collaboration with ECLAC.<sup>41</sup> This mission, owing to its success, has since then been expanded and extended, and is ongoing to this day.<sup>42</sup> Thus, in the backdrop of HIPPO, increased presence in West Africa and Latin America has represented a new phase of Peacekeeping—one characterized by enhanced regional political engagement and collaboration.

Despite early success and evidence of a serious paradigm shift for UN peace operations, the future of peacekeeping faces very real structural challenges. Because the UN system was originally set up to “cater for a largely static and headquarters-oriented organization” and to employ “career civil servants primarily engaged in providing administrative support for conferences and meetings among member states,” past and present relations between New York and the field have been contentious and dysfunctional, and peacekeeping operations

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37 Ibid.

38 United Nations. “UN, African Union Sign New Partnership Framework to Better Respond to Evolving Challenges | UN News.” United Nations. 2017.

39 Coning, Cedric de, and Mateja Peter. *United Nations Peace Operations in a Changing Global Order*, 224.

40 Ibid, 82.

41 United Nations. “Verification Mission in Colombia.” United Nations, United Nations, 2017.

42 United Nations. *United Nations Security Council Resolution 2261*. 2016.

have been limited as a result.<sup>43</sup> Thus far, reform has seemed impossible. In fact, HIPPO even asserted that “in operating environments that demand more tailored and flexible UN peace operations it appears that human resources policies may be moving in the opposite direction.”<sup>44</sup> That said, work has been undertaken to address these issues. HIPPO stressed the importance of “one mandate, one mission, one concept” in an attempt to unify mandate implementation under one chain of command.<sup>45</sup> Managing these tensions has thus far proven difficult, but there remains hope for the future.

Moreover, in the backdrop of increasing multipolarity, rising powers have become emboldened to halt participation in global order, and to instead shape it according to their geopolitical ambitions. Perhaps the most egregious result of this shift is the UN military inaction in Syria, owing to Russia and China taking advantage of their veto ability to stifle any possibility of UN intervention in the war-torn country. This reflects the tension between the deep-rooted principle of sovereignty (embodied in the UN Charter) and the need to intervene. Stemming from the 2011 UNSC-backed intervention in Libya, which invoked the principles of Responsibility to Protect (R2P), both Russia (who has a vested interest in maintaining a military base with access to the Mediterranean in Syria) and China saw the experience as proof that R2P could be used as a tool for the West to achieve its political agenda, and therefore also a threat that might legitimize foreign intervention in their own countries.<sup>46</sup> Because of the primacy of sovereignty, especially in the Security Council, any real progress is unfortunately unlikely. That said, the same geopolitical ambitions that have stymied progress in Syria may very well expand peacekeeping elsewhere. As China’s economic and political interests have globalized, reaching Africa and Latin America, it is likely that as the country seeks an expanded role in UN peacekeeping, it will also adopt a more flexible stance on what it has considered ‘intervention,’ and will instead encourage the growth of peacekeeping across the world.<sup>47</sup> Increased presence of Chinese troops in missions in Mali, South Sudan, and Darfur is therefore worth noting in this context, especially when it has been praised by national media outlets.<sup>48</sup> The failure to respond to Syria should not be discounted and needs to be addressed. However, it should not represent the end of peacekeeping, but rather, a setback whose motivations can be considered equally responsible for its expansion in recent years.

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43 Coning, Cedric de, and Mateja Peter. *United Nations Peace Operations in a Changing Global Order*, 119.

44 United Nations. *Report of the High-Level Independent Panel on Peace Operations on Uniting Our Strengths for Peace: Politics, Partnership and People*. 2015.

45 Coning, Cedric de, and Mateja Peter. *United Nations Peace Operations in a Changing Global Order*, 121.

46 Russo, Jenna. *The Politics of R2P and Inaction in Syria: U.S., Russian, and Chinese Responses*.

47 Coning, Cedric de, and Mateja Peter. *United Nations Peace Operations in a Changing Global Order*, 54.

48 Pauley, Logan. “China Takes the Lead in UN Peacekeeping.” *The Diplomat*, 2018.

When the HIPPO panel was concluded in 2015, it mapped out the future of peacekeeping in hopes that the shifts it called for would be embraced by UN peace operations. Nearly four years later, progress has been slow, and understandably so considering the structural challenges in the way, but it is clear that the seeds of change have been planted.<sup>49</sup> Early signs that the vision of HIPPO is being adopted by the UN have appeared since 2016, and will likely continue to appear as member states, aware of their responsibilities to prevent global conflict and to mediate peace in an increasingly multipolar world, expand their engagement in the United Nations and in UN peacekeeping missions.

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# The Refugee Test: European Disunity in the Face of Crisis

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## Abstract

*In 2015-16, the European Union experienced its largest wave of migration since World War II. However, this crisis quickly became about more than just the migrants and refugees themselves. It tested the EU's problem-solving capacity, its unity in the face of challenges, and whether the Union had truly overcome the continent's cultural and political schisms. This paper begins with an overview of the crisis and the EU's existing mechanism for processing asylum requests. It then examines the responses of several key EU states and concludes with an analysis of the EU's future in light of the disunity displayed during this crisis. When viewed through the long lens of history, the political debacle of the EU's disjointed response can be seen as an ominous foreshadowing of the Union's future and of European solidarity itself.*

## Introduction

“If you do not treat the situation competently and firmly, yes, it is the end of Europe.”<sup>1</sup> President Donald Trump issued this warning to Europe in 2016. At the time, the continent was in the second year of a wave of mass migration from the Middle East and Sub-Saharan Africa. But what did the President mean by “the end of Europe”? After all, Europe was coping with a humanitarian disaster, not an invasion. To understand the President's point, it must be clarified what exactly “Europe” meant. By the “end of Europe,”

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1 Matthew N. Metzler and John M. Lorenzen, “Military Force and Mass Migration in Europe,” *Parameters* 47, no. 3, September 22, 2017.

I argue that the President meant that the migrant crisis marked the end of the unified entity which we refer to as “Europe,” a political body which is under the auspices of the European Union, rather than simply a geographic term. If left unaddressed, this crisis would threaten this unity and instead leave Europe to be what it had always been: a collection of states with competing interests that embodied the very essence of disunity. In short, the massive influx of migrants and refugees was a test of the EU’s ability to burden-share and overcome obstacles to collective action. To fully understand exactly how this crisis posed an existential threat to “Europe,” we must first understand the nature of the problem and how it arose. We will then explore the responses of Italy, Greece, Germany, and the members of the Visegrád Group, as well as how their choices conflicted with one another. Finally, we will discuss the structural problems within the EU that the migrant crisis exposed and how they threaten the very existence and cohesion of the EU.

### **The Nature of the Global Forcibly-Displaced Persons Crisis**

By the end of 2013, the total number of forcibly-displaced persons worldwide surpassed 50 million for the first time since World War II.<sup>2</sup> This number increased to 70.8 million in 2018.<sup>3</sup> Of them, 41.3 million are internally displaced peoples, 25.9 million are refugees, and 3.5 million are asylum-seekers. According to the UN High Commissioner for Refugees, refugees are people who are fleeing armed conflict or persecution and are forced to cross international borders.<sup>4</sup> For these people, denial of asylum could have potentially fatal consequences. Migrants, on the other hand, are not leaving their home country because they have to, but because they seek to improve their lives by finding work, reuniting with family, or some other non-life-threatening reason. Importantly, unlike refugees, migrants face no impediment to return to their home country.<sup>5</sup> Internally displaced peoples, or IDPs, are essentially refugees who have remained within their national borders but were forcibly displaced from their homes. IDPs account for the vast majority of forcibly displaced people—roughly 58% of the 70.8 million worldwide.

Amazingly, five countries account for 67% of the world’s forcibly displaced people: Syria (6.7 million), Afghanistan (2.7 million), South Sudan (2.3 million), Myanmar (1.1 million),

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2 Adrian Edwards, “World Refugee Day: Global Forced Displacement Tops 50 Million for First Time in Post-World War II Era,” UNHCR USA, United Nation High Commissioner for Refugees, June 20, 2014.

3 “UNHCR Global Trends 2018 Report,” UNHCR. United Nations High Commissioner for Refugees, 2018.

4 Krishnadev Calamur, “Refugees vs. Migrants: What’s the Difference?” *The Atlantic*, August 28, 2015.

5 Calamur, “Refugees vs. Migrants.”

and Somalia (0.9 million).<sup>6</sup> While 41.3 million are IDPs, many have fled to neighboring countries. However, Germany, which does not neighbor any significant sources of refugees or asylum-seekers, hosts the fifth most refugees in the world (1.1 million), the vast majority of whom are from Syria, Iraq, and Afghanistan.

### **The Nature of Europe’s Migration Crisis**

The migrant crisis (or refugee crisis, the two terms are often used interchangeably), which began around the end of 2014 and peaked in 2015-16, was a period of time in which an unprecedented number of people attempted to enter the European Union through a variety of sea and land routes. Those coming from Sub-Saharan and North Africa crossed the Mediterranean, usually departing from Libya, and landed on the shores of Italy, and those from the Middle East and Southeast Asia either crossed by land through Turkey or crossed the Aegean Sea into Greece.

In 2014, 219,000 migrants and refugees crossed the Mediterranean into Europe. In the first eight months of 2015, over 300,000 had made the same journey, many fleeing from Libya and Syria.<sup>7</sup> 107,500 migrants entered Europe in September 2015 alone.<sup>8</sup> By the end of 2015, over one million migrants and refugees crossed into Italy and Greece by sea.<sup>9</sup> In 2016, the EU stated that there had been another 500,000 illegal border crossings that year. Turkey, while not in the EU, was the primary transit state for land-based migrants and refugees, and in 2016 it was hosting 3.5 million displaced civilians from Syria, Iraq, and Afghanistan (Turkey is the world’s single-largest host of refugees).<sup>10</sup> Europe’s 2017 illegal immigrant population was estimated to be between 3.9 and 4.8 million people, which is less than 1% of the continent’s total population.<sup>11</sup> For comparison, that same year the United States was home to between 10.3 and 10.7 million illegal immigrants, which accounted for roughly 3% of the American population.

### **The Dublin System**

In 1997, the EU’s Dublin Convention entered force and was meant to set a standard pol

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6 “UNHCR Global Trends 2018 Report.”

7 Marina Koren, “A Look Back at Europe’s Worst Refugee Crisis,” *The Atlantic*. September 1, 2015.

8 Krishnadev Calamur, “Migrant Crisis: Hungarian Train Station Blocked,” *The Atlantic*, September 1, 2015.

9 Metzler and Lorenzen. “Military Force and Mass Migration in Europe.”

10 “UNHCR Global Trends 2018 Report.”

11 Phillip Connor, Jeffrey S. Passel, and Jens Manuel Krogstad, “How European and U.S. Unauthorized Immigrant Populations Compare,” *Pew Research Center*, November 13, 2019.

icy for how member states would handle asylum claims. The convention was replaced by the Dublin II Regulation in 2003 and again by the Dublin III Regulation in 2013. While the “Dublin System,” as it will be referred to, contains many clauses and regulations regarding the rights of asylum seekers in the EU, the most important aspect of the law is that the first country where a refugee places an asylum claim is responsible for processing it.<sup>12</sup> The Dublin System, in effect, places nearly all of the burden of processing asylum seekers on the shoulders of the arrival country, which since 2015 has been primarily either Italy or Greece.

Since the migrant crisis began, there have been a number of challenges which have affected the function and rationale of the Dublin System. Since refugees are required to file an asylum claim in the member state in which they first arrived, any other member is legally allowed to return that person to the arrival state if the claim is not processed. For example, if “a migrant claims asylum in Britain, officials can check that person’s name to see if they have previously been registered by the authorities elsewhere in the EU. If, for example, the claimant has been logged in Greece, Britain can then start proceedings to return that person to Greece, which is supposed to consider the application for asylum.”<sup>13</sup> In 2015, when the migrant crisis hit its peak, there were a number of challenges to the Dublin System from member states. In June, Hungary announced that it would no longer take back any refugees who traveled through its territory to reach other countries. The government claimed that 60,000 illegal immigrants had already entered its borders between January and June, and that it would be constructing a fence along its border with Serbia. When asked why it was shirking its Dublin System responsibilities, Hungary simply cited “technical reasons.”<sup>14</sup>

That same month, Austria announced that it would stop processing asylum claims in an attempt to pressure other countries to do more. Between January and May of 2015, Austria already had 21,000 requests. It previously had 17,000 in 2013 and 28,000 in 2014. In September 2015, the Czech Republic announced that it would stop sending Syrian refugees who applied for asylum in Hungary to detention facilities.<sup>15</sup> Instead, they would be offered asylum within the Czech Republic. If they refused, they would have one week to move on to Germany. At the time, the majority of Syrians within the Czech Republic wanted to eventually reach Germany.

However, the greatest challenge to the enforcement of the Dublin System came in August 2015, when German Chancellor Angela Merkel announced that Germany would suspend

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12 Justin Huggler, “EU Court Rejects ‘Open-Door’ Policy and Upholds Right of Member States to Deport Refugees,” *The Telegraph*, July 26, 2017.

13 Huggler, “EU Court Rejects ‘Open-Door’ Policy.”

14 Krisztina Than and Shadia Nasralla, “Defying EU, Hungary Suspends Rules on Asylum Seekers,” *Reuters*, June 23, 2015.

15 “Change in Czech Refugee Policy,” *Prague Post*, September 2, 2015.

all Dublin System procedures for Syrian nationals only. All ongoing procedures to return Syrian refugees to their arrival country would be suspended, and Germany would adopt the responsibility for their asylum claims under the Dublin System. This now meant that Germany would accept responsibility for all Syrian asylum seekers and become their de facto arrival country. Between January and July of 2015, Germany had received around 44,000 Syrian asylum applications. By the end of 2016, Germany would go on to receive 1.3 million refugees as a result of Merkel's "open-door policy."<sup>16</sup>

In 2017, the European Court of Justice (ECJ) dealt a significant blow to Germany's "open-door policy" when it upheld member states' right to deport asylum seekers to the EU country they arrived in. The Court ruled that the Dublin System still applied and, as a result, refugees must seek asylum in the first country they enter.<sup>17</sup> The case was brought by two Afghan sisters who arrived in Croatia with their children. Khadija and Zainab Jafari were allowed to pass through Croatia without requesting asylum and entered Austria. At the time, Austria had a policy similar to Germany's. However, Austria then reversed its policy and deported the women back to Croatia where, under the Dublin System, they should have requested asylum in the first place. The sisters challenged the decision in the ECJ and, unexpectedly, the Court ruled against them. In an unusual move, the Court ruled against the advice from the advocate-general, which was Eleanor Sharpston, who cautioned that upholding the Dublin System during such a uniquely exceptional period of migration would place an undue burden on border states. She said, "if border member states, such as Croatia, are deemed to be responsible for accepting and processing exceptionally high numbers of asylum-seekers, there is a real risk that they will simply be unable to cope with the situation."<sup>18</sup> According to her, the Dublin System was not designed to handle the kind of migration influx that Europe was experiencing.

### **EU-Turkey Agreement**

In March 2016, the EU reached an agreement with Turkey, a non-EU state, to solicit Turkish help in stemming the flow of migrants into Southeastern Europe. The agreement required Turkey to hold 3.5 million refugees and migrants in its territory in exchange for €6 billion (\$7.1 billion) from the EU and the promise that the EU would accelerate its consideration of eventual Turkish membership in the bloc.<sup>19</sup> The costs for Turkey to support the migrants reached \$500 million per month, and Turkish unemployment reached 12.1% in

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16 Stefan Trines, "The State of Refugee Integration in Germany in 2019," *World Education News Reviews*, August 8, 2019.

17 Huggler, "EU Court Rejects 'Open-Door' Policy."

18 *Ibid.*

19 James Kanter, "E.U. Countries Must Accept Their Share of Migrants, Court Rules," *The New York Times*, September 6, 2017.

November 2016, complicating the domestic politics surrounding the agreement.<sup>20</sup> Turkish President Erdogan has leveraged this agreement to obtain concessions from the EU. This agreement was a significant turning point in the migrant crisis, as it relieved much of the pressure experienced by Greece.

## Italy

As one of the EU's 'frontline' states, Italy has shouldered a significant part of the burden that the migrant crisis imposed on the continent. Since nearly all of the migrants coming to Italy were crossing the Mediterranean from North Africa, the EU's agreement with Turkey did not help Italy. In fact, it may have had the opposite effect; in 2015, 150,000 migrants and refugees landed on Italy's shores. In 2016, after the EU-Turkey agreement went into effect, 180,000 came. It is possible that the increase from 2015 to 2016 was in part a result of the agreement, as many would-be migrants and refugees knew they would get stopped in Turkey before they could reach Greece, and so some diverted to Italy.

Prior to the crisis, Italy had an agreement with Muammar Gaddafi to limit migration from North Africa. In exchange for \$5 billion per year, Gaddafi allowed the Italian coast guard to return migrants it intercepted to Libya. As a result, in 2010, Italy only received 7,300 migrants from North Africa. One year later, when Gaddafi fell (after Italy pressured NATO to intervene), roughly 30,000 migrants made the journey across the Mediterranean. In 2014, more than 100,000 crossed into Italy. Between January and September 2017, 125,860 migrants entered Europe through the Mediterranean, 80% of whom arrived in Italy.<sup>21</sup> According to the International Organization for Migration, Italy's forcibly-displaced migrant population is currently around 189,000; it was 167,300 in 2017, 147,400 in 2016, and 114,000 in 2015.<sup>22</sup> Another important factor to consider is the Italian public's reaction to increased migration. In 2018, only 26% of polled Italians believed that increased diversity was a positive for their country.<sup>23</sup> Moreover, 60% believe that refugees increase the likelihood of terrorism and 65% think that they take jobs and benefits from citizens.<sup>24</sup> In 2017, Chatham House conducted a public opinion survey in ten European countries. The survey asked whether someone agreed, disagreed, or was neutral towards the statement "all further migration from mainly Muslim countries should be stopped": 51% of Italians agreed, 26% were neutral, and 23% disagreed.<sup>25</sup>

20 Metzel and Lorenzen, "Military Force and Mass Migration in Europe."

21 Kanter, "E.U. Countries Must Accept Their Share."

22 "Italy," Migration Data Portal, International Organization for Migration, 2019.

23 Jacob Poushter and Janell Fetterolf, "How People around the World View Diversity in Their Countries," Pew Research Center, April 22, 2019.

24 Metzel and Lorenzen, "Military Force and Mass Migration in Europe."

25 Matthew Goodwin, Thomas Raines, and David Cutts. "What Do Europeans Think About Muslim Immigration?" Chatham House, February 7, 2017.

## Greece

Greece, as the other primary frontline state, has also shouldered a disproportionate share of the migrant burden. In 2015, Italy and Greece combined received over one million migrants and refugees by sea.<sup>26</sup> In 2018, Greece was home to 61,400 refugees, up from just 38,900 in 2017.<sup>27</sup> This was actually a decrease from the 46,400 that were in Greece in 2016. Even though Greece's refugee population is significantly smaller than Italy's, Greece's refugee portion of its overall population is actually twice that of Italy's. Greece's refugee population is six times what it was in 2014 when the crisis first began. Similar to Italy, there has also been a strong domestic reaction to the wave of migrants and refugees. 55% of Greeks think that refugees bring an increased risk of terrorism, and 72% think that they use up public benefits and take jobs away from Greek citizens.<sup>28</sup> The Greek dissatisfaction with increased diversity is even more pronounced than in Italy; only 17% of Greeks thought that increased diversity was a good thing.<sup>29</sup> In the Chatham House survey, Greeks' views were also more extreme than Italians'; only 20% of Greeks thought that Muslim migration should continue, whereas 58% were opposed and 22% were neutral<sup>30</sup>. As the two countries bearing the brunt of the migration crisis, Greece and Italy were strong supporters of resettlement programs, also known as "quota" systems, which would disperse migrants throughout the EU to relieve the border states.

## Germany

Germany played a central and very divisive role in the European response to the migration wave. Naturally, Chancellor Angela Merkel was the deciding figure for Germany's refugee policy, and her evolution on the issue is fascinating. In 2010, Merkel delivered a speech in Potsdam in which she famously said that attempts to turn Germany into a multicultural society had "utterly failed."<sup>31</sup> Horst Seehofer, the leader of the Christian Social Union (CSU), the sister party of Merkel's Christian Democratic Union (CDU), said that "multikulti has failed" and it was "obvious that immigrants from different cultures like Turkey and Arab countries, all in all, find it harder" to assimilate to German culture.<sup>32</sup>

In July 2015, when the migrant crisis was in full-swing, Merkel appeared on television with

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26 Metzel and Lorenzen, "Military Force and Mass Migration in Europe."

27 "Greece," Migration Data Portal, International Organization for Migration, 2019.

28 Metzel and Lorenzen, "Military Force and Mass Migration in Europe."

29 Poushter and Fetterolf, "How People around the World View Diversity in Their Countries."

30 Goodwin, Raines, and Cutts, "What Do Europeans Think About Muslim Immigration?"

31 "Merkel Says German Multicultural Society Has Failed," British Broadcasting Corporation, October 17, 2010.

32 Ibid.

a group of young Germans. During the program, a young Palestinian girl asked the Chancellor if she and her family could stay in Germany. Merkel responded that not all migrants can stay in Germany and that “some will have to go home.”<sup>33</sup> She also said, “in Lebanon there are thousands and thousands [of refugees], and if we now say, ‘you can now all come here and you from Africa can all come here, you can all come,’ we cannot manage that either.”<sup>34</sup> When Merkel walked away, the camera panned back to the girl, who was now crying. Merkel approached her and began to try to comfort her but was criticized by some for appearing too robotic and cold.

One month later, Merkel completely abandoned her previous position and announced Germany’s “open-door policy,” which brought 800,000 Syrian refugees to Germany in 2015 alone. In July, weeks before she announced the policy change, Germany was expecting roughly 400,000 asylum applications for the year, which would have been twice the figure from 2014. Germany currently has the fifth-largest refugee population in the world with 1.1 million refugees living within its borders.<sup>35</sup> In 2014, when the crisis first began, Germany only housed 217,000 refugees.<sup>36</sup>

In Germany, as in most other European countries, there has been a public reaction to Merkel’s policy which manifested itself in the rise of Alternative for Germany (AfD), a far-right nationalist party which rose to prominence during the crisis on an explicitly anti-migration and anti-Islam platform. In the 2017 German elections, Merkel was re-elected to her fourth term as Chancellor, but her CDU party had its worst showing in almost 70 years.<sup>37</sup> The AfD was only founded in 2013, but in 2017 it won 12.6% of the vote, taking 94 seats in Germany’s 709-seat federal parliament and becoming the country’s third-largest party.<sup>38</sup> AfD did particularly well in East Germany, where it was the second-most popular party and won 21.5% of the vote.

A particularly galvanizing moment occurred in December 2016, when a rejected Tunisian asylum-seeker stole a semi-truck and ran over more than sixty people at a Christmas market in Berlin’s Breitscheidplatz, killing twelve.<sup>39</sup> One year earlier, in the square around

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33 “Angela Merkel Attacked Over Crying Refugee Girl,” British Broadcasting Corporation, July 17, 2015.

34 Ibid.

35 “UNHCR Global Trends 2018 Report.”

36 “Germany,” Migration Data Portal, International Organization for Migration, 2019.

37 “German Election: Merkel Wins Fourth Term, AfD Nationalists Rise,” British Broadcasting Corporation, September 25, 2017.

38 Ibid.

39 Kristie Pladson, “Germany Prevented 7 Attacks since Berlin Christmas Market Atrocity,” DW, October 23, 2019.

Cologne's famous cathedral, hundreds of women were sexually assaulted on New Year's Eve by over one thousand young men, many of whom were drunk. It was reported that the majority of the perpetrators were of Arab or North African descent,<sup>40</sup> and many Germans indicated that the event was a turning point in the country. One twenty-year-old woman said, "It happened, and you can't forget that. There's a lot more hatred against foreigners now."<sup>41</sup> Another woman said, "Since [the attacks], all refugees are viewed with suspicion. That's too bad, but that's how it is."<sup>42</sup>

Given these events, along with a suicide bombing in July 2016 by a rejected Syrian asylum-seeker that killed fifteen,<sup>43</sup> and an axe attack in a train that same month by a 17-year-old Afghan refugee that killed four,<sup>44</sup> it is not surprising that public opinion in Germany has shifted. While not as extreme as in Italy or Greece, anti-migrant sentiment has risen since the migrant crisis began. Half of Germans believe that increased diversity is a positive change for Germany,<sup>45</sup> but 53% of Germans think that "all further migration from mainly Muslim countries should be stopped."<sup>46</sup> Only 19% disagreed with that statement, and 28% were neutral. The AfD's electoral success in 2017 is largely a manifestation of this sentiment.

As the largest economy in the EU, Germany is naturally at the forefront of the bloc's policymaking process and Merkel is often considered to be the Union's de facto leader. As a result, Germany's actions during the migrant crisis revealed a significant schism within the EU surrounding Germany's outsized influence vis-à-vis the other member states. While the Dublin System was the official policy of the EU regarding asylum seekers, the handling of immigration policies is primarily a prerogative of national governments.<sup>47</sup> When Merkel announced Germany's unilateral decision to open its borders to all Syrians in August 2015, she essentially handed every country between Germany and Turkey a policy fait accompli. Since Germany is nowhere near Syria, any refugees interested in accepting Merkel's invitation would be required to travel through several EU states which had not consented to their presence. This resulted in an uproar from other EU countries, particularly in the East, over Germany's unilateral decision which had massive implications for them.

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40 "How Cologne Sexual Assaults 'Changed German Mood Completely,'" *The Local De*, December 15, 2016.

41 *Ibid.*

42 *Ibid.*

43 Gabriel Gatehouse, "Germany 'Was Warned about Ansbach Suicide Bomber,'" *British Broadcasting Corporation*, August 12, 2016.

44 "Afghan Teen Slashes Passengers on German Train," *CBS News*, July 18, 2016.

45 Poushter and Fetterolf, "How People around the World View Diversity in Their Countries."

46 Goodwin, Raines, and Cutts. "What Do Europeans Think About Muslim Immigration?"

47 Ian Traynor, "Refugee Crisis: East and West Split as Leaders Resent Germany for Waiving Rules," *The Guardian*, September 5, 2015.

## The Visegrád Group

Founded in 1991, Visegrád Group is a cultural and political alliance between Poland, the Czech Republic, Hungary, and Slovakia. Intended to advance cooperation in all sectors, the four Eastern European states share a common experience of living under communist rule as well as a common skepticism towards the EU. At the moment, all four countries have relatively small refugee populations when compared to countries like Germany or Italy; Poland is home to 12,500, the Czech Republic has 2,100, Slovakia has 608, and Hungary has 6,000.<sup>48</sup> They all also share common public sentiment towards migrants in general. Only 20% of Hungarians and 28% of Poles think that increasing diversity in their countries is a good thing,<sup>49</sup> and 64% of Hungarians and 71% of Poles think that all Muslim migration should stop (the cited polls did not include data for the Czech Republic or Slovakia).<sup>50</sup>

All four countries were also particularly opposed to Germany's open-door policy and have rejected any type of quota system that Brussels has proposed. As Ian Traynor wrote in *The Guardian*, "Berlin is winning plaudits everywhere for its exemplary generosity and its open-door policy towards Syrians fleeing war, but Syrians can only get to Germany through other EU countries who were not told about the policy flip-flop. That contributed to the wretched scenes in Hungary and Austria."<sup>51</sup> Indeed, Hungary was one of the most vocal critics of Germany, and Prime Minister Viktor Orbán said, "the problem is not a European problem. The problem is a German problem."<sup>52</sup> One month after the open-door policy was announced, Hungary began construction of a razor-wire fence on its border with Serbia,<sup>53</sup> closed the main train station in Budapest to migrants,<sup>54</sup> and Orbán announced he would be deploying the army to the border to enforce a zero-immigration policy. Hungary, Slovakia, and the Czech Republic were particularly angered by the German policy because they were the states that Syrian refugees would need to cross to reach Germany. In September 2015, after Merkel announced the open-door policy, Hungary closed the main train station in Budapest to migrants. Hungary had previously been allowed migrants to cross through without checking their paperwork or registration. When the station was closed, there were crowds of refugees outside chanting "Germany." That same month, the Czech Republic announced that any Syrians in the Czech Republic would not be detained but rather given the opportunity to apply for asylum there or would be given seven days to go to Germany.<sup>55</sup>

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48 Migration Data Portal, International Organization for Migration, 2019.

49 Poushter and Fetterolf, "How People around the World View Diversity in Their Countries."

50 Goodwin, Raines, and Cutts. "What Do Europeans Think About Muslim Immigration?"

51 Traynor. "Refugee Crisis."

52 Ibid.

53 Ibid.

54 Calamur. "Migrant Crisis."

55 "Change in Czech Refugee Policy."

In 2017, the ECJ ruled against Hungary and Slovakia, saying that they must accept migrants under the EU's quota system. According to the court, the quota system was "necessary to respond effectively and swiftly to an emergency situation characterized by a sudden inflow of displaced persons."<sup>56</sup> While most countries were not enthusiastic about Brussels' 2015 quota plan, Hungary and Slovakia were openly hostile. The plan called for 100,000 migrants in Greece and Italy to be dispersed throughout the EU to varying degrees; for example, Hungary's quota was only 1,294 migrants. Poland and the Czech Republic also refused to participate, but Slovakia eventually accepted a token number of migrants to get on Brussels' good side.<sup>57</sup>

### **The Fault Lines of Europe**

The European Union is a remarkable achievement. As perhaps the first supranational organization with quasi-state authority and sovereignty, the EU has managed to accomplish what many believed could never be done: it brought peace to a continent which had previously known so little of it. After so many years of the EU's existence, entire generations have grown up in a world in which intra-European conflict was unthinkable, and this is a wonderful state of affairs. But, by growing accustomed to the stability brought by the EU, many have forgotten the genuine diverging interests of the EU's members. After the accession rounds of the 2000s, the diversity of views within the EU's member states grew even more stark. The refugee crisis of 2015-16 revealed these schisms and placed them at the forefront of the European consciousness.

Some countries, such as Germany, have declining populations and low birth-rates and thus have a genuine and legitimate incentive to attract as many immigrants as possible. Others, such as Poland and the Visegrád Group, have relatively homogenous societies and seriously question their ability to assimilate large numbers of Muslim refugees into their overwhelmingly-Christian cultures. Countries like Italy and Greece desperately needed the 'solidarity' that Chancellor Merkel so often referred to, but many of the countries in the interior of Europe had little-to-no motivation to help.

The refugee crisis was an opportunity to test Europe's problem-solving abilities. However, coherent strategy was not implemented, and instead various European countries began pursuing their own independent policies to deal with the migrants. In some cases, these independent policies actually worsened the divide in Europe, Angela Merkel's open-door policy being at the top of the list. Even in France, a country often aligned with Germany on EU matters, there was significant resentment towards Germany. In the aftermath of the November 2015 Paris terror attacks, which occurred only months after Merkel opened Germany's doors, French Prime Minister Manuel Valls said, "it was not France that said:

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56 Kanter, "E.U. Countries Must Accept Their Share."

57 Ibid.

Come!”<sup>58</sup> Germany’s unilateral action in the face of direct opposition from many other EU members dealt a serious blow to the idea that Europe could unite in the face of a crisis, and confidence in the EU has suffered; for example, in 2018, 66% of Poles agreed that the “politics of the European Union is regularly in conflict with the interests of Poland.”<sup>59</sup>

It has also been widely-observed that there has been a marked rise in far-right and populist parties throughout Europe in the years since the migrant crisis unfolded; the United Kingdom voted to leave the EU, Marine Le Pen received one-third of the vote in France’s 2017 election, the AfD became Germany’s third largest party, Austria’s Freedom Party and Hungary’s Jobbik and Fidesz parties rose to prominence, and Italy’s Five Star Movement became the largest party in parliament. While all of these events have many, many causes, they all share a common thread of anti-immigration sentiment. Consider the following results of an Ipsos poll taken in July 2016, nearly a year after Germany opened its doors. When asked if “immigration has generally had a positive or negative impact on your country?”, the following percentages of respondents answered “very positive” or “fairly positive”: United Kingdom, 35%; Sweden, 24%; Spain, 20%; Germany, 18%; Poland, 14%; Belgium, 11%; France, 11%; Italy, 10%; and Hungary, 6%.<sup>60</sup>

The long-term results of the refugee crisis are not yet known, and, absent mass deportations, there is not much that can be done to change the current situation anyway. However, the crisis did reveal the fault lines of Europe. When push came to shove, the façade of European unity was shattered: some countries stepped up and adopted their share of responsibility, others were content to wait on the sidelines and watch Italy and Greece drown, and Germany decided to make a unilateral decision for the group with wide-ranging and generational consequences for everyone else. If the European Union ever collapses, historians will reflect upon the mangled response to the refugee crisis as the beginning of the end.

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58 Jennifer Newton, “Europe CANNOT Take Any More Migrants, Says French PM... Who Has a Veiled Shot at Merkel by Saying ‘It Was Not France That Said to Come,’” *The Daily Mail*, November 25, 2015.

59 Reinhard Krumm et al., 2019 Security Radar: Wake-up Call for Europe!, Friedrich Ebert Stiftung, 2019.

60 “Global Views on Immigration and the Refugee Crisis,” Ipsos, July 2016.

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# Making Space: Spatial Urban Growth and the Size of the Informal Economy

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## Abstract

*This study investigates the empirical relationship between spatial urban growth and the size of the informal economy in order to understand the pervasiveness of informal employment across the developing world. Based on several regional comparisons, the results of this paper suggest that countries with greater percent changes in their built-up area, on average, have a larger share of informal employment in total non-agricultural employment. In other words, countries that undergo more rapid and dramatic urban expansion tend to have more people employed in the informal economy. In fact, the data shows that a one-percent increase in the percent change of built-up area results in an increase of the share of informal employment by as much as 0.72 percentage points. Despite a strong positive correlation, a causal relationship between spatial urban growth and the size of the informal economy cannot be supported.*

## Introduction

Cities in the developing world are growing at a rapid rate. More than half of the world's population lives in urban areas today, with most of the urbanized population residing in the developing world.<sup>1</sup> Thus, it comes as no surprise to see more than half of the world's

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1 United Nations Department of Economic and Social Affairs, "68% of the World Population Projected to Live in Urban Areas by 2050, Says UN," May 16, 2018. <https://www.un.org/development/desa/en/news/population/2018-revision-of-world-urbanization-prospects.html>.

megacities, that is, urban areas with a population of more than 10 million, in low income, lower-middle income, or upper-middle income countries. A growing amount of academic literature and research has highlighted the fact that cities, while at the nexus of efficiency and innovation, pose a number of human and environmental development challenges. Threats of epidemics and resource scarcity have become more prevalent as cities continue to densify. Meanwhile, society's most vulnerable populations continue to be pushed further into the periphery due to persisting urban sprawl.<sup>2</sup>

In particular, rapid urbanization is often associated with the growth of informality. More specifically, greater numbers of people tend to take up employment in the informal economy. The presence of informal employment is commonly observed in many developing countries. In fact, developing countries house 93 percent of the world's informal employment.<sup>3</sup> The presence of informal employment even holds true in some of the world's fastest growing economies, such as China and India, where the industrial sector is relatively more developed.<sup>4</sup> What explains the pervasiveness of informal employment throughout the developing world? Investigating the physical dimensions of urbanization can help in answering this question. While little attention has been paid to the spatial or physical determinants of informal economic activity, research on urbanization contributing to the growth of the informal economy is much more robust.<sup>5</sup> Research done by Ceyhun Elgin and Cem Oyvatt investigates the relationship between urbanization and the informal economy by looking at the impact of growing urban populations on the productivity of the informal economy.<sup>6</sup> A study by Héctor Posada and Ana Moreno-Monroy explored several geographic determinants that explain the incidence of informal employment in the developing world.<sup>7</sup>

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2 Anjali Mahendra and Karen C. Seto, "Upward and Outward Growth: Managing Urban Expansion for More Equitable Cities in the Global South," World Resources Institute, 2019.

3 ILO, "Women and Men in the Informal Economy: A Statistical Picture (Third Edition)," International Labour Organisation, 2018.

4 Richard B. Freeman, "Labor Regulations, Unions, and Social Protection in Developing Countries: Market Distortions or Efficient Institutions?" National Bureau of Economic Research, Working Paper, 2009.

5 An-gang Hu and Li Zhao, "Informal Employment and Informal Economy in the Economic Transformation in the Process of Urbanization in China (1990-2004)," *Journal of Tsinghua University (Philosophy and Social Sciences)*, (2006); Ceyhun Elgin and Cem Oyvatt, "Lurking in the Cities: Urbanization and the Informal Economy," *Structural Change and Economic Dynamics* 27, (December 2013): 36-47; Héctor M. Posada and Ana I. Moreno-Monroy, "Informality, City Structure and Rural-Urban Migration in Latin America," *The Annals of Regional Science* 59, no. 2 (2017): 345-69; Ejaz Ghani and Ravi Kanbur, "Urbanization and (In)Formalization," Policy Research Working, (2013).

6 Elgin and Oyvatt, "Lurking in the Cities."

7 Posada and Moreno-Monroy, "Informality, City Structure, and Rural-Urban Migration."

This paper builds off of the research done by Elgin and Oyvatt, as well as Posada and Ana Moreno-Monroy by expanding their variables of interest to reflect the physical dimensions of urbanization.

Most literature, along with this paper, focuses specifically on how urbanization may impact the informal economy. However, it is important to address the possibility for the reverse of this relationship to exist. The influence of the informal economy on urban expansion is little explored, and is further addressed in the robustness section of this paper.

Using data in part from Jacques Charmes' synthesis on global informal economy trends and characteristics,<sup>8</sup> this paper contributes to existing dialogue by considering spatial urban growth as a determinant of the size of the informal economy. A greater understanding of the relationship between urban expansion and the informal economy assists in explaining the prevalence of informal employment across the developing world.

By strictly looking at the expansion of urban areas, this paper sheds light on how the process of outward urban growth can explain the incidence of informal economic activity across developing countries. Due to the discrete nature of the informal economy and the nascence of data collection on urban extent, the findings and conclusion of this research are drawn from a limited pool of observations. As a result, I look at the built-up area and informal employment in nine countries and four regions and find strong evidence to support a positive correlation between spatial urban growth and the size of the informal economy. More specifically, I find countries that experience greater percent changes in their built-up area have a larger share of their total employment in the form of informal employment. In other words, countries that undergo more rapid and dramatic urban expansion tend to have more people employed in the informal economy. In fact, the data shows that a one-percent increase in the percent change of built-up area results in an increase of the share of informal employment by as much as 0.72 percentage points.

In the following sections, I will introduce the theoretical context for the proposed relationship by examining the push and pull factors of informal employment and spatial urban growth. I then present the reasons for the selected variables and explain the empirical methods of analysis used. A description of the data used for this research is followed by an analysis of the results that lead to the conclusion that countries with larger changes in built-up area have larger shares of informal employment. I conclude with a consideration of the robustness of this analysis and methods for improving future research on spatial determinants of the size of the informal economy.

## 2. Theoretical Framework

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8 Jacques Charmes, "The Informal Economy Worldwide: Trends and Characteristics," *Journal of Applied Economic Research* 6, no. 2 (2012).

The informal economy encompasses a diverse set of economic activities and entities that are neither regulated nor protected by the state.<sup>9</sup> As the population of urban areas increases, and cities become more densified, many cities have sought to reduce land and resource pressure by physically expanding outwards, occupying larger areas. At the same time, the promise of a higher expected wage in the urban industrial sector catalyzes rural-urban migration,<sup>10</sup> and cities struggle to absorb the increase in the supply of labor associated with a rising urban population.<sup>11</sup> As a result, many lower-income individuals migrate to urban areas with hopes of eventually earning formal employment in the higher-earning urban industrial sector. In the meantime, these individuals take up employment in the informal economy, usually in the form of street vending, waste picking, or home-based work.<sup>12</sup> Given the dynamics of urban resource allocation and labor markets, this paper hypothesizes a positive relationship between spatial urban growth and the size of the informal economy, as measured by built-up area and informal employment respectively. In the following sections I discuss the various push and pull factors associated with informal employment and urban expansion and how existing literature suggests a correlation between the two variables.

When considering the different push and pull factors of informal employment, the existing literature on the informal economy has traditionally focused on institutional, economic, and social determinants. Government and labor regulations may pose challenges in receiving the proper documentation, licenses, or permits to participate in the formal economy.<sup>13</sup> On the other hand, Ravi Kanbur argues that weak regulations and relaxed enforcement in rapidly growing economies, such as India, have made it easier for people to actively avoid government regulation.<sup>14</sup> Tax burdens and social security contributions may discourage

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9 WIEGO, “Informal Economy,” Women in Informal Employment: Globalizing and Organizing, 2012, <https://www.wiego.org/informal-economy>.

10 John R. Harris and Michael P. Todaro, “Migration, Unemployment and Development: A Two-Sector Analysis,” *The American Economic Review* 60, no. 1 (1970): 126-42.

11 ILO, “Decent Work and the Informal Economy,” International Labour Organisation, 2017.

12 WIEGO, “Informal Economy.”

13 Bruno Frey and Friedrich Schneider, “Informal and Underground Economy,” Department of Economics at Johannes Kepler University, Working Papers, 2000; Friedrich Schneider, “Shadow Economy,” in *Readings in Public Choice and Constitutional Political Economy*, ed. Charles K. Rowley and Friedrich G. Schneider (Boston, MA: Springer US, 2008), 511-32; Michael Krakowski, “Determinants of the Informal Economy: The Importance of Regional Factors,” *Hamburg Institute of International Economics*, no. 313 (March 2005); Hashibul Hassan, “Determinants and Effects of the Informal Economy: Bangladesh Perspective,” *Janata Bank Journal of Money, Finance and Development* 5, no. 1 (2018): 197-208.

14 Ravi Kanbur, “Avoiding Informality Traps,” Cornell University School of Applied Economics and Management, Working Paper, January 2011.

individuals who believe their income in the informal economy to be greater than their after-tax earnings in the formal economy.<sup>15</sup> Others have cited poor governance and corruption as factors that force individuals into taking up informal employment.<sup>16</sup> The structural makeup of economies has also been used to determine the prevalence of the informal economy.<sup>17</sup> Social factors such as poverty and level of education contribute to the probability of an individual to partake in informal economic activity.<sup>18</sup>

Previous research conducted by Elgin and Oyvatt was among the first to explore the spatial determinants of informal economic activity.<sup>19</sup> Their work demonstrates how the size of the informal economy behaves according to Kuznets' inverted-U as the share of the urban population of a country increases. By considering urbanization as a process, Elgin and Oyvatt find that as countries enter the beginning stages of urbanization, the size of the informal economy first expands. However, as countries begin to enter the later stages of urbanization and the population growth begins to slow, the size of the informal economy contracts. Elgin and Oyvatt found urbanization to be significant in helping explain the presence of informal employment, suggesting a relationship between spatial factors and informal employment. While Elgin and Oyvatt provide valuable insight on how spatial aspects of urbanization impact the structural makeup of economies, this paper aims to emphasize the importance of the physical, not population, growth of cities in explaining the size of the informal economy. Additionally, Elgin and Oyvatt fail to consider the physical factors such as growth of total urban land area, an important determinant of the size of the informal economy, as this paper argues.

Research by Posada and Moreno-Monroy also highlights the relationship between urbanization and informal employment by investigating geographic determinants such as locality of jobs, commuting times, and the extent of urban compactness as justifications for the

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15 Frey and Schneider, "Informal and Underground Economy"; Schneider, "Shadow Economy," 511-32; Simon Johnson, Daniel Kaufmann, and Pablo Zoido-Lobaton, "Regulatory Discretion and the Unofficial Economy," *American Economic Review* 88, no. 2 (1998): 387-92; Hassan, "Determinants and Effects," 197-208.

16 Sean Dougherty and Octavio Escobar, "The Determinants of Informality in Mexico's States," OECD Economics Department, Working Paper, no. 1043 (April 2013): 1-23; Ajit Mishra and Ranjan Ray, "Informality, Corruption, and Inequality," IDEAS Working Paper Series from RePEc, (October 2011): 1-36; ILO, "Decent Work"; Hedayet Ullah Chowdhury, "Informal Economy, Governance, and Corruption," *Philippine Journal of Development* XXXII, no. 2 (2005): 32.

17 Diego F. Angel-Urdinola and Kimie Tanabe, "Micro-Determinants of Informal Employment in the Middle East and North Africa Region," no. SP 1201 (2012).

18 Catalina Amudeo-Dorentes and Susan Pozo, "Workers' Remittances and the Real Exchange Rate: A Paradox of Gifts," *World Development* 32, no. 8 (2004): 1407-1417; Indrajit Bairagya, "Employment in India's Informal Sector: Size, Patterns, Growth and Determinants," *Journal of the Asia Pacific Economy* 17, no. 4 (2012): 593-614.

19 Elgin and Oyvatt, "Lurking in the Cities."

“existence and persistence of informal employment.”<sup>20</sup> Based on their research, as informal jobs become more decentralized, informality rates within the labor markets increase. The theory posited by Posada and Moreno-Monroy is imperative to establishing the theoretical context of this paper and understanding the relationship between the physical growth of cities and the size of the informal economy. As cities continue to grow in size and population, urban land and resources become increasingly stressed. Whether it’s increasing land prices or government regulation that pushes low-income individuals out of the urban core into the periphery, cities across the developing world experience informality in the form of housing and labor. Posada and Moreno-Monroy demonstrate that the presence of informal housing, oftentimes an indication of expanding urban territory, along with greater job decentralization and higher commuting costs, results in higher rates of informal labor. However, Posada and Moreno-Monroy’s model considers urban growth through the lens of informal housing, as opposed to the total extent occupied by urban areas. This paper considers how spatial urban growth, measured using percent change in built-up land area as a proxy, is related to a country’s share of employment in the informal economy.

This paper uses built-up land area as a proxy for total urban land area. Research by She-Juan Li and Hui Zeng demonstrates the robustness of this approximation<sup>21</sup>. Their research on increases in built-up land area in the Nanchang region of China reveals that urban core growth and urban sprawl are two of the main factors that explain a rise in built-up land. Li and Zeng’s work illustrates the usefulness of using built-up land area as a measure of the physical dimensions of urban growth.

Factors that drive urban land expansion include economic, demographic, and social. Economic drivers such as growth GDP per capita, industrial development, and decentralization of employment are often associated with expanding urban cores.<sup>22</sup> Demographic factors including growing urban populations and labor forces have explained the need for cities to expand housing and infrastructure, and thus total occupied area, in order to accommodate a greater number of people.<sup>23</sup> Finally, social aspects such as real estate development,

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20 Posada and Moreno-Monroy, “Informality, City Structure, and Rural-Urban Migration.”

21 Posada and Moreno-Monroy, “Informality, City Structure, and Rural-Urban Migration.”

22 Karen Seto and Michail Fragkias, Burak Guneralp, and Michael K. Reilly, “A Meta-Analysis of Global Urban Land Expansion,” *PLOS ONE* 6, no. 8 (2011): e23777; Qianwen Zhang and Shiliang Su, “Determinants of Urban Expansion and Their Relative Importance: A Comparative Analysis of 30 Major Metropolitans in China,” *Habitat International* 58 (November 2016): 89-107; Michelle J. White, “Urban Areas with Decentralized Employment: Theory and Empirical Work,” in *Handbook of Regional and Urban Economics*, ed. E.S. Mills and P. Cheshire (Elsevier Science, 1999), 1376-1412.

23 Zhang and Su, “Determinants of Urban Expansion,” 89-107; Julian D. Marshall, “Urban Land Area and Population Growth: A New Scaling Relationship for Metropolitan Expansion,” *Urban Studies* 44, no. 10 (2007): 1889-1904.

energy consumption, and consumer preference also explain why the bounds of cities have been pulled outwards over time.<sup>24</sup> Given the overlap in factors that drive physical urban expansion and those that motivate informal employment, this paper empirically investigates whether a relationship between the two can be established.

## Data

The empirical analysis section of this paper relies on three distinct datasets consisting of data pulled from various sources. The data is split into regional data and country-level data, with a third dataset comprising of data on Brazil and India exclusively. The unregulated nature of the informal economy makes quantitative data collection rather difficult. Similarly, data on built-up area came about with the advent of spatial analysis. Observations for built-up area were only found beginning in 1990. Therefore, the observations for this research span a limited number of countries and time periods for which the relevant data was available.

Table 1 includes the summary statistics for the first relevant dataset containing regional measures of built-up area and informal employment for Latin America, Africa, the Middle East

Region	Year	Built-up area (% change)	Informal employment (%)
Latin America	1990-2000	26.99	54.20
	2000-2004	8.79	55.90
	2005-2010	11.18	57.70
	2011-2015	7.21	–
MENA (North Africa & West Asia)	1990-2000	36.42	47.50
	2000-2004	13.52	45.25
	2005-2010	13.91	58.40
	2011-2015	9.44	–

24 Todd Litman, “Where We Want To Be: Home Location Preferences and Their Implications for Smart Growth,” Victoria Transport Policy Institute, March 5, 2020, <https://vtpi.org/sgcp.pdf>; Gian Carlo Delgado Ramos, “Real Estate Industry as an Urban Growth Machine: A Review of the Political Economy and Political Ecology of Urban Space Production in Mexico City,” Center for the Interdisciplinary Research in the Sciences and Humanities 11, no. 7 (2019): 1-24; Zhang and Su, “Determinants of Urban Expansion,” 89-107.

Asia (including India, excluding China)	1990-2000	202.20	69.90
	2000-2004	6.72	–
	2005-2010	9.13	69.70
	2011-2015	9.27	–
Africa (Sub-Saharan)	1990-2000	36.88	86.90
	2000-2004	13.46	–
	2005-2010	16.24	65.90
	2011-2015	14.12	–

*Table 1 -- Regional dataset*

and North Africa (MENA), and Asia. Regional data on built-up area is extracted from a 2017 dataset from the History Database of the Global Environment (HYDE),<sup>25</sup> which uses the US Geological Survey definition of built-up area.<sup>26</sup> Built-up area, as measured in hectares, is reflected for all world regions, and several large countries, from the year -10000 to the 2016. Any countries that are reflected in the dataset are excluded from the data of their respective regional groupings. Since the data from HYDE is in 10-year increments until the year 2000, after which it becomes annual data, the first observed time period for this paper will be 1990 to 2000. To accommodate this time period, I used the HYDE data to calculate the percent change in built-up area for the given time periods. The only time periods that presented substantial data, and were thus relevant for this paper, were those from 1990 onwards. Percent change in built-up area was calculated for 5-year increments following the year 2000 up to the year 2015.

The regional data on informal employment is pulled from Jacques Charmes' research on trends and characteristics of the informal economy. Charmes' employs the ILO definition of informal employment adopted by this paper.<sup>27</sup> Charmes' data reflects informal employ-

25 US Geological Survey, "Urban Dynamics: Data and Images," USGS LCI, December 11, 2018, <https://archive.usgs.gov/archive/sites/landcover.usgs.gov/urban/umap/htmls/defs.php.html>.

26 Built-up area as defined by the US Geological Survey is as follows: "Areas characterized by buildings, asphalt, concrete, suburban gardens, and a systematic street pattern. Urban development includes residential, commercial, industrial, transportation, utilities, and mixed urban." (US Geological Survey 2019)

27 ILO, "Guidelines concerning a statistical definition of informal employment," International Labour Organisation, 2003. [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms\\_087622.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_087622.pdf); The current ILO definition of informal, non-agricultural, employment as established at the 17th International Conference of Labour Statisticians (ICLS) is as follows: "all jobs carried out in informal enterprises as well as in formal enterprises by workers, and especially employees, whose employment relationship is, in law or practice, not subject to national labor legislation, income taxation, social protection or entitlement to certain

ment for the years 1975 to 2010 in 5-year increments, when available. In an effort to accurately reflect regional trends, the MENA data on informal employment for this paper was calculated using the arithmetic mean for Charmes' North Africa and West Asia data points for each observed time range. Additionally, Charmes provided no data on informal employment in China. However, China was represented as a single country in the HYDE dataset, along with India. Therefore, the Asia regional grouping for this paper includes India and excludes China. Finally, the regional  $\Gamma$ ta on Africa uses Charmes' sub-Saharan Africa data, which admittedly leaves out  $\Gamma$ nuch of Eastern Africa. It is important to note that the countries considered for regional groupings are not specified in the HYDE dataset. Therefore, the countries that are represented in Charmes' regional measures for informal employment may not be included in HYDE's data on built-up area, and vice-versa.

The second relevant dataset for this paper includes observations for Brazil and India exclusively (Table 2).

Country	Year	Built-up area (% change)	Informal Employment (%)
Brazil	1990-2000	31.45	60.0
	2000-2004	11.25	51.1
	2005-2010	14.85	42.2
	2011-2015	8.86	38.2
India	1990-2000	20.89	83.4
	2000-2004	7.5	83.5
	2005-2010	9.05	84.2
	2011-2015	10.79	78.1

*Table 2 -- Brazil and India dataset*

While Brazil and India serve as insightful case studies for Latin America and Asia respectively, the reason that they constitute a dataset of their own is due to the misalignment in time periods with the other country-level data. Brazil and India were among the few countries represented in the HYDE dataset, and also among those with substantial amounts of data in Charmes' dataset. As a result, the two countries are observed along the same 5-year incremented time period as the first regional dataset, from 1990 to 2016. However informal economy data points for Brazil (2011-2015) and India (2011-2015) were extracted from the World Bank's World Development Indicators (WDI) database,<sup>28</sup> while India's 2000-2004 employment benefits."

28 World Bank, "World Development Indicators Databank," World Bank Group. <https://databank.worldbank.org/reports.aspx?source=world-development-indicators>; The World Bank's definition of informal employment as used by the World Development Indicators (WDI) is as

data point was retrieved from the 2nd edition of the ILO's Women and Men in the Informal Economy: A Statistical Picture.<sup>29</sup>

Finally, the third dataset for this paper includes observations for seven different countries over two time periods: 1990 to 2000, and 2000 to 2014 (Table 3). Data on built-up area for this dataset was pulled from the OECD Stats database.<sup>30</sup> Country data for informal employment was combined from WDI data, ILO reports, and Charmes' dataset. Observations that relied on data from Charmes' dataset used data points from 1995-1999. Observations pulled from either the WDI database or ILO reports were constructed using arithmetic means if sufficient data was made available. When insufficient data did not allow for the calculation of the arithmetic mean, data from the closest observable year, with no more than a 2-year deviation, was used as an approximation.

Country	Year	Built-up area (% change)	Informal employment (%)
Mexico	1990-2000	22.01	55.00
	2000-2014	19.73	53.20
Peru	1990-2000	10.72	67.90
	2000-2014	7.08	59.63
Argentina	1990-2000	13.31	53.30
	2000-2014	10.36	46.79
Egypt	1990-2000	13.75	45.90
	2000-2014	19.37	47.20

follows: "all jobs in unregistered and/or small-scale private unincorporated enterprises that produce goods or services meant for sale or barter. Self-employed street vendors, taxi drivers and home-base workers, regardless of size, are all considered enterprises. However, agricultural and related activities, households producing goods exclusively for their own use (e.g. subsistence farming, domestic housework, care work, and employment of paid domestic workers), and volunteer services rendered to the community are excluded.

<sup>29</sup> ILO, "Women and Men in the Informal Economy: A Statistical Picture (Second Edition)," International Labour Organisation, 2014. [https://www.ilo.org/stat/Publications/WCMS\\_234413/lang-en/index.html](https://www.ilo.org/stat/Publications/WCMS_234413/lang-en/index.html).

<sup>30</sup> OECD, "Built-up Area and built-up Area Change in Countries and Regions," OECD Stats, 2016. The definition of built-up area use in the OECD Stats database is as follows: "the presence of buildings (roofed structures). This definition largely excludes other parts of urban environments and the human footprint such as paved surfaces (roads, parking lots), commercial and industrial sites (ports, landfills, quarries, runways) and urban green spaces (parks, gardens). Consequently, such built-up area may be quite different from other urban area data that use alternative definitions."

Pakistan	1990-2000	21.06	70.00
	2000-2014	40.48	71.99
Mali	1990-2000	36.56	94.10
	2000-2014	62.97	89.90
Colombia	1990-2000	17.38	38.40
	2000-2014	21.88	57.70

*Table 3 -- Country dataset*

Regional patterns are especially evident in Table 1. All regions experience positive change in built-up area but at inconsistent rates. All regions also experience increases in built-up area at a decreasing rate between 1990-2000 and 2000-2004. Between the periods 2000-2004 and 2005-2010, Latin America and MENA experience increases in built-up area at an increasing rate. Across Latin America and Asia there appears to be minimal change in the regions' share of informal employment, while Africa and MENA experience greater changes in their shares of informal employment. The two regions that possess larger shares of informal employment relative to their percent change of built-up area are Asia and Africa, suggesting that additional factors contribute to the size of their informal economies.

Dataset	Variable	Obs.	Mean	Std. Dev.	Min.	Max.
All 3: Regional, Brazil and India, and Country	Built-up area (% change)	31	19.79839	12.43404	7.08	62.97
	Informal employment (%)	31	61.45032	15.6657	38.2	94.1
Regional	Built-up area (% change)	10	19.3236	10.61282	8.791	36.88
	Informal employment (%)	10	61.135	12.33671	45.25	86.9
Brazil and India	Built-up area (% change)	8	14.33	8.131637	7.5	31.45
	Informal employment (%)	8	65.0875	19.55684	38.2	84.2
Country	Built-up area (% change)	14	22.61886	14.90975	7.08	62.97

	Informal employment (%)	14	60.815	16.34645	38.4	94.1
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*Table 4 -- Summary statistics for primary datasets*

\*Statistics calculated using Stata (2017)

In Table 4, notice how the mean across all three datasets for the share of informal employment exceeds 60 percent, or well over half of the working population. This speaks to the prevalence of informal employment across the developing world. The mean for percent change in built-up area across the three separate datasets ranges from roughly 15 percent to 23 percent, suggesting that the amount of built-up area across the developing world increases anywhere from one-sixth to a quarter roughly every five years. The relatively large standard deviations for both variables reveal the varying extent to which both variables are present across countries. A large standard deviation suggests that disaggregating data may provide increased insight on regional and country-level trends.

Another interesting observation can be seen in the larger built-up area mean for the country dataset versus that of Brazil and India in Table 4. This difference indicates potentially more rapid urban expansion within developing countries, while the expansion processes in the emerging BRICS economies could be slowing.

Despite including data from various sources, the methods of measurement, including units and scale, for the variables of interest remain consistent from source to source. However, it is important to note that it would be impossible to control for biases in the collection of data by each source, which could affect the robustness of the results.

## **Empirical Analysis**

In this section, I construct a number of scatter plots to analyze the relationship between spatial urban growth and the size of the informal economy. I begin with a scatter plot of the pooled data, and then continue by disaggregating the data into regional and country groupings. Disaggregation is necessary for investigating the varying extents of the relationship, as shown by different slope estimates and correlation values. In the first subsection, I discuss how I measure spatial urban growth and the size of the informal economy. In the second subsection, I discuss the empirical methods used for analysis. In the final subsection, the results of my analysis are presented.

## **Variable Selection**

In order to understand the physical dimension of urbanization and its relationship with the informal economy, built-up land area is used as an approximation for the physical extent of urban zones. Built-up land area refers to the US Geological Survey's definition. This

paper specifically looks at percent change of built-up land area over certain time periods, rather than looking at an absolute measure, to model spatial urban growth as a process that can speed up and slow down overtime. Data on the spatial extent of cities over time is not readily available. Thus, this paper reflects changes in spatial urban growth by assessing the percent change of built-up land area over time.

To measure the size of the informal economy, this paper uses the share of employment in the informal economy in total non-agricultural employment. There are two important aspects of this measurement which make it appropriate to use for this paper. Firstly, since agricultural activities typically take place in rural contexts, the specification of non-agricultural employment allows for the assumption that all other informal employment takes place in an urban setting. Secondly, defining and measuring the informal economy as a ratio of employment better reflects how spatial growth impacts the nature of the labor market in the informal economy, rather than the productivity of the informal economy, as done by Elgin and Oyvatt.<sup>31</sup> Other measures such as share of the total population and share of GDP of the informal economy fail to consider existing labor market conditions. Informal employment in this context draws upon the current International Labour Organisation's (ILO) definition.

### Model and Empirical Methods

Given the aforementioned data limitations, this study uses pooled data to construct a regression model and conduct graphical analysis. I begin by pooling 31 observations spanning all three datasets and constructing the following model:

$$\text{InformalEmployment}_{i,t} = \beta_0 + \beta_1 \text{builtuparea}_{i,t} + \epsilon_i$$

where  $\text{InformalEmployment}_{i,t}$  represents the percent share of employment in the informal economy in non-agricultural employment for country or region  $i$  in time period  $t$ . The regressor  $\text{builtuparea}$  stands for the percent change in country or region  $i$ 's total built-up land area in time period  $t$ . Finally,  $\epsilon_i$  denotes the error term. Given the relatively small sample size and the various time periods across which these observations take place, I forego conducting a panel regression or including control variables in my model. Omitted variable bias is discussed in the robustness section.

In Table 5, the slope estimates, standard errors, correlation values, and R-squared values for all models are reported for a better understanding of the statistical relationship between the two variables. Correlation values are acquired by running Pearson's correlation tests.<sup>32</sup>

31 Elgin and Oyvatt, "Lurking in the Cities."

32 StataCorp, "Stata Statistical Software: Release 15," College Station, TX, (2015): StataCorp.

Despite the limited number of observations, Elgin and Oyvatt's graphical analysis conducted alongside their regression analysis demonstrates the usefulness of using this method when investigating the relationship between the two variables.

Model	Slope estimate	Correlation	R-squared
Pooled data	0.54** (0.196)	0.43	0.18
Regional (1990-2010)	0.26 (0.562)	0.22	0.05
Regional: Latin America (1990-2010)	-0.14 (0.08)	-0.79	0.62
Regional (1990-2000)	0.12 (1.44)	0.06	0.003
Country (1990-2014)	0.80 (0.17)	0.74	0.54
Country (2000-2014)	0.72 (0.14)	0.91	0.82
Country: Brazil (1990- 2010)	0.793 (0.37)	0.83	0.70

*Table 5 – Output share of informal employment and built-up area*

Robust standard errors are in parentheses.

\*Denotes 1% confidence level.

\*\*Denotes 5% confidence level.

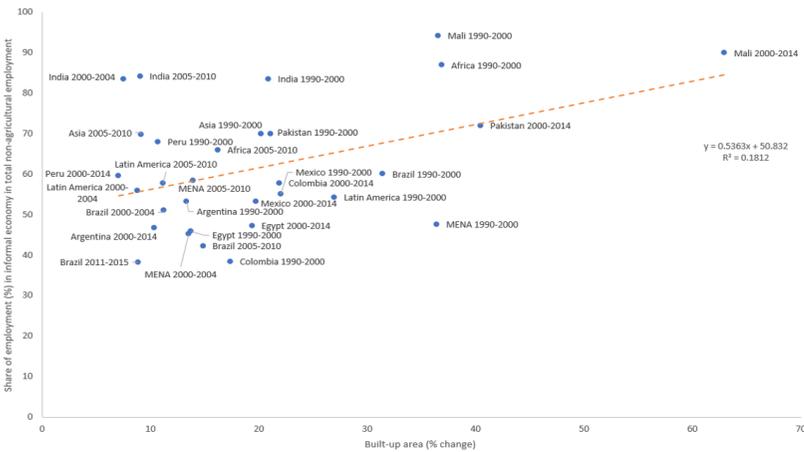
Statistics calculated using Excel (2017) and Stata (2017).

To control for regional and time period differences, I further disaggregate the data by constructing a number of scatter plots across various groupings including time periods, regions, and countries. The region with the most substantial amount of data was Latin America, and thus proved to be the most insightful. Given the units and scale of measurement of the two variables of interest, a positive relationship between spatial urban growth and the size of the informal economy can be illustrated in several ways. Only when negative in value does the percent change in built-up area indicate declining spatial urban growth. Therefore, a negative slope estimate indicates a negative relationship whereby decreasing percent change in built-up area is associated with an increase in the share of informal employment. However, a decreasing percent change in built-up area still implies positive spatial growth, just at a decreasing rate. Consequently, a downward sloping line of best fit must be interpreted carefully.

### 4.3 Results

The simple pool model constructed across all observed regions and countries yielded a statistically significant, positive relationship between percent change in built-up area and the share of informal employment. The slope estimate signifies that a 1 percent positive change in built-up area will result in a 0.54 percent increase in the share of employment in the informal economy. Despite the calculated significance, the moderate correlation value and comparatively modest R-squared value suggest that there may be another model better suited to estimate the relationship. In addition, notice in Figure 1 how some countries exhibit different levels of informal employment and percent change in built-up area compared to their respective regions.

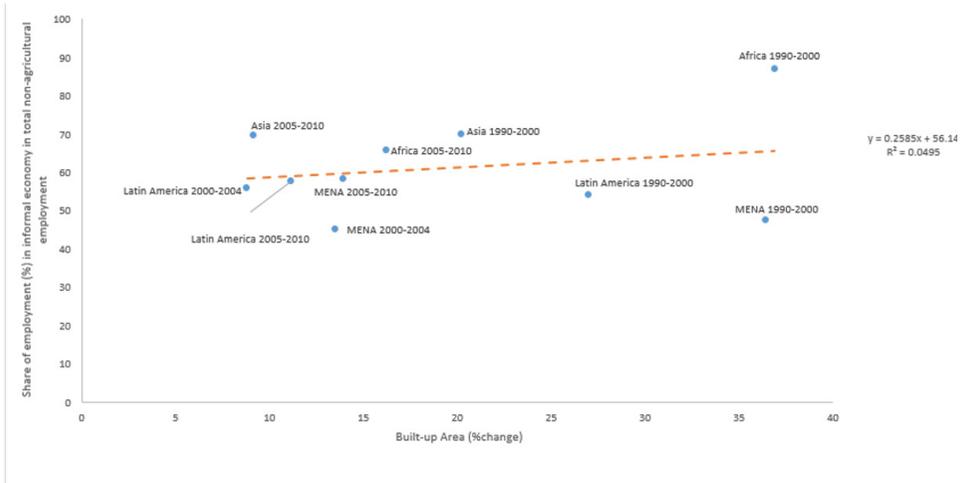
Figure 1: – Built-up area and informal employment: different regions and countries



For example, Peru in 1990-2000 lies above the line of best fit, indicating that the country has a higher share of informal employment relative to its percent change in built-up area. During this time period, Peru experienced a 10.72 percent change in its built-up area and had informal employment account for 67.90 percent of total employment. The other observed Latin American countries during this time period appear to be below the line of best fit. The Latin America regional observation, also below the line of best fit, experienced 26.99 percent change in its built-up area and had informal employment represent 54.20 percent of total regional employment. The difference in magnitude of both variables suggest that regional data may not accurately capture country-specific characteristics that could drive discrepancies in built-up area and informal employment patterns. To address

these concerns, data was further disaggregated across regions, countries, and time periods.

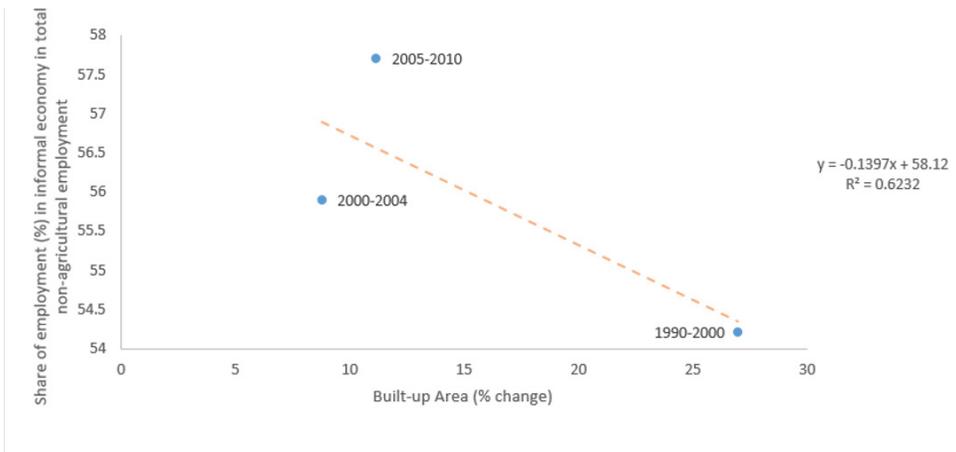
Figure 2 – Built-up area and informal employment: different regions 1990-2010



Using regional data from the HYDE 2017 and Charmes' datasets, I first checked the relationship between built-up area and informal employment on a regional level. Notice in Figure 2 the upward sloping line of best fit. A clear positive relationship between built-up area and informal employment can be observed across the developing world. This shows that in the developing world as the percent change of built-up area increases, the share of informal employment also increases. However, the results of the Pearson correlation test reflected in Table 5 show that the relationship between the two is quite weak. The results of the regional data provide weak evidence for a significant relationship between the two variables. A weak positive correlation suggests that there may be differences in the slopes, or the steepness of the relationship, among regions. Some regions may experience greater rates of built-up area change or larger shares of informal employment than others. Additionally, Latin America in Figure 2 consistently performs below the expected share of informal employment. These observations suggest that regional patterns in built-up area are not indicative of the urban development experiences of individual countries. Given the independent economic, social, and political conditions of countries, one would expect to see deviations within regions. Argentina's share of informal employment from 2000 to 2014 was 19 percent less than that of Colombia's, while Argentina experienced 52 percent less change in its built-up area than Colombia. This discrepancy shows country-level data is perhaps more descriptive of the overall relationship between spatial urban growth and informal employment.

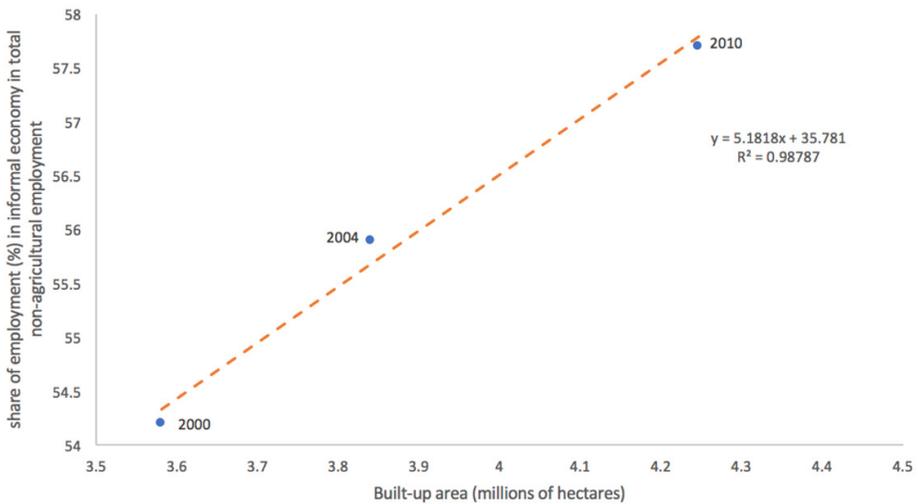
However, a stronger relationship can be observed when looking at individual regions. Intuitively, this makes sense. Limiting the analysis to one geographic region, as opposed to comparing the levels of built-up area and informal employment across several regions, controls for region-specific factors and will yield a statistically stronger relationship between the two variables. For example, the model for Latin America regional observations has an R-squared value of 0.62, implying a better fitting model than that shown in Figures 1 and 2.

Figure 3 – Built-up area and informal employment: Latin America 1990-2010



Nonetheless, the relationship depicted in Figure 3 shows a slowing rate of built-up area expansion associated with an increasing share of employment. The correlation value of -0.79 suggests a negative relationship between the two observed variables. At the same time, this negative correlation value signifies that Latin America during this time period experienced a slowdown in the rate of its physical urbanization, and thus may have entered the final stages of urbanization. To investigate this observation further, I plotted total built-up area against the share of informal employment in Figure 4 for Latin America and found that when the region acquired more total built-up area, its share of informal employment in total employment grew. In this case, Latin America conflicts with existing literature which found that the size of the informal economy follows an inverted-U pattern, whereby it first increases as urbanization begins, but then falls in the later stages of urbanization. Latin America's decrease in percent change of built-up area signals that the region has reached the end of the urbanization process. However, despite literature saying that informal employment should begin to decrease at this stage, in Latin America it has in fact increased.

Figure 4 – Total built-up area and informal employment: Latin America 2000-2010



This outlying behavior could be due to several reasons, including the large indigenous populations characteristic of many Latin American countries, like Bolivia and Guatemala. Employment within indigenous communities is often confined to the informal economy in part due to discrimination and discrepancies in knowledge of labor laws.<sup>33</sup> Therefore, the prevalence of indigenous communities could introduce bias into the model, and should be further considered in future research. This characteristic could also help explain why Peru in Figure 6 appears to have a much larger incidence of informal employment compared to its regional counterparts.

I proceed by seeing if disaggregating data further will refute this negative relationship and exhibit a stronger positive correlation. Therefore, I checked the relationship between spatial urban growth and the size of the informal economy using country-level data from Charmes', WDI, ILO, and OECD datasets. Figure 5 shows the patterns of movement between the two variables across countries in Latin America. Notice that as the percent change in built-up area increases or decreases, the share of informal employment follows. This alludes to a potential relationship between the two.

<sup>33</sup> United Nations, "Indigenous Peoples' Access to Decent Work and Social Protection," Inter-Agency Support Group on Indigenous Peoples' Issues, (2014).

Figure 5 – Built-up area and informal employment bar graph: Latin American countries, 1990-2015

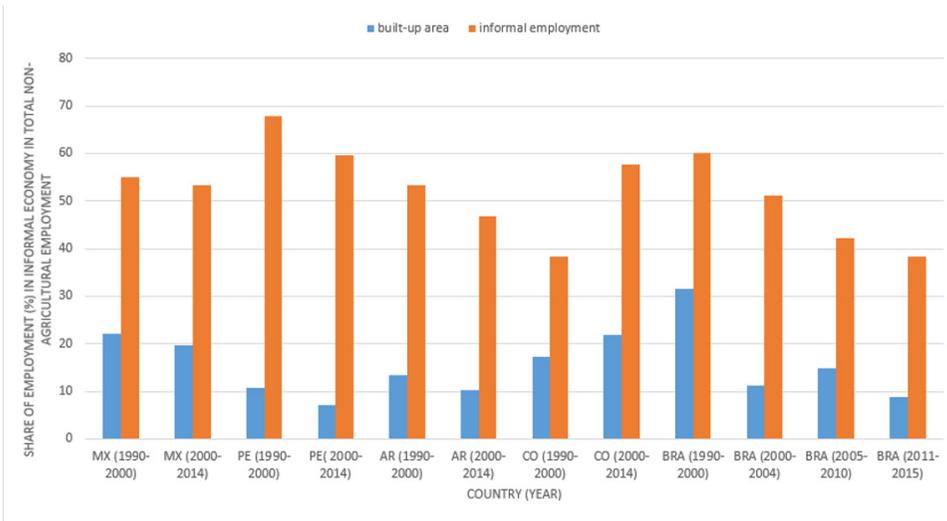


Figure 6 – Built-up area and informal employment: different countries 1990-2014

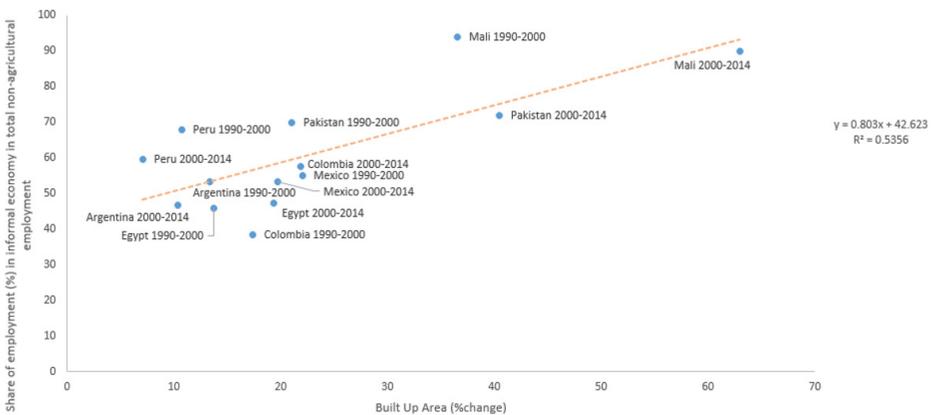


Figure 6 more clearly illustrates the relationship between built-up area and informal employment across seven countries from 1990-2014. Across the seven developing countries, a moderately strong positive relationship between spatial urban growth and the size of the informal economy is indicated by a correlation value of 0.74. With an R-squared value of

0.54, the model does a good job explaining the variance in data given the differences in magnitude. From 2000-2014, Mali reported a percent change of built-up area of 62.79 percent. Whereas, Peru reported a percent change of 7.08. This relationship is accentuated even further by specifically plotting the time period 2000-2014 (Figure 8). Here you can observe that, generally, the larger a country's percent change in built-up area, the larger its share of informal employment in total non-agricultural employment. The output for 2000-2014 data reported the strongest positive correlation with 0.91 and an R-squared value of 0.82, being the best fitting model.

Figure 7 – Built-up area and informal employment: different regions, 1990-2000

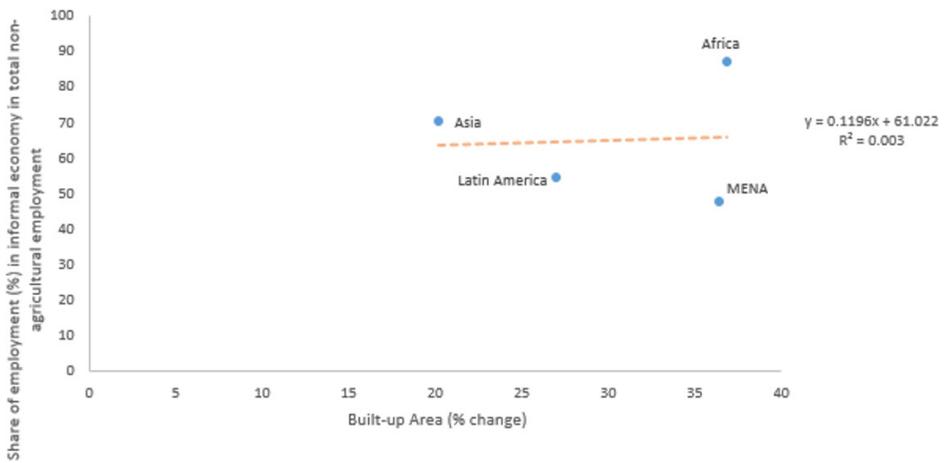
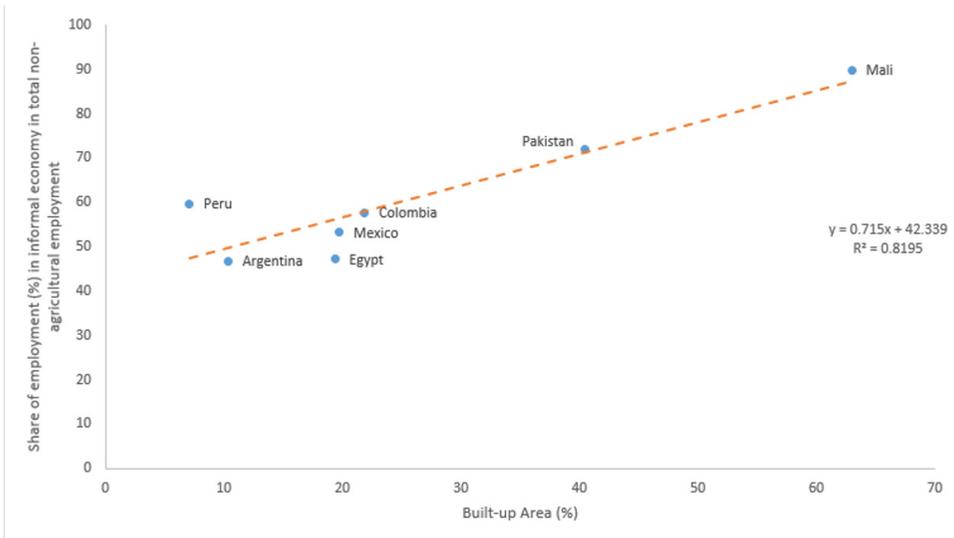


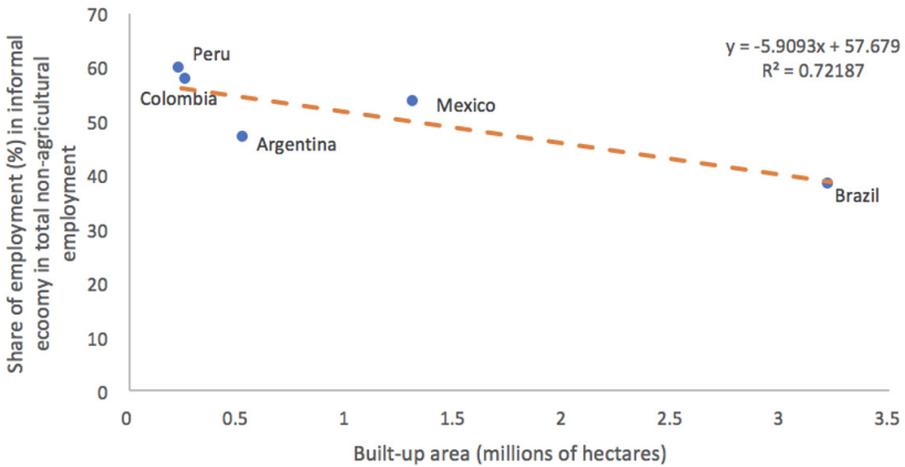
Figure 8 -- Built-up area and informal employment: different countries, 2000-2014



More specifically, the country-level model for 2000-2014 shows every one-percent increase in the percent change of built-up area results in an increase of the share of informal employment by 0.72 percentage points. The steepness of this relationship suggests that the change in built-up area growth has a larger influence on the size of the informal economy within countries, as opposed to within regions. With a correlation of 0.91 and an R-squared value of 0.82, this model exhibits the highest correlation and best fit. Data on Brazil also reported stronger correlation and R-squared values, 0.83 and 0.70 respectively, compared to those of regional models. Therefore, the relationship between spatial urban growth and the size of the informal economy is best studied by looking at country-level data.

While the data thus far shows that countries and regions experiencing the greatest percent changes in their built-up area are also the ones with informal employment accounting for a greater share of their total employment, I also checked whether this relationship holds for absolute measures of built-up area. Using 2014 data from the OECD database on five Latin American countries, I plotted total built-up area in hectares against the share of employment in the informal economy (Figure 8). Looking at these same countries in Figure 7 shows that between 1990 and 2014, each of the countries experienced a decrease in their percent change of built-up area, suggesting that the process of urbanization is slowing down in these countries. As urban expansion slows, and these countries enter the later stages of urbanization, their informal economies should contract, according to Elgin in Oyvatt. Figure 9 confirms just that, with an observable negative slope-estimate. Figure 9 shows that

countries that have more total built-up area generally have smaller informal economies



The output for country data compared to that of regional data indicates country data to be more telling of the relationship between spatial urban growth and the size of the informal economy. This appears to be true since country-data accounts for country-specific determinants of informal employment and built-up area that regional data omits. As such, evidence conveys that the larger a country's percent increase in built-up area, the greater the number of people who take up informal employment in these countries. As cities rapidly expand in size, the population they encompass expands as well. As a result, cities struggle to absorb the increase in the supply of labor associated with a rising urban population, leading to a greater number of informal workers.<sup>34</sup>

Given this distinction, the country-level data demonstrates a stronger relationship between spatial urban growth and the informal economy than the regional data. More specifically, the data shows that the greater the change in built-up area, the larger its share of informal employment. This claim is supported by the strong correlation values for the larger country model, as well as the 2000-2014 country model. This relationship also warrants an investigation of whether the same could be said for total measures of built-up area. Literature suggests that the data should reveal a negative relationship between total built-up area and the share of informal employment. Data on Latin American countries in 2014 confirms the existing literature, and thus underscores the importance of the rate of change in built-up area in determining the size of the informal economy.

34 ILO, "Decent Work."

## Robustness

A large gap in the study of urban expansion exists due to limited data. Data collection on the urban extent of countries is a recent phenomenon that has evolved with improved satellite and geographic imagery. Therefore, the limited number of observations in this research challenge the robustness of the results presented. The country model for 2000-2014, which was found to exhibit the strongest positive relationship between the two variables, only consisted of seven observations. Data limitations in this case could result in limited sampling bias. This also explains why the significance of the relationship could not be calculated. As more data becomes available and urban expansion continues, fluctuations in estimated values become less relevant and the relationship between spatial urban growth and the informal economy will become more evident.

The same challenges apply to the informal economy. Often referred to as the “shadow”<sup>35</sup> or “underground”<sup>36</sup> economy, informal economic activity usually takes place outside the purview of the state, making it more difficult for national statistical agencies to collect data on such populations. As a result, data on the informal economy is lacking. The limited amount of data creates space for a potentially underestimated relationship between spatial urban growth and the informal economy. More specifically, restricted informal employment data could direct bias to suggest urban land expansion as having an insignificant effect on the number of people who take up informal employment.

When data is available on the informal economy, the unregulated nature of the sector puts into question the quality and reliability of the source of data. This points to another concern with the data used for this paper. However, when possible, I collected data on informal employment from sources that used identical or nearly identical definitions, to account for any bias. In the same way that data collection methods for urban expansion are improving, the same can be said for the informal sector. As the informal economy continues to gain attention from state and international actors, the need for data on those participating in the informal economy is more imperative to addressing the various social, political, and economic needs and challenges of this population. As data becomes more readily available, further research on the physical determinants of informal economic activity should be explored.

While plenty of research suggests that spatial urban growth coincides with an increasing number of people partaking in informal employment, little existing literature exists to justify the reverse. In fact, research done by Stephen Sheppard finds that informality, specif-

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35 Friedrich Schneider and Colin C. Williams, “The Shadow Economy,” The Institute of Economic Affairs, 2013.

36 Susan Pozo, “Exploring the Underground Economy: Studies of Illegal and Unreported Activity,” Upjohn Institute for Employment Research, (January 1996).

ically informal housing, does not serve as an adequate explanation for urban expansion.<sup>37</sup> Instead, his empirical analysis finds that informal housing may be indicative of a lack of urban expansion. Additionally, informal housing and informal employment are oftentimes seen as going hand-in-hand. Informal settlements exist for many of the same reasons that individuals take up informal work. As a result, many informal housing dwellers are employed in the informal economy.<sup>38</sup> Therefore, Sheppard's research and the close association of those living in informal housing and those partaking in informal employment lead to the belief that informal employment inadequately explains the physical growth of urban areas. Nevertheless, while Sheppard's research provides an empirical account of the limited impact of informal housing on urban expansion, the impact of informal employment remains to be explored. Until research sheds light on this relationship, the prospect of simultaneous causality cannot be completely rejected.

## Conclusion

Through graphical modeling, this paper examines the relationship between spatial urban growth and the size of the informal economy. The empirical evidence reveals a strong positive relationship, as verified by a large positive correlation value, whereby a greater percent change in a country's built-up area over time coincides with a larger share of informal employment in total non-agricultural employment. More specifically, for every one-percent increase in the percent change of built-up area, the share of informal employment increases by as much as 0.72 percentage points. This finding suggests cities that undergo rapid and dramatic urban growth, not just in population but in physical extent, have larger informal economies as represented by greater shares of informal employment in total non-agricultural employment. However, according to my interpretation, a causal relationship between the two cannot be drawn until additional data is collected and made available.

Moreover, the further disaggregation of data into regional groupings provides increased clarity into regional trends in urbanization, but also sheds light on omitted variables that may explain the regional patterns in spatial urban growth and informal employment. Similarly, taking disaggregation one step further and inspecting country-level data provided even greater clarity on regional discrepancies in spatial urban growth and the informal

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37 Stephen Sheppard, "Informal Sprawl," Department of Economics at Williams College, (October 20, 2010): 1-18.

38 Donald Brown and Gordon McGranahan, "The Urban Informal Economy, Local Inclusion and Achieving a Global Green Transformation," *Habitat International* 53 (April 2016): 97-105; Katherine V. Gough, Graham Tipple, and Mark Mapier, "Making a Living in African Cities: The Role of Home-based Enterprises in Accra and Pretoria," *International Planning Studies* 8, no. 4 (2003): 253-77; Taibat Lawanson and D Olanrewaju, "The Home as Workplace: Investigating Home Based Enterprises in Low Income Settlements of the Lagos Metropolis," *Ethiopian Journal of Environmental Studies and Management* 5 (August 2012).

economy. In the case of Latin America, country-level data from Peru revealed divergences in the urban development experience of countries within the same region. Moreover, larger correlation and R-squared values for models using country-level data suggest country-level data to be more representative of the relationship between spatial urban growth and the size of the informal economy. Nonetheless, a limited number of observations precluded the ability to run a formal regression to test for significance of this relationship. The findings drawn from the country-level analysis confirm the need to control for omitted variables not only to account for differences in patterns across countries within similar regions and the need to further investigate this relationship as more data become available.

The findings of this research underscore the importance of the rate of urban expansion in understanding informal labor markets. Considering the rate at which cities in the developing world are urbanizing, they will most likely continue to have large informal economies. Particularly vulnerable individuals will continue to be excluded from formal labor markets and governments will be losing out on an important source of tax revenue. For sustainable urban development to take place, the relationship between urban growth and informal employment must remain an area of prioritization.

The data limitations in this study make it difficult to control for various other variables. Since Elgin and Oyvat, and Posada and Moreno-Monroy use control variables that provide compelling empirical evidence for a statistically significant relationship between spatial determinants and the informal economy, suggesting any kind of causality in the context of my research would be misplaced. Instead, I assert a positive relationship between spatial urban growth and the size of the informal economy that could also be influenced by several other variables. Additional variables to consider in more robust models going forward include income per capita, commuting times, indigenous populations, level of education, land use, population density, presence of public transport, among others.

The results are in line with existing research, specifically that of Elgin and Oyvat and Posada and Moreno-Monroy, which emphasizes the spatial drivers of informality in cities. Nonetheless, this paper highlights the prospect of a causal relationship between urban expansion and the size of the informal economy; a relationship that necessitates further study in order to fully grasp why informal employment persists even in the face of rapid and sustained growth.

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# Popping China's Bubble: An explanation of the conflict between economic health and the Chinese Dream

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## Abstract

*This purpose of this paper is to outline the institutional, financial, and cultural drivers that have led to extensive volatility in the Chinese financial system. China's adoption of Keynesian stimulus during the 2008 financial crisis confirmed the Chinese Communist Party's commitment to preserving economic growth at all costs. Liquidity crises in 2016 and 2018 illuminated public discontent with the government's deleveraging efforts and push for a negative savings environment. National distaste for deleveraging has limited the political urgency of deleveraging, and the bureaucratic institutional culture is unlikely to yield public officials willing or able to forcefully act. This paper analyzes the economy created in the aftermath of unprecedented growth, investigating the cultural orientation toward stability, execution of fiscal policy and prevalence of systemic risk.*

## Introduction

In the past thirty years, the Chinese economy has expanded at one of the quickest rates of human history. The emergence of the "China Dream," an often-used slogan by President Xi Jinping meant to denote the Chinese people's dream of a better life and a similarity to the American Dream, is evidence of the new expectations and growth upon which the current population thrives. Yet the ease of presiding over prosperity has corrupted the internal culture of China's political and regulatory institutions. A meritocratic bureaucracy on paper, which has become a corrupt one in practice, pursues its sole mission to uphold the status quo without repercussions for institutional ignorance or irresponsibility. By consistently returning to stimulus in order to prolong the growth of the economy, Chinese policymakers have begun astroturfing their real economy with growth driven by investment rather than

consumption. The Chinese economy has hit the wall of global demand. Despite grand schemes to stimulate that demand, no stimulus will generate real demand in time to rescue the economy from its savings.

The One Child Policy has artificially created a savings-oriented generation, with a culture of fear surrounding the threat of future inflation. Well-documented cases of public outrage regarding the financial sector have made the Party wary of an economic environment detrimental to savings. Twenty years of rapid growth led the entire economy, particularly the financial sector, to become encumbered with debt. As opposed to usual household-firm debt, this debt is intergenerational, bleeding into the culture of New China, preventing the Party from addressing the problem. The threat of public dissent bars any political tolerance of inflation, limiting the potential for reductions of the real debt. In the absence of deleveraging, the political status quo continues to perpetuate systemic risk through the relationships between state-owned enterprises and the private sector. The current economic system in China is unsustainable in the short run because of the cultural orientation toward political stability, fiscal policy and systemic risk.

### **Stability Oriented Culture**

The clash between traditional Chinese familial expectations and its contemporary economy has generated a structural glitch in Chinese life. The traditional promotion of stability is now at odds with the contemporary culture of chaos. The implicit pursuit of social stability has corrupted a legally meritocratic bureaucracy where regulators, administrators and politicians are incentivized to maintain the status quo in the face of mounting issues.<sup>1</sup> At the same time, historic economic growth has left the people accustomed to economic growth and expectant of personal prosperity. New expectations have given way to an evolving culture of social obligations. The One Child Policy has led families to expedite and centralize intergenerational wealth transfers to support their sole descendants, dramatically increasing household savings. This centralization of assets has led to a new fear: inflation, as savers become more conscious of their culturally and financially important holdings. The public's fear of inflation has prevented the government from performing holistic policy despite the potential benefits to firms.

### **Bureaucratic Incentives**

The most glaring institutional feature of the Chinese Communist Party's (CCP) focus on GDP growth is the incentive structure within party and state institutions creating moral hazard. The Chinese government's system of internal evaluation is built on simple reinforcement tactics. Wages are awarded based on seniority, age, level of education, and

1 Derived from the characters of steady and decide, stability is an enduring cultural virtue. President Xi recently identified six key areas of stability for China to target in 2018. See Xinhua, 2018.

administrative rank.<sup>2</sup> Three of the four -- seniority, age, and administrative rank -- incentivize self-preservative behaviors and policies rather than policies that promote long-term economic health. Simply put, the performance of local officials has been mainly evaluated based on GDP growth.<sup>3</sup> Additionally, as promotion of administrative rank involves voting among fellow cadres and senior Party officials, progression of administrative rank depends on one's statistical performance and internal alliances. In order to gather and maintain internal alliances, officials operate at the behest of other officials in the hierarchy. The system lacks mechanisms of gathering information on malfunctions or malpractices and gives higher officials the power to punish or reward lower ones.<sup>4</sup> These two factors make internal factions incredibly important to the individual success of a cadre, so it is unsurprising that provincial officials rarely disrupt existing practices without pressure from the hierarchy above.

Furthermore, cadres are bombarded with thought control, dissuading them from creatively engaging long-term issues impacting local economies. Though the practice is successful in asserting the dominance of central leaders, ideological manipulation limits administrators to addressing the problems assigned to them by Beijing, or whichever will help them obtain the next promotion. While a growth emphasis incentivizes these governance improvements, a stability emphasis not only does not do so, but actually disincentivizes improvements as counties focused on stability avoid bold institutional reforms in fear of local unrest. Regarding the likelihood of future local reforms, one official in Anhui noted, "our leaders have no courage."<sup>5</sup> The sustained rate of growth distorted the logic of evaluating performance based on growth. Promotions have become less objective, resulting in an enhanced role of patronage in local personnel decisions, which is a leading cause of corruption.<sup>6</sup> Advancement became a sign of a cadre's loyalty to their chain of command, so pursuit of advancement lost what little connection it had to administrative efficacy.

Thirdly, maintenance of one's own position requires systematic advancement in administrative ranking and seniority. Each successive administrative rank places formal and informal age restrictions upon cadres, tying political mobility closely to age. The mean age of

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2 Administrative rank refers to the legal standing of a province or institution, arguably the most important aspect in determining the power and influence of a cadre. See Ringen, 69-80, 141.

3 Guangzhong Cao, Changchun Feng, and Ran Tao, "Local "Land Finance" in China's Urban Expansion: Challenges and Solutions," *China & World Economy*, 16, no. 2 (2008): 19-30.

4 Stein Ringen, *The Perfect Dictatorship: China in the Twenty-First Century* (Hong Kong: Hong Kong University Press, 2016), 69-80.

5 David J. Bulman, *Governing for Growth and the Resilience of the Chinese Communist Party* (Cambridge: Ash Center for Democratic Governance and Innovation Harvard Kennedy School, 2016), 4-5.

6 Ibid.

Provincial Leaders' remains at 55.4, and the mean age of City Leaders is around 50, which have both remained stable throughout the 1990s and 2000s.<sup>7</sup> Meanwhile, CCP Politburo Members' median age was 63 in 2007. This indicates some degree of formalization within the Party bureaucracy regarding the age of its cadres, such that a cadre must progress up the party ladder with age.<sup>8</sup> Age restrictions prevent the entrenchment of cadres within a single institution, limiting the potential for factional capture but also the stability of human capital. Short-term stationing of cadres around the bureaucracy not only reinforces the power of entrenched hierarchies but also disincentivizes a cadre from addressing long-term problems, as they will inevitably retire or be moved away from those problems. It is not a civil service but a party service; public servants do not answer downwards to the people they serve but upwards to those they serve for.<sup>9</sup>

### Economic and Cultural Fear of Inflation

A high savings rate throughout the country translates to widespread sensitivity toward savings, meaning the maintenance of a savings-friendly economy is important to the CCP. A danger to the financial stability of future generations is a danger to the present political power of the CCP, and in brief moments of volatility, public outcry has not gone unnoticed. Noteworthy public demonstrations have emerged in the aftermath of a string of short-run bubbles, particularly throughout the 2018 credit-crunch that led to the bankruptcy of dozens of corporations in the third and fourth quarters of that year.<sup>10</sup> Many middle-class Chinese families who reported losing money in risky ventures refused to quietly absorb their losses, and many even notified local police, despite the person-to-person (P2P) lending business being informally banned in 2016.<sup>11</sup> During the credit-crunch, private lenders lost an estimated RMB 51,790 million in bankrupt Local Government Financing Vehicles (LGFVs) by October 2018.<sup>12</sup> Revealingly, the CCP later acknowledged public concerns by purging the word “deleveraging” from all future official press releases, instead referring

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7 Qiao Liang, *Political Mobility of Chinese Regional Leaders: Performance, Preference, Promotion* (New York City: Routledge, 2018), 23.

8 Ibid.

9 Ringen, *The Perfect Dictatorship*, 141.

10 Xiaohua Gu and Ya Luo, “Victims of P2P Lending Crash Hold Simultaneous Protests Across China,” *The Epoch Times*, October 4, 2018. [https://www.theepochtimes.com/victims-of-chinas-p2p-lending-scams-hold-protests-police-arrest-protectors\\_2678751.html](https://www.theepochtimes.com/victims-of-chinas-p2p-lending-scams-hold-protests-police-arrest-protectors_2678751.html); Orange Wang, “China’s P2P lending market could be decimated this year amid Beijing crackdown,” *South China Morning Post*, (2019). <https://www.scmp.com/economy/china-economy/article/3006170/chinas-p2p-lending-market-could-be-decimated-year-amid>.

11 Wang, “China’s P2P Lending Market.”

12 Gloria Lu et al., *China’s Hidden Subnational Debts Suggest More LGFV Defaults Are Likely* (Hong Kong: S&P Global Ratings, 2018), 8-10. <https://www.spratings.com/documents/20184/0/ChinasHiddenSubnationalDebtsSuggestMoreLGFVDefaultsAreLikely.pdf/00c1bdd1-70c0-9240-12df-850df192c602>.

to “structural deleveraging” in order to ease fears of future defaults.<sup>13</sup> Chinese savers are undoubtedly concerned about the possibility of default, but before 2018, there had been very few defaults among borrowers, and even fewer among state-owned enterprises (SOEs). What savers are more afraid of, however, is future inflation.

Though inflation has increased in the short term, the increase has been quite manageable, holding steady in the medium term. Between 2015 and 2019, the rate of inflation increased from 1.5% to 3.8%.<sup>14</sup> Though inflation hit an eight-year high in November 2019, this was driven by a localized surge in the price of pork imports, which doubled year-on-year in October, accounting for over 60% of the increase in the consumer price index (CPI).<sup>15</sup> The core inflation rate, which discounts volatile goods such as food and energy, remained steady at 1.5% in October, and in the medium-term, the core inflation rate has been quite low, averaging 1.39% from 2008-2019.<sup>16</sup> Despite the low rate of inflation, the M2 money supply has quadrupled in the past ten years.<sup>17</sup> One of the most telling signs of inflation-fearing savers is the prevalence of capital flight. Capital in China has been flowing out of the country in earnest since 2004, and its first net-capital inflow in nearly a decade was generated in 2013.<sup>18</sup> Net capital flows continued to increase before sharply decreasing in Q2 of 2019 in preparation for the introduction of new monetary tools.<sup>19</sup> All across the income distribution, savers are running to high-returns and new markets to escape future inflation. Savers are so concerned with asset maintenance because of the cultural weight assets carry. Ultimately, a majority of this new wealth is channeled into the purchasing and maintenance of property assets, as the new generation of bachelors need property and safety to meet their standards.

For serious dating and marriage prospects, property is considered a requirement in addition to savings and a stable occupation. The average age of Chinese homebuyers in 2018 was

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13 Mike Bird, “Chinese Deleveraging is Dead, Long Live Chinese Deleveraging!” Wall Street Journal, February 26, 2019. <https://www.wsj.com/articles/chinese-deleveraging-is-dead-long-live-chinese-deleveraging-11551171159>.

14 “China Core Inflation Rate.” Trading Economics, National Bureau of Statistics of China. December 1, 2019. <https://tradingeconomics.com/china/core-inflation-rate>.

15 Chen Yawen and Wu Huizhong, “China factory prices falter, while inflation soars to near eight-year high”, Reuters, November 9, 2019. <https://www.reuters.com/article/us-china-economy-inflation/china-factory-prices-falter-while-inflation-soars-to-near-eight-year-high-idUSKB-N1XJ023>.

16 “China Core Inflation Rate”.

17 “China M2 Money Supply.” Trading Economics, People’s Bank of China. November 28, 2019. <https://tradingeconomics.com/china/money-supply-m2>

18 “China Capital Flows.” Trading Economics, State Administration of Foreign Exchange, China. December 3, 2019. <https://tradingeconomics.com/china/capital-flows>.

19 Ibid.

29.<sup>20</sup> According to the 2010 Survey Report on Chinese Marriage and Love Status, 70% of women surveyed believe that men need a house, a stable income, and a certain amount of savings to get married. Furthermore, 65% of women hope that a man's income is more than double their own, while more than 63% of men do not have high requirements for a woman's income.<sup>21</sup> Unfortunately for young Chinese men, homebuyers pay an average of 10 times their income stream for a home.<sup>22</sup> Lacking a robust national system of individual credit, young people rely on their families to help afford property. Monthly payments made by first-time buyers in 2018 accounted for an average of 42.9% of their income, while for most people, monthly repayments accounted for more than 50% of their salaries.<sup>23</sup>

Much of the pressure comes from parents who feel taunted by the wealth around them in the aftermath of the One Child Policy.<sup>24</sup> The sociological side-effects of the pressure associated with these intergenerational wealth transfers are so well-known they have earned a name: Six-Wallet Syndrome, a term used to describe the spending habits of young Chinese adults upon being given their family's combined fortune.<sup>25</sup> One popular saying, "A good wife and health are a man's best wealth,"<sup>26</sup> illustrates how marriage is important for maintaining good familial relationships because it helps the family gain *guanxi*<sup>27</sup> or maintain *mianzi*.<sup>28</sup> Attending to *guanxi* is important for both personal and professional relationships in China. Business is conducted almost exclusively through *guanxi*, so a person's value in

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20 People's Daily Online, "Average age of Chinese homebuyer is 29.5", The Telegraph, February 5, 2019. <https://www.telegraph.co.uk/peoples-daily-online/society/chinese-homebuyers/>.

21 Chongqing Evening News & News Center, "Survey says Chinese candidates love stable male civil servants and female teachers," China.com, December 16, 2010. [http://www.china.com.cn/news/txt/2010-12/16/content\\_21552148.htm](http://www.china.com.cn/news/txt/2010-12/16/content_21552148.htm).

22 E. Glaeser et al, "A real estate boom with Chinese characteristics", *Journal of Economic Perspectives*, (2016), 3.

23 Maria de Guzman, "China's house price boom over in the 1st tier cities", *GlobalPropertyGuide*, August 19, 2019. <https://www.globalpropertyguide.com/Asia/China/Price-History>.

24 Andrew Jacobs, "For Many Chinese Men, No Deed Means No Dates," *New York Times*, April 5, 2011. <https://www.nytimes.com/2011/04/15/world/asia/15bachelors.html>.

25 Associated Press, "Young, Rich and Chinese: It's life in the fast lane for the emerging class of *fuerdai*", *South China Morning Post*, August 19, 2016. <https://www.scmp.com/news/china/society/article/2005658/young-rich-and-chinese-its-life-fast-lane-emerging-class-fuerdai>.

26 "妻贤与身体好是男人最大的财富"

27 *Guanxi* loosely translates as personal connections, relationships or social networks. It implies trust and mutual obligations between parties, and it operates on personal, familial, social, business and political levels. Having good, bad or no *guanxi* impacts one's influence and ability to get things done. See Wenderoth.

28 Penn State University and Peking University, *Chinese Culture, Tradition, and Customs*, (2018).

an occupation often counts their *guanxi* above their qualifications.<sup>29</sup> A person's wealth is an essential determinant of their quality of life, social life and employment, which is why wealth is important to contemporary Chinese culture.

### Unsustainable Practices

The country's meteoric rise has become a comfortably easy point of legitimacy and support for the CCP, while the economy seems to grow without fail as it expands in a young market. By consistently returning to stimulus in order to prolong the growth of the economy, Chinese policymakers have begun astroturfing their real economy, or crowding out private enterprise with growth driven by investment, rather than consumption.<sup>30</sup> Provincial governments rely on debt to fund central initiatives and regular public expenditures. Two signature investment initiatives, China 2025 and One Belt One Road, commit titanic amounts of investment toward economic evolution and international demand. The development of skills and strategic infrastructure require prolonged, high-risk investments, and returns will not arrive in the short-term. The Chinese economy has hit the wall of global demand, and despite its grand schemes to stimulate that demand, no stimulus will generate real demand in time to satisfy the national savings glut.

### Borrowing Habits

State-owned enterprise borrowing has exploded after 2005, and the insolvency of SOE debt is generating concerns in both public and private circles.<sup>31</sup> Among Chinese borrowers, most are SOEs, which have a political and economic obligation to remain in operation. SOEs and local government financing vehicles (LGFV) borrow absurd amounts of money to remain solvent, and in an environment where inflation is suppressed, borrowers are responsible for repaying a larger portion of their real debt. According to the latest data released by the State Council, in 2017, non-financial SOE debt reached CNY 118.5 trillion, exceeding 100 trillion in November of that year. Non-financial SOE debt increased nearly four-fold between 2007 and 2017, and during the same time, SOE assets grew 337%, revenues 159% and profits 60%. SOEs have crowded out a large share of private credit; LGFVs take the place of Public-Private Partnerships (PPPs) in China, interacting with private lending through quasi-state trust companies and secondary balance sheets to make lending safer. SOEs have been the major business group behind the soaring corporate debt, accounting for roughly 88% of it by 2017. While SOE debt was already high at 80% of

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29 Yutang Lin, *My Country and My People* (New York: Reynal & Hitchcock, 1935).

30 The crowding out effect is an economic theory arguing that rising public sector spending drives down or even eliminates private sector spending; Will, Kenton, "Crowding Out Effect," Investopedia, April 30, 2019. <https://www.investopedia.com/terms/c/crowdingouteffect.asp>.

31 Margit Molnar and Jiangyuan Lu, "State-Owned Firms Behind China's Corporate Debt," OECD Working Paper, February 7, 2019: 12. [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP\(2019\)5&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP(2019)5&docLanguage=En).

GDP in 2005, the large stimulus in 2009 (roughly CNY 4 trillion) to counter the effects of the global financial crisis increased the debt further to around 100%.<sup>32</sup>

Many SOEs are still growing through debt, relying on it to remain in operation and contributing to major insolvency across the sector. Experts estimate 40% of SOEs lose money every year and borrow yearly to pay off annual interest payments to private lenders.<sup>33</sup> The Party does not tolerate high rates of nonperforming loans (NPLs) so SOE debts continue to be offloaded onto the real economy to be sold through wealth management products (WMPs).<sup>34</sup> Effectively, these SOEs are engines of interest payments and an increasingly small percentage of urban employment, about 10% in 2018.<sup>35</sup> Without real assets or revenue to create real value, SOEs are extremely illiquid instruments of stimulus and inefficient employment.

### Future Stimulus

China 2025 is a good example of the risk associated with crowding out. The “flagship” economic program promotes strategic industrial development through targeted investment. Although the ideological thrust behind the plan is sound, accelerating the process of adding value to an economy is challenging in the short-term. Funding cannot solve the higher education and high-skilled labor peak in service-oriented economies; the process of generating the necessary supply of high skilled labor will take decades.<sup>36</sup> As of the middle of last year, 1,940 “government guidance funds” have been established to finance investment in strategic technologies, which on paper, are modelled after private venture capital funds that financed the early development of Silicon Valley’s tech giants. In reality, these guidance funds are government-run bodies set up to direct capital to chosen sectors in accordance with government policy.<sup>37</sup> By having state-owned investment enterprises spearhead China 2025, central planners have tasked structurally inefficient bodies with creating a highly efficient sector.

In spite of China 2025’s stated plan to focus on services, manufacturing continues to be China’s preferred method of infusing stimulus. Services purchasing managers index (PMI) and non-manufacturing PMI both have continued to show steady growth, yet manufacturing PMI has been increasing since the beginning of 2019, a moment of concern for

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32 Ibid, 16.

33 Nicholas Lardy, *The State Strikes Back: The End of Economic Reform in China?* (Washington, D.C.: Peterson Institute for International Economics, 2018), 8-31.

34 Douglas Elliot, Arthur Kroeber, and Yu Qiao, *Shadow banking in China: A primer* (Washington, D.C.: Brookings, 2015), 22.

35 Lardy, *The State Strikes Back*, 93-97.

36 Ibid, 8-28.

37 Tom Holland, “Beijing’s ‘Made in China 2025’ plan isn’t dead, it’s out of control,” *South China Morning Post*, April 8, 2019. <https://www.scmp.com/week-asia/opinion/article/3004900/beijings-made-china-2025-plan-isnt-dead-its-out-control>.

Chinese policymakers.<sup>38</sup> Manufacturing PMI hit an all-time high in 2013, corresponding with well-documented stimulus taking place during that time, most notoriously in the cement sector.<sup>39</sup> It also increased in 2016, amid concerns of another recession in the financial sector. In 2019, manufacturing PMI again hit a three-year high.<sup>40</sup> At the same time, services PMI has been erratic, but generally countercyclical to manufacturing PMI, indicating that in times of recession, or administrative concern, the service sector grows more slowly, even almost shrinking in 2014 before a dramatic increase.<sup>41</sup> Non-manufacturing PMI continued to grow in the last decade, but its growth rate has steadily declined after rebounding throughout 2009, and since 2016, it has held steady around 54.<sup>42</sup> The countercyclicality of service and manufacturing sectors occurs because of the institutional reaction of the Chinese government to quickly rescue the manufacturing sector. This countercyclicality may not occur at the long-term expense of the service sector, yet it underlines the sector's lack of firm state support. Manufacturing, with its ties to the central government through widespread state-ownership and historical state monopolization, is the simplest option for stimulus, while the service sector is more exposed to a slowing real economy. Not only is China 2025 incomplete because of its impossible timeline, but also because of the lack of support for the service sector during these brief moments of distress. Potential returns on China 2025 investments will not materialize in the short-term, or even the medium-term, eliminating the initiative as a potential location for successful stimulus.

The Belt and Road Initiative (BRI) is an even more speculative investment and will not generate immediate returns. One Belt, One Road is another example of a theoretically strong idea requiring a long period of sustained investment before turning any substantial profit. Unfortunately, the short-term prospects for BRI continue to worsen, as smaller countries curtail their previous commitments to large infrastructure projects. In January 2019, the Malaysian Cabinet announced plans to abandon a \$20 billion high-speed rail across the Malay peninsula, and \$3 billion gas pipeline projects.<sup>43</sup> The Malaysian cabinet released

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38 “China Services PMI.” Trading Economics, Markit Economics. December 1, 2019. <https://tradingeconomics.com/china/services-pmi>.

39 Ana Swanson, “How China used more cement in 3 years than the U.S. did in the entire 20th Century”, Washington Post, March 24, 2015. <https://www.washingtonpost.com/news/wonk/wp/2015/03/24/how-china-used-more-cement-in-3-years-than-the-u-s-did-in-the-entire-20th-century/>.

40 “China Caixin Manufacturing PMI.” Trading Economics, Markit Economics. December 1, 2019. <https://tradingeconomics.com/china/manufacturing-pmi>.

41 “China Services PMI.”

42 “China Non Manufacturing PMI.” Trading Economics, National Bureau of Statistics of China. December 1, 2019. <https://tradingeconomics.com/china/non-manufacturing-pmi>.

43 “China’s Belt and Road Initiative: Why the Price Is Too High.” Knowledge@Wharton. April 30, 2019. <https://knowledge.wharton.upenn.edu/article/chinas-belt-and-road-initiative-why-the-price-is-too-high/>.

a statement explaining that their reevaluation of the budget led them to determine they could not afford investments on the scale China had proposed.

In a second notable example, Myanmar's Minister of Investment and Foreign Economic Relations said the country would scale-down a \$7.5 billion plan for a deep-sea port built by CITIC Group in the town of Kyaukpyu.<sup>44</sup> He said, "We do not have any concerns about the debt trap...we are not going to borrow to the extent where we can't repay."<sup>45</sup> Ignoring the widespread concerns of debt-trap diplomacy,<sup>46</sup> the short-term future of BRI is bleak, and its short-term profitability even more so. Without global demand for Chinese products expanding with One Belt, One Road, there are no new sources of revenue that the Chinese can use to expand. Traditional benefits from stimulus are the result of a short-term boost to the real economy, so any potential increase in economic growth must by definition occur from the addition or integration of existing demand or assets. BRI is not a plan to incorporate existing assets or demand, but rather a plan to create them elsewhere. As an exporter, China cannot discover new sources of supply to create new revenue streams, as opposed to commodities exporters. In the long-term, an export economy must rise and fall with global demand, so when global demand contracts, exporters shrink.

### Systemic Risk

The Chinese economy has experienced the longest period of rapid economic growth in human history, but never before has an economy been able to outrun the reality of long run economic growth. A cycle of good money chasing bad money has continued for 25 years, creating an economy that is systemically overleveraged and built on cycles of worsening credit. Whenever the economy has shown signs of slowing, the response has been consistently political: the infusion of more stimulus to propel the economy to greater heights. There has been no opportunity to clear balance sheets, and the asset growth has been outpaced by the growth of credit. Provincial governments have resorted to selling rural land to compensate for a disproportionate amount of public expenditures since Beijing has refused to allow provincial governments to issue bonds or carry debt, leaving local officials with few options to raise revenue to keep pace with internal performance evaluations. Collective desperation to continue growth has led to bad growth and bad credit, a cycle of systemic risk.

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44 CITIC Group Corporation Ltd. Is a Chinese state-owned investment company established in 1979, headquartered in Beijing. The group's subsidiaries include CITIC Bank, CITIC Securities, Frontier Services Group, CITIC Construction and nearly 50 other firms.

45 David Tweed, Iain Marlow, and Dandan Li, "Souring Deals Put China's Belt and Road Dreams Under Pressure," Bloomberg, January 30, 2019. <https://www.bloomberg.com/news/articles/2019-01-29/souring-deals-put-china-s-belt-and-road-dreams-under-pressure>.

46 The intentional extension of excessive credit to another debtor country with the intention of extracting economic or political concessions from the debtor country when it becomes unable to honor its debt obligations. See Chellaney.

## Artificial Growth

The simplest way to increase GDP numbers is to sponsor small-scale infrastructure maintenance projects. These projects can include necessary, routine maintenance, but oftentimes their sole purpose is to give somebody something to do. The repaving of roads, maintenance of escalators, and reconstruction of public goods are among the most common methods provincial governments use to increase GDP without adding any real value to the economy.<sup>47</sup> More well-documented is the administrative repurposing and sale of land. Many smaller cities, particularly new first-tier cities, rely on land sales for most of their annual revenue. Some cities, notably Hangzhou, Foshan, and Xiamen, generate more revenue from land sales than taxes.<sup>48</sup> Land sales do add value to the real provincial economy, but a majority of the short-term benefit from land sales returns to the government rather than to the real economy. Selling land easily accounts for local deficits, but the practice is more of a band-aid than a long-term solution. Between 1990 and 2010, the average number of land sale cases per year increased from 266 to 563 as provincial economies grew to need more land sales every year for swelling urban populations.<sup>49</sup>

The practice of selling land to account for deficit spending became widespread among Chinese city governments in the aftermath of the 1994 tax system reforms, which alleviated the national budget deficit that had sprung up in the 1980s.<sup>50</sup> As a result of these reforms, a substantial part of the money from growth flows to the central government rather than to provincial governments. Although local governments are responsible for 80% of public expenditures, they only receive about 40% of annual tax revenues while the other 60% remains in Beijing. Though the central government will often subsidize local expenditures, the threat of provincial shortfalls remains on the provincial balance sheets. Provincial governments accounted for nearly 90% of all expenditures in 2012, while only receiving 50% of revenues during that time.<sup>51</sup> The disproportionate expenditures of the Chinese state continue in 2019 as China's central government took 48% of the country's fiscal revenues in the first eight months of 2019, leaving the vast local government apparatus – which includes 31 provincial governments, 330 municipal governments as well as around 2,800 county governments – to share the remaining 52%.<sup>52</sup> The prevalence of land sales high

47 Sun Yu and Tom Mitchell, “Chinese local government funds run out of projects to back,” *Financial Times*, October 16, 2019. <https://www.ft.com/content/6aaa5bfe-efce-11e9-ad1e-4367d8281195>.

48 Li Zhang, “Political Reform and Governance,” November 11, 2019.

49 Ibid.

50 Barry Naughton, *The Chinese Economy: Transitions and Growth* (Cambridge: The MIT Press, 2007), 427-428.

51 Zhang, “Political Reform and Governance.”

52 Frank Tang, “China to give local governments bigger share of tax revenues to continue crucial infrastructure investments”, *South China Morning Post*, October 11, 2019. <https://www.scmp.com/economy/china-economy/article/3032597/china-give-local-governments-bigger-share-tax-revenues>.

lights provincial governments' desperation for revenue and the lack of regard for the sustainability of their revenue sources.

Artificial growth has even led to crowding out in finance and manufacturing. Government spending has been disproportionately awarded to SOEs through LGFVs, leading private companies to pursue riskier sources of lending. Private manufacturing has been shrinking without access to traditional sources of funding despite its higher share of exports and higher returns to capital. In 2016, non-state companies received just 11% of new loans issued by the official banking sector, while more than 80% flowed to SOEs despite the fact that non-state firms account for more than half of all spending on R&D, urban employment, and exports.<sup>53</sup>

This riskier source of capital was the shadow banking sector, which exploded with lending in 2016. As an anonymous lending executive told *South China Morning Post*, "Shadow bankers were just as discerning as loan officers at the big banks. Lending to private businesses, often without a government's implicit backing or tangible assets like property, is considered a risky undertaking."<sup>54</sup> Shadow banking loans grew rapidly as an alternative to state-owned commercial bank loans for their profitability and accessibility for small, private enterprises. Corporate debt reached 160% of GDP by 2016 and has remained a large part of national debt.<sup>55</sup> The most common tools of stimulus led to the least amount of real economic growth. Small projects and land sales both add little to no real value in the short-term, and the lack of a method of financing artificial growth has crowded out the natural engines of real growth in the financial sector.

## Lending

In their fear of future inflation, savers without the ability or knowledge to move their money out of China pursue risky, speculative investments, often with dire consequences they are unprepared for. Since 2015, experts estimate an RMB 5 trillion annual deficit in deposits as savings leave the traditional banking sector to pursue higher interest rates.<sup>56</sup> Yet these higher rates of return lead to higher rates of risk throughout the economy, leading to systemic volatility. In the wake of the Great Recession-era stimulus, Chinese finance has experienced a string of bubbles in new lending markets: shadow banking and P2P. The most recent bubble has appeared within new financial instruments known as structured deposits. A

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53 Lardy, *The State Strikes Back*, 119-127.

54 Molnar and Lu, "State-Owned Firms Behind China's Corporate Debt," 8.

55 Lu, "China's Hidden Subnational Debts Suggest More LGFV Defaults Are Likely," 8-10.

56 Lardy, *The State Strikes Back*, 8-31.

structured deposit is a deposit with embedded derivatives,<sup>57</sup> designed for investors who are prepared to sacrifice the fixed interest yield from a traditional cash deposit in return for a potentially higher return by taking a certain amount of risk, while also maintaining the capital security offered by deposits.<sup>58</sup> However, structured deposits are being marketed as infallible WMPs that provide the security of a deposit and the return of a private loan, despite the fact that structured deposits are primarily deposits and not WMPs.<sup>59</sup> These structured deposits became popular in the summer and fall of 2019 in the aftermath of the liquidity crisis in the P2P lending markets. In October 2019, an official at the China Banking and Insurance Regulatory Commission (CBIRC) said that problems including irregular product management and misleading product sales have emerged in the creation and marketing of structured deposits.<sup>60</sup> These problems seem to plague the Chinese lending sector, occurring in P2P, WMPs, shadow banking and now structured deposits. Before structured deposits emerged, P2P lending became popular as both a formal and informal sector, and before P2P, shadow banking was a key source of liquidity. The volatility of this industry originates from its repeated targeting by regulators. However, these small, high-risk lending operations continuously reappear a short time after every new round of regulations.

Though these rounds of regulations have been successful in the short-term, regulators have yet to address the problematic culture of the financial sector. There is widespread disregard for basic laws of finance, meant to protect the solvency of institutions and the system of lending. The most blatant example of this permissive culture is the commonplace use of secondary balance sheets. From small, private lenders to state owned commercial banks, secondary balance sheets are now an essential aspect of Chinese finance.<sup>61</sup> Although these balance sheets are challenging to definitively track, new regulations illuminate their popularity, or at least the concern they pose to regulators. Many Chinese commercial banks maintain a reserve of twice the required reserve ratio (RRR).<sup>62</sup> With this in mind, regula

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57 The embedded derivative requires that some portion of the contract's cash flows be modified in relation to changes in a variable, such as an interest rate, commodity price, credit rating, or foreign exchange rate. If a derivative is contractually transferable separately from the contract, then it is not an embedded derivative. See Bragg 2018.

58 Xueqing, Jiang. "Chinese regulator tightens regulation of structured deposits," *China Daily*, October 18, 2019. <https://www.chinadaily.com.cn/a/201910/18/WS5da9c35da310cf3e-355715ab.html>.

59 Lei Xuan, "Structured deposits in China tumble into a 'regulatory grey area'", S&P Global Market Intelligence, June 3, 2018. [https://www.spglobal.com/marketintelligence/en/news-insights/trending/\\_bqgdq36zx2mtc3bpku7w2](https://www.spglobal.com/marketintelligence/en/news-insights/trending/_bqgdq36zx2mtc3bpku7w2).

60 Ibid.

61 Elaine Chan, "China's private firms in traditional low-tech sectors struggling without government support," *South China Morning Post*, April 21, 2019. <https://www.scmp.com/economy/china-economy/article/3006995/chinas-private-firms-traditional-low-tech-sectors-struggling>.

62 In China, banks are assigned different RRRs according to their size and location. Traditionally, an RRR applies to all banks operating in a particular market/country.

tors have begun considering the idea of a ceiling in addition to a floor on RRRs.<sup>63</sup> In lieu of a ceiling on RRRs, in 2018, the PBOC began lowering its array of RRRs to support the real economy and boost social financing.<sup>64</sup> Though the targeted RRR cut should release RMB 100 billion and the broad cut releasing RMB 800 billion, the monetary tool has not kept the private enterprise from continuing to shrink. Ultimately, the potential regulation could pressure commercial banks to acknowledge their other balance sheets, or simply generate even higher rates of insolvency. The use of secondary balance sheets breeds distrust through accounting errors across the financial sector. Regulatory signaling is impossible without an accurate picture of corporate debt, and each factor compounds upon the next to increase systemic risk.

In the final analysis, the key indicator of continued systemic risk in SOEs is the internal culture of risk distortion. Off-balance LGFVs and private debt has been repackaged as safe, government-backed debt, and these highly rated loans have entered the real economy through mostly informal channels. The American Economic Association estimates 80% of private Chinese firms have received funds from these informal channels.<sup>65</sup> LGFV managers transfer money through informal channels using secondary SOE balance sheets, and off-balance sheet LGFV-related debt is loosely valued between RMB 30 trillion – RMB 40 trillion.<sup>66</sup> Local governments have been largely quiet about this mountain of hidden debt, and in many cases, instead of providing guarantees or other support in clear violation of regulations or laws, they used PPPs and investment funds to finance infrastructure projects. The central government frowns on the use of budgetary funds to directly bail out local government SOEs and would hold officials personally responsible for such actions. As such, there is little chance of another round of debt swaps as seen in 2015-2018 to convert the hidden debt into government bonds.<sup>67</sup>

In the absence of central deleveraging, enterprise managers have no incentive to address the problem themselves, and local administrators continue to use SOEs and LGFVs to expand their economic and political clout. The recent initiative to support small business, where the medium-term lending facility was established in order to incentivize safer, one-year loans, resulted in the substitution of private loans for SOE debt and LGFV bonds. While private lenders have begun to shield some liquidity from direct loans to small cor

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63 Lardy, *The State Strikes Back*, 99-117.

64 Xinhua, “PBOC cuts bank’s reserve ratio to bolster economy,” *China Daily*, September 6, 2019. <https://www.chinadailyhk.com/articles/244/76/161/1567765759896.html>.

65 Amanda Lee, “Is China about to bring shadow banking back out of the darkness to kick start its slowing economy?” *South China Morning Post*, March 13, 2019. <https://www.scmp.com/economy/china-economy/article/3001507/china-about-bring-shadow-banking-back-out-darkness-kick-start>.

66 Lu et al., *China’s Hidden Subnational Debts*, 8-10.

67 *Ibid.*

porates, this new shielding has come at the cost of replacing the liquidity of private loans with decidedly illiquid government funds. Since 2006, state assets in small firms grew every year, accounting for nearly 20% of GDP by 2015.<sup>68</sup> In short, SOE's leverage and debt service increased in tandem with their ballooning debt. However, through synthesizing debt, secondary balance sheets, and loan shielding techniques, the debt is publicly viewed as safe and manageable.<sup>69</sup>

## Conclusion

In digging beneath the broad statistics of GDP growth, the picture of the Chinese economy is not as rosy as we had once thought. Three aspects of the Chinese economy-- its new financially-oriented culture, impatient fiscal policy, and government-backed artificial growth -- all foundational to the contemporary Chinese economy, contribute to its volatility in the short and medium term. The challenges within the culture of the bureaucracy lie in how the features of the institutions and the habits of public officials generate substantial corporate debt, while the challenges created by Chinese savings create a political environment that prevents regulators from using traditional tools to address this debt.

The internal incentive structure of the cadre system rewards short-term solutions to long-term problems, as administrators are incentivized to focus on promotion through maintenance of the status quo rather than long-term solutions. The widespread practice of leasing reclassified urban land to account for local government budget shortfalls and the tremendous amount of assets held by LGFVs and other SOEs is evidence of the challenges faced by local administrators under the new Tax-Sharing system. Although regulators seem keen to address this problem, the importance of savings in Chinese contemporary culture has prevented them from doing so effectively. Not only are savings an important source of wealth for an increasingly unequal society, but savings connote one's social status and ability to marry in the aftermath of the One Child Policy. Thus, savers are increasingly in fear of inflation, moving money out of the country and seeking higher interest rates through newer and riskier methods, compounding the problem of corporate debt. Despite the debt being held by Chinese corporations and operated largely by local governments, deleveraging has led to widespread popular dissent, forcing the government to ignore the problem as it continues to grow.

Though traditional methods of deleveraging may yield success, Beijing's appetite for public upheaval has been and will continue to be low. While there may eventually be some kind of mean reversion, the process will be painful for Chinese savers. In the face of systemic speculation, lenders can only hope for the rapid generation of real assets throughout the econo

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68 Molnar and Lu, "State-Owned Firms Behind China's Corporate Debt," 7.

69 Ibid.

my, a prospect growing less feasible as the Chinese economy slows. Ambitious initiatives like China 2025 and One Belt, One Road will undoubtedly increase long-run demand for Chinese goods and services, but their short-term success is equally unlikely. When the potential for new spending runs dry, so does the potential for new saving. Continuously slowing Chinese growth limits the potential for growth through investment, which has accounted for 40% of Chinese yearly GDP growth over the last 20 years. As can be seen throughout the developed world, when widespread fear of future inflation becomes political, the consequences have meant the populist disruption and even destruction of institutions.

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# The Impact of Filing: How does U.S. Participation within the WTO affect America's Economic Relationships?

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## Abstract

*The rise of populist leaders around the world has brought trade issues to the forefront of the international conversation. The role of a multilateral institution like the World Trade Organization (WTO) is in jeopardy in an era which increasingly values nationalism. Although attention has been given to the effect of power relations on WTO participation, this article will explore how U.S. participation within the WTO as a complainant affects its economic relationship with third party Member states. Specifically, this paper aims to provide background, a literature review, and a research design to the question: When the United States files at the WTO, are its economic relationships with third parties different relative to their Organization for Economic Co-operation and Development (OECD) status? This paper will examine the relationship between the WTO and the OECD, an organization composed of thirty-six member states who work together on global policy concerns. Although the OECD has "Key Partners" such as China and India, states have to apply or be invited to apply in order to enjoy the full benefits of membership.*

## Introduction

The election of President Trump and rise of populist rhetoric have brought trade to the forefront of the international conversation. Within the halls of the United Nations, U.S. representatives have questioned values such as fairness and trade liberalization which were taken for granted in decades prior. Other states have also discussed trade in broader forums as a result of treaties such as the United States-Mexico-Canada Agreement (USMCA) and

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<sup>1</sup> This article is the first half of a senior honors thesis that includes a literature review and research design.

the Trans-Pacific Partnership (TPP). The role of a multilateral institution like the World Trade Organization (WTO) is in jeopardy in an era which increasingly values nationalism. As the WTO's dispute settlement mechanism (DSM) has become increasingly valued with the difficulty of the Doha Round, researchers and policymakers must be aware of the impact of dispute settlement on treaty negotiation. Thus, this thesis will address: how does U.S. participation within the WTO as a complainant affect its economic relationship with third party Member states? Specifically, the researcher aims to answer: When the United States files at the WTO, are its economic relationships with third parties different relative to their OECD status?

Since the WTO's inception, America has filed 124 disputes, responded to 155 disputes, and participated as a third party in 156 disputes.<sup>2</sup> From 1995 to the present day, there have been 592 disputes at the WTO.<sup>3</sup> Thus, the United States has a 73.4% participation record at the WTO. In comparison, the next highest participant, the European Union (composed of twenty-eight nations), has a participation rate of 66.7%. America participates in the WTO extensively; thus its involvement within this organization sets the tone for its economic agenda on the world stage. This article will examine the relationship between WTO and the Organization for Economic Co-operation and Development (OECD), a group composed of thirty-six member states who work together on global policy concerns.<sup>4</sup> The European Commission (EC) is not a member of the OECD, but many states within the EC have joined. Developed nations primarily form the OECD. Thus, this organization serves as a general measure of developed versus developing status. Although terms such as the Global South and Global North are increasingly utilized, academic WTO literature primarily includes "developed" and "developing" terminologies. Attention has been given to the effect of power relations on WTO participation, but scholars have not examined the effect of differentiation on third party power.

When discussing developing country WTO participation, most scholars have attributed a lower level of market power or legal capacity as to why these countries do not file. Busch et al. assert that market power "derives from the size of the complainant's economy" while legal capacity is defined as "the institutional resources required to prepare, prosecute and monitor a case, including legal, economic and diplomatic staff."<sup>5</sup> Although scholars generally include insufficient legal capacity within these discussions, there is no consensus regarding the role of market power.

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2 "Dispute by Member," World Trade Organization, accessed February 7, 2020, [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_by\\_country\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm).

3 Ibid.

4 "About the OECD," OECD, Accessed February 7, 2020, <https://www.oecd.org/about/>.

5 Marc Busch, Eric Reinhardt, and Gregory Shaffer, "Does legal capacity matter? Explaining patterns of protectionism in the shadow of WTO litigation," *International Centre for Trade and Sustainable Development* (February 2008): 5 and 8.

This research will add to the current market power debate by providing context which will help in determining whether OECD states with greater market power have different economic relationships with the United States than non-OECD states with less market power. One group of scholars advocates that market power has no impact on WTO dispute initiation.<sup>6</sup> Guzman and Simmons hint at market power arguments through their power hypothesis: "...countries will file fewer complaints if they are poor and politically weak than if they are rich and politically powerful."<sup>7</sup> Although Guzman and Simmons find no evidence for the power hypothesis, their research is based on complainants. Looking at third party differentiation may provide different results. However, if market power does not affect dispute initiation, then the United States will have similar economic relationships with OECD states and non-OECD third party member states.

However, if market power does affect WTO dispute initiation (as another group of academics suggest), then there will likely be a difference between OECD and non-OECD economic relationships.<sup>8</sup> In a study with fifty-two WTO member state responses, 49% of the

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6 See Henrik Horn, Petros C. Mavroidis, and Håkan Nordström, "Is the Use of the WTO Settlement System Biased?" WTO Centre for Economic Policy Research (November 1999): 1-31; Marc Busch and Eric Reinhardt, "Testing International Trade Law: Empirical studies of GATT/WTO Dispute Settlement," in *The Political Economy of International Trade Law: Essays in Honor of Robert E. Hudec*, eds. Daniel L. M. Kennedy and James D. Southwick (Cambridge: Cambridge University Press, 2002), 457-481; Andrew T. Guzman and Beth Simmons, "Power Plays & Capacity Constraints: The Selection of Defendants in WTO Disputes," *The Journal of Legal Studies* 34, no. 2 (2005). <https://doi.org/10.1086/430767>; Hunter Nottage, "Commonwealth Small States and Least-Developed Countries in World Trade Organization Dispute Settlement," in *Small States and the Multilateral Trading System: Overcoming Barriers to Participation*, eds. Teddy Y. Soobramanien and Laura Gosset (London: Commonwealth Secretariat, 2015), 81–104.

7 Guzman and Simmons, "Power Plays & Capacity Constraints."

8 See James Smith, "Inequality in International Trade? Developing Countries and Institutional Change in WTO Dispute Settlement," *Review of International Political Economy* 11, no. 3 (2004): 542–73. <https://doi.org/10.1080/0969229042000252891>; Chad Bown, "Participation in WTO Dispute Settlement: Complainants, Interested Parties, and Free Riders," *The World Bank Economic Review* 19, no. 2 (2005): 287–310. <https://doi.org/10.1093/wber/lhi009>; Gregory Shaffer, "Power, Governance, and the WTO: A Comparative Institutional Approach," in *Power in Global Governance*, eds. Michael Barnett and Bud Duvall (Cambridge: Cambridge University Press, 2005), 130; Thomas Sattler and Thomas Bernauer, "Dispute Initiation in the World Trade Organization," in *Annual Meeting of the International Political Economy Society*, Stanford University, (2007); Chad Bown, "The WTO Secretariat and the Role of Economics in DSU Panels and Arbitrations," *SSRN Electronic Journal* 7364823736 (2008); Joseph A. Conti, "Producing Legitimacy at the World Trade Organization: The Role of Expertise and Legal Capacity," *Socio-Economic Review* 8, no. 1 (2008) : 131–155; Chad Bown and Rachel McCulloch, "Developing Countries, Dispute Settlement, and the Advisory Centre on WTO Law," *The Journal of International Trade & Economic Development* 19, no.1 (2010): 33–63.

participants “cited inadequate market power as a reason for not filing [instead becoming a third party to the dispute].”<sup>9</sup> Differences between OECD and non-OECD third parties would support the importance of market power. However, the two possible differences have contradictory implications. If non-OECD member states have better economic relationships with the United States (the complainant) than OECD member states, becoming a third party is clearly beneficial. However, if non-OECD states have worse economic relationships with the United States than OECD member states, becoming a third party may not be as helpful as these states expect.

This research will also provide further evidence as to whether America remains a hegemon. A strong hegemon stabilizes the world order while a weak hegemon is required for global stability; instability can still occur in the reign of a weak hegemon.<sup>10</sup> Although many scholars suggest that America is a hegemon in transition due to its loss in relational power — “the power of [country] A to get [country] B to do something it would otherwise not do,” — Strange argues that America remains a hegemon due to its overwhelming structural power (564). She defines structural power as “the power to choose and to shape the structure of the global political economy....”<sup>11</sup> Good economic relationships between the United States and other WTO member states (indeterminate of OECD status) would indicate a stable hegemon while poor economic relationships would suggest a hegemon in transition.

A possible research design would define American participation within the WTO as any case in which the United States has filed a complaint within the WTO’s DSM. A mixed methods research design approach with regression analysis in order to examine the relationship between the independent variable (U.S. participation within the WTO) and the dependent variable (economic relationships between America and other states). Quantitative data would be collected through the WTO website while data on economic relationships would be gathered by examining various U.S. trade reports and government websites. Qualitative cases would be discussed if interesting data surfaces from the quantitative analysis. Possible difficulties could include free trade agreements which were discussed privately as well as measurement validity concerns over the term “economic relationship.” Section one will provide historical context while section two will give a two-part literature review addressing state participation in the DSS, hegemonic stability theory, and the power hypothesis. Section three will conclude with a proposed research design and future research strategies.

## I. Historical Context

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9 Busch, Reinhardt, and Shaffer, “Does legal capacity matter?”, 12.

10 Susan Strange, “The Persistent Myth of Lost Hegemony,” *International Organization* 41, no. 4 (1987), 555.

11 *Ibid.*, 565.

Established in 1995, the WTO manages international trade around the globe. However, that is only one of its many functions: the organization also manages dispute settlement, trade liberalization, and trade rules.<sup>12</sup> Currently, 164 member states participate in the WTO, and these nations are granted benefits such as Most-Favored-Nation (MFN) status which mandates that WTO member states must treat each other equally.<sup>13</sup> Before the establishment of the WTO, the General Agreement on Tariffs and Trade (GATT) oversaw trade liberalization from 1948 to 1994.<sup>14</sup> However, the inclusion of new member states as trade liberalization augmented meant that the principles upon which the GATT was founded grew less relevant with time.

In 1994, the Uruguay Round, the most recent GATT trade round, replaced the GATT with the WTO. Thus, the WTO became the international organization spearheading the regulation of multilateral trade. With the creation of the WTO came reforms such as a transformed dispute settlement system (DSS), trade policy review, and increased market access.<sup>15</sup> This paper will focus on dispute settlement at the WTO. States have the opportunity to participate in the DSS as complainants, defendants, or third parties. Third parties can voluntarily join disputes as biased or neutral members in lieu of filing a complaint.

## II. Literature Review

The literature review will be separated into two parts. The first portion will address participation within the WTO dispute settlement system while a second, shorter section will discuss more recent literature regarding hegemonic stability theory, preferential trade agreements, and the future of the WTO. Participation within the DSS will address who participates, why countries participate (or do not participate), and how they participate. Scholars have devoted significant attention to the participation rates of developing countries. Given that this research aims to investigate whether U.S. dispute initiation against developing countries impacts its economic relationship with developed countries, the dispute settlement patterns of developing states serve as important points of comparison. The factors which impact developing country participation within the WTO also affect America's participation within the same system. Thus, developing country participation provides a tool towards understanding how America's dispute initiation affects its economic relationships across the

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12 "Understanding the WTO: Who we are," World Trade Organization, accessed February 7, 2019, [https://www.wto.org/english/thewto\\_e/whatis\\_e/who\\_we\\_are\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm).

13 "Understanding the WTO Basics: Principles of the trading system," World Trade Organization, accessed February 7, 2019, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm).

14 "History of trade: History of the multilateral trading system," World Trade Organization, accessed February 7, 2019, [https://www.wto.org/english/thewto\\_e/history\\_e/history\\_e.htm](https://www.wto.org/english/thewto_e/history_e/history_e.htm).

15 "Understanding the WTO Basics: The Uruguay Round," World Trade Organization, accessed February 7, 2019. [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm).

globe. Considering the empirical issue of measuring “dogs which don’t bark” (ie. disputes which are not filed), there is a clear measurement validity concern which the literature has attempted to work around. Although most quantitative studies in the field have primarily included filed complaints, some scholars have researched potential disputes.<sup>16</sup>

### *Literature Review Part One*

#### **Who participates in the WTO?**

From the creation of the WTO’s DSS to the present-day, state participation rates have changed. Over time, absolute participation has decreased. Bown and McCulloch note that the average number of WTO cases filed from 2001-2008 (21 disputes) is almost half the number of cases initiated from 1995-2000 which averaged 41 disputes.<sup>17</sup> Davis supports Bown and McCulloch’s findings in a later study, noting that the number of DSS disputes has declined from 1995-2015.<sup>18</sup> In an innovative study which uses data from U.S. National Trade Estimate reports, Davis suggests that overall participation rates have declined because WTO disputes have a “gap-filling” role which deters future complaints.<sup>19</sup>

Although overall participation within the WTO has declined, developing nations have increased their participation levels within this same time period. We can see that developing countries’ relative use of the WTO has dramatically increased since 1995-2000 saw a developed country to developing country dispute initiation ratio of 2:1 in contrast to a dispute initiation ratio of almost 1:1 from 2001 to 2008.<sup>20</sup> Davis and Alter both suggest that the WTO has led to some developing country success. However, Davis differs from Alter by suggesting that the WTO has lowered the possibility of future conflicts because the system promotes compliance, credibility, and concern for one’s reputation.<sup>21</sup>

#### **Is developing country participation what it should be?**

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16 See Chad Bown, “Participation in WTO Dispute Settlement”; Busch, Reinhardt, and Shaffer, “Does legal capacity matter?”; Christina Davis, “WTO Adjudication as a Tool for Conflict Management,” Prepared for presentation to the International Law Colloquium at Northwestern University School of Law (February 2012).

17 Bown and McCulloch, “Developing Countries, Dispute Settlement and the Advisory Centre on WTO Law,” 7.

18 Christina Davis, “Deterring Disputes: WTO Dispute Settlement as a Tool for Conflict Management,” Prepared for presentation to the Annual Meeting of the International Political Economy Society (November 2016).

19 Davis, “WTO Adjudication,” 22.

20 Bown and McCulloch, “Developing Countries, Dispute Settlement and the Advisory Centre on WTO Law,” 7.

21 Davis, “WTO Adjudication.”

Although absolute participation within the WTO has increased relative to GATT-era levels, an academic debate has sprung up regarding the relative participation rates of developing states. Scholars are divided into two camps regarding the success of developing states who have initiated WTO disputes. These two camps are composed of WTO advocates and WTO critics. The “Advocates” argue that developing nations have been more successful at the WTO than the GATT, whereas the “Critics” suggest that developing states have been less successful at the WTO relative to the GATT. The “Champions” (a smaller, more active subcategory of Advocates) argue that developing country participation rates are where they should be.<sup>22</sup> Rather than merely utilizing a WTO and GATT comparison as a measure of dispute settlement success, Champions suggest that dispute initiation patterns of developing nations are accurate reflections of these states’ market power and trade capacities.

Advocates argue that developing countries have been more successful in the WTO’s dispute settlement process than that of the GATT. Although Davis and Bormeo note that there is potential for lower developing country participation within the WTO, some developing countries in particular -- Brazil, India, Thailand, and the Philippines -- have been extremely active participants.<sup>23</sup> Meanwhile, Davey notes over 75% of developing country cases have been settled in comparison to the overall 50% settlement rate.<sup>24</sup> Thus, he suggests that the dispute settlement mechanism has been useful for developing countries who utilize the system, an important caveat considering that many developing countries have minimal involvement.

The Champions hyper-advocate on behalf of the WTO by arguing that developing participation levels are fairly accurate reflections of what they “should” be. In one of the first empirical studies in the field, Mavroidis and Nordstrom suggest that “the seeming over-representation by G4 countries [the U.S., EU, Canada, and Japan], or the mirror image under-representation of developing countries, to a large extent reflect differences in the diversity and value of trade.”<sup>25</sup> A later study by Bown corresponds with Horn et al.’s findings as he suggests that the size of a country’s exports affect dispute initiation.<sup>26</sup> However,

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22 Joseph F. Francois, Henrik Horn, and Niklas Kaunitz, “Trading Profiles and Developing Country Participation in the WTO Dispute Settlement System,” International Centre for Trade and Sustainable Development, Issue Paper No. 6 (2008).

23 Christina L. Davis and Sarah Blodgett Bermeo, “Who Files? Developing Country Participation in GATT/WTO Adjudication,” *The Journal of Politics* 71, no. 3 (2009).

24 William J. Davey, “The WTO Dispute Settlement System: How Have Developing Countries Fared?” in *Is the World Trade Organization Attractive Enough for Emerging Economies?*, ed. Zdenek Drabek, (London: Palgrave MacMillan, 2010), 295–332.

25 Horn, Mavroidis, and Nordström, “Is the Use of the WTO Settlement System Biased?”

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26 Bown, “Participation in WTO Dispute Settlement.”

Bown gives greater credence to legal capacity than Horn et al. and also includes retaliatory capacity as an important characteristic which factors into DSS participation.<sup>27</sup> Similar to Bown's perspective, Francois et al. suggest that the "composition of trade, the volume of trade, income levels, aid levels, and legal capacity."<sup>28</sup> Although Horn et al.'s study suggests that the G4 over-participates and Shaffer denotes that the U.S. and EC have respective participation rates of 97% and 81%, Francois et al.'s study finds that America is neither overrepresented or underrepresented while the EC and Canada are overrepresented.<sup>29</sup> However, by focusing on trade and retaliatory capacities, the Champions often overlook the costs of dispute initiation.

In contrast, Critics suggest that the WTO dispute settlement mechanism is biased against developing countries relative to their prospects during the GATT-era. Busch and Reinhardt counter Bown and Alter's arguments, stating that developing countries have so far participated slightly less in the WTO at 29% compared to GATT levels at 31% despite the WTO containing more developing countries.<sup>30</sup> Their empirical study also pushes back against Alter's qualitative findings by suggesting that the legalization of the WTO has not led to more panel rulings. Shaffer finds that with the exception of Brazil and India, developing countries are less likely to file disputes against developed countries in comparison to the GATT due to high individual export costs, high litigation costs, low legal capacity, and less public-private crossover compared to that within developed nations.<sup>31</sup> Furthermore, Shaffer adds that the increasingly formalized WTO dispute settlement process has meant that developed countries, in particular the U.S. and EC, have benefitted the most due to their frequent use of the DSS and the corresponding impact on WTO law.<sup>32</sup>

Since notable developing countries such as India and Brazil have clearly increased their complaints, the Advocates seem to be correct in arguing that WTO dispute initiation has been of greater benefit to developing states than the GATT system. However, the Champions overextend themselves as they seem to overlook the costs of dispute initiation in favor of arguments pertaining to economic capacity. The fact that some states may be able to "afford" dispute initiation does not mean that the benefits of participation outweigh its financial and human costs. If the Advocates are correct, there are more WTO cases available where developed countries have the ability to become involved in the affairs of devel

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27 Ibid.

28 Francois, Horn, and Kaunitz, "Trading Profiles and Developing Country Participation."

29 Ibid.

30 Busch and Reinhardt, "Testing International Trade Law," 466–67.

31 Gregory Shaffer, "Recognizing Public Goods in WTO Dispute Settlement: Who Participates? Who Decides? The Case of TRIPS and Pharmaceutical Patent Protection," *Journal of International Economic Law* 7 no. 2 (2004): 472-3.

32 Ibid.

oped-developing dispute pairs. Thus, America's economic relationships with other nations may be affected in cases where the United State is a complainant, a developing country is the defendant, and other developed states are third parties.

### **Does market power affect dispute initiation?**

There is a growing body of literature regarding why the vast majority of non-OECD states choose not to participate in the DSS. Academics have provided two primary reasons: market power and legal capacity. However, regime type, trade flows, and legal costs have also been offered as alternative reasons. There are two groups debating whether market power impacts a member state's decision to file a WTO complaint. The pro-market power group suggests that market power affects dispute initiation while the con-market power bypasses market power arguments in favor of other potential factors affecting dispute initiation. WTO Advocates, Champions, and Critics have not come to a consensus regarding either group. For example, Champions such as Horn and Mavroidis are members of the con-market power group while Bown, a fellow Champion, is a pro-market power fan.

The con-market power group implies that market power does not affect dispute initiation.<sup>33</sup> Looking at three hundred and eighty GATT/WTO disputes from 1980 to 2000, Busch and Reinhardt suggest that, "The complainant's income (and, likewise, market size) has no effect on its prospects of winning a judgment, given that one is going to be issued."<sup>34</sup> Busch and Reinhardt discount market power because their study finds that the pre-litigation stage matters most for poor complainants rather than litigation or post-litigation which would respectively point to issues of legal cost and retaliatory capacity linked to market power.<sup>35</sup> However, greater development means that a state is more likely to recognize and file a complaint when WTO violations rise.<sup>36</sup>

Guzman and Simmons' findings support Busch and Reinhardt's claims as they find no empirical support for the power hypothesis which suggests that "countries will file fewer complaints if they are poor and politically weak than if they are rich and politically powerful."<sup>37</sup> Johns and Pelc add a caveat; even though their results indicate that market size does not impact DSS success, they note that defendants with increased market share have

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33 Horn, Mavroidis, and Nordström, "Is the Use of the WTO Settlement System Biased?"; Busch and Reinhardt, "Testing International Trade Law"; Guzman and Simmons, "Power Plays and Capacity Constraints"; Nottage, "Commonwealth Small States and Least-Developed Countries."

34 Marc L. Busch and Eric Reinhardt, "Developing Countries and General Agreement on Tariffs and Trade/World Trade Organization Dispute Settlement," *Journal of World Trade* 37, no. 4 (2003): 732.

35 Ibid.

36 Ibid.

37 Guzman and Simmons, "Power Plays and Capacity Constraints," 8.

a greater chance of reaching a panel ruling.<sup>38</sup> Their findings suggest that countries with a larger market share are more likely to litigate.

In contrast, pro-market power scholars argue that market power impacts dispute initiation.<sup>39</sup> Busch et al. clearly delineate the relationship between market power and retaliatory capacity: “The ability to retaliate, however, is a function of market power in relation to the defendant, which ultimately derives from the size of the complainant’s economy.”<sup>40</sup> Smith suggests that retaliatory capacity creates an uneven playing field as more powerful trade partners can threaten to cut off vital benefits if developing countries file certain disputes.<sup>41</sup> Furthermore, Smith argues that the WTO compliance system favors developed countries with larger markets meaning that developing countries may choose not to file in the face of shaky compliance from more powerful states.<sup>42</sup> Conti echoes Smith in that successful dispute may not facilitate compliance if the defendant has sufficiently large market power.<sup>43</sup> Canesin goes even further, stating that in order to file a complaint against the G2 (the EU and U.S.), a state needs to have both high market power and high legal capacity.<sup>44</sup> That requirement suggests that there’s an inherent limitation in the number of countries who have both these factors and also believe there has been a G2 trade violation, yet the EU and U.S. are the states who most often appear as defendants.

### **How does the United States participate within the WTO?**

In the United States, firms persuade the United States Trade Representative (USTR) to pursue a WTO case by presenting strong, winnable cases brimming with legal expertise.<sup>45</sup> Washington law firms are especially useful as they retain many former USTR representatives as employees. Since firms often hire “Washington lawyers” to gather evidence on their

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38 Leslie Johns and Krzysztof J. Pelc, “Who Gets to Be In the Room? Manipulating Participation in WTO Disputes,” *International Organization* 68, no. 3 (2014): 663–99. <https://doi.org/10.1017/S0020818314000241>.

39 See Smith, “Inequality in International Trade?”; Bown, “Participation in WTO Dispute Settlement”; Shaffer, “Power, Governance, and the WTO”; Sattler and Bernauer, “Dispute Initiation in the World Trade Organization”; Bown, “The WTO Secretariat”; Conti, “Producing Legitimacy at the World Trade Organization: The Role of Expertise and Legal Capacity”; Bown and McCulloch, “Developing Countries, Dispute Settlement, and the Advisory Centre on WTO Law.”

40 Busch, Reinhardt, and Shaffer, “Does Legal Capacity Matter?” 5.

41 Smith, “Inequality in International Trade?”

42 Ibid.

43 Conti, “Producing Legitimacy at the World Trade Organization.”

44 Carlos Henrique Canesin, “The Role of Institutional-Legal Capacity and Power in Explaining the Performance of Developing Countries in WTO Disputes against the G20,” *Contexto Internacional* 40, no. 1 (2018).

45 Gregory Shaffer, *Defending Interests: Public-Private Partnerships in WTO Litigation* (Washington, D.C.: Brookings Institution Press, 2003).

behalf and present legal cases to the USTR, outside counsel can lower the agency's potential caseload.<sup>46</sup> Although the government agency obtains relevant information from both private and public arenas, private lawyers often “entirely write the first draft of the brief's factual section,” provide legal arguments which USTR employees directly utilize, and edit USTR drafts.<sup>47</sup>

Bown's previously mentioned “extended litigation process” includes pre-litigation, litigation, and post-litigation. The pre-litigation phase is quite time consuming as it lays the groundwork for a WTO complaint; thus many lobbyists are law firms which have an international law focus such as Sidley Austin and Akin and Gump, Strauss, Hauer & Feld.<sup>48</sup> The pre-litigation phase also includes Section 301 investigations which gives firms the right to request USTR action, resulting in public-private partnerships. Firms usually do not file Special 301 requests without USTR approval because the public-private litigation process is a mutually beneficial relationship.<sup>49</sup> The USTR publishes Special 301 or National Trade Estimate Reports which publish significant trade barriers per country. These reports are important because they indicate that the United States will file a WTO complaint if the trade barrier is not resolved in due course

## Conclusion

Although academics have examined the effect of third parties on WTO disputes (as mentioned above), they have not yet differentiated between these third parties. A developed country with a more powerful retaliatory capacity may have an altogether different effect on a dispute than a developing country with little to no retaliatory capacity. Thus, economic relationships between the United States and other states can be examined through the lens of third party market capacity (OECD vs non-OECD status).

Furthermore, DSS market access literature often solely discusses developed-developing nation dyads. Bown and McCulloch provide an important contribution by mentioning relations between developing member states and developed-developing dyads in the same context. One of the three foremost trends in WTO dispute settlement is that developing member states have initiated more disputes in order to gain access to the markets of developed and developing nations.<sup>50</sup> If developing nations are interested in the disputes of

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46 Shaffer, “Defending Interests,” 38; Ryan Brutger, “Litigation for Sale: Private Firms and WTO Dispute Escalation,” MIT IPE Speaker Series, Massachusetts Institute of Technology, September 24, 2017, 69, <https://ipespeakerseries.mit.edu/node/7>.

47 Ibid, 49 and 78.

48 Shaffer, “Defending Interests.”

49 Shaffer, “Defending Interests,” 98.

50 Bown and McCulloch, ““Developing Countries, Dispute Settlement, and the Advisory Centre on WTO Law.””

other developing nations, it is possible that developed nations with greater resources may be interested in the disputes of developed-developing pairs.

*Literature Review Part Two*

**Hegemonic Stability Theory (HST)**

Oatley argues that as a result of their power, hegemony bypasses the free-riding problem.<sup>51</sup> The free-riding problem occurs when states are disincentivized to act because other states can act for them. Oatley suggests that the WTO is especially liable to free-riding since it is a public good whose members all receive the benefits of a trade law once it is established.<sup>52</sup> If the United States is able to take on the cost of filing a complaint and overturn a trade violation, then it is bearing the cost of a public good which all other WTO members receive. Assuming success, America acts as a hegemon in this manner. However, if filing complaints results in externalities, then America's role as a hegemon who files complaints through the WTO may be in jeopardy. If filing against a non-OECD country results in a better economic relationship with an OECD nation, then filing produces a positive externality. A positive externality suggests that the hegemon is stable. In contrast, if filing causes a worse economic relationship with an OECD nation, then a negative externality occurs. If a WTO complaint where the hegemon is supposed to overcome the free-riding dilemma causes a negative externality, then the hegemon's dominance is in question.

Hegemonic stability theory has been utilized to describe periods of economic stability led by the actions of a reigning hegemon. After the Industrial Revolution, Great Britain became the dominant global power, creating machinery and promoting trade through technological innovation and political capital.<sup>53</sup> After World War II, the United States enjoyed hegemony as the state laid the foundations of the Bretton Woods System currently in place today. Oatley notes that these hegemonic periods were marked by "stable trade regimes and the rapid growth of international trade."<sup>54</sup> Once America took on greater responsibility in the international arena during World War I and II, hegemonic transition occurred. During the interwar period, the Great Depression resulted in a prolonged period of economic instability. Although there is scarcity of hegemonic transition examples, Oatley suggests that hegemonic transition is correlated to trade instability.<sup>55</sup>

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51 Thomas H. Oatley, *International Political Economy*, 5th ed. (London: Routledge, 2012).

52 *Ibid.*

53 *Ibid.*

54 *Ibid.*, 30.

55 *Ibid.*

In contrast with many scholars, Strange argues that U.S. hegemony is still present. Rather than relational power, defined as “the power of [country] A to get [country] B to do something it would not otherwise do”, she argues that structural power should determine hegemony.<sup>56</sup> Strange defines structural power as “the power to choose and to shape the structures of the global political economy within which other states, their political institutions, their economic enterprises, and (not least) their professional people have to operate.”<sup>57</sup> Since the United States still wields structural power, Strange determines that the country is still a hegemon. If the United States filing WTO disputes results in good economic relationships with OECD and non-OECD states, that suggests that the United States contains structural power — its complaints are shaping the WTO and rules of the global political economy. However, if the United States’ disputes lead to bad economic relationships with both states, then its structural power is in question.

### The Future of the WTO

In a 2016 study, Bagwell et al. conduct an economic literature review and conclude with the idea that the WTO is not *passé*.<sup>58</sup> They point out that the relationship between PTAs and the DSM is of interest as PTAs can result in WTO complaints.<sup>59</sup> The rise of WTO-X (WTO-extra) issues covered in PTAs means that enforcement is especially important.<sup>60</sup> However, many PTAs include language directly lifted from the WTO, and states who have the most PTAs are more likely to mention the WTO or utilize WTO language in these agreements.<sup>61</sup>

Currently, the future of the WTO is in question. Although scholars have suggested increased use of critical mass agreements (CMAs) or plurilateral agreements (PAs), Bagwell et al. discuss that consequences of these agreements — the most powerful states may be the only ones who utilize CMAs while PAs are similar to PTAs. However, they also suggest that PAs are better for multilateralism than PTAs.<sup>62</sup> Baldwin suggests that the “WTO’s paralysis” has occurred because Doha has become outdated while WTO member states have refused to expand issue areas covered by the organization.<sup>63</sup> The United States’ refusal to

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56 Strange, “The Persistent Myth of Lost Hegemony,” 564.

57 Ibid, 565.

58 Bagwell, Bown, and Staiger, “Is the WTO *Passé*?” National Bureau of Economic Research, Working Paper 21303. <http://www.nber.org/papers/w21303>.

59 Ibid.

60 Ibid.

61 Todd Allee, Manfred Elsig, and Andrew Lugg, “The Ties between the World Trade Organization and Preferential Trade Agreements: A Textual Analysis,” *Journal of International Economic Law* 20, no. 2 (June 2017): 333-363.

62 Bagwell, Bown, and Staiger, “Is the WTO *Passé*?”

63 Richard Baldwin, “The World Trade Organization and the Future of Multilateralism,” *Journal of Economic Perspectives* 30, no. 1 (2016): 113.

compromise in order to allow nominees onto the Appellate Body has stagnated the appeals process. Appeals cannot continue unless a minimum of three judges sit on the court. The number of judges fell to one on December 10th, 2019. Now, the WTO is in a state of crisis as member states and the organization attempt to come up with both short and long term solutions.

### III. Research Design

#### Problem

Scholars have examined U.S. complaints at the WTO through the lens of defendants, issue-areas, and domestic politics. However, third parties to America's complaints in particular have been overlooked. This article attempts to fill the gap in the literature by proposing a research design which examines how America's complaints at the WTO affect its economic relationships with third party member states (differentiated by their OECD status).

Examining third parties through the lens of OECD versus non-OECD membership will allow for variation as OECD states traditionally have higher development levels and economic might relative to non-OECD states. Guzman and Simmons' "power hypothesis" and hegemonic stability theory will provide guiding frameworks of analysis in order to determine the bilateral impact of WTO dispute initiation.

First, I will delve into the academic debate regarding hegemonic stability and hegemonic transition, relating these theories to dispute initiation. Then, I will discuss how Guzman and Simmons' power hypothesis may explain possible differences in economic relationships between the United States and third parties. The third section will conclude by proposing a research design and future research directions.

#### **Is WTO dispute initiation indicative of a stable hegemon or a hegemon in transition?**

Scholars have not reached a consensus as to whether or not the United States remains a hegemon. The rise of China and India have forced academics and policymakers to consider a world rife with challenges to U.S. power. Although the researcher makes no claims regarding the state of American hegemony, the consequences of U.S. dispute initiation could help analyze whether the twenty-first century is undergoing a hegemonic transition. As economic relationships flourished during Great Britain and America's international dominance, hegemonic stability theory would suggest that hegemons promote better economic relationships.

This relationship may supplement current international political economy theories concerning hegemonic stability and hegemonic transition. If America's WTO disputes result

in deteriorating economic relations with non-OECD states, then the data may imply hegemonic transition. Worse economic relations with OECD states would signify an even greater stage of hegemonic transition as these nations have traditionally been U.S. allies. However, if U.S. disputes create better economic relationships with OECD and non-OECD states, then America may be maintaining its role of stable hegemon. Furthermore, better economic relationships between the complainant and non-OECD third party nations would support research which suggests that states free-ride in the hopes of receiving the organization’s benefits at minimal personal cost.<sup>64</sup> Since non-OECD states traditionally have less resources than OECD states, these states have the most incentive to free-ride.

Returning to Strange’s argument discussed in the literature review, economic relationships with third parties may provide further evidence regarding the state’s structural power.<sup>65</sup> Better economic relationships (suggesting greater structural power) would advance the United States as a global hegemon. Strange adds hegemonic stability theory provides two forms of a hegemon: a strong hegemon whose presence is sufficient for global stability, and a weak hegemon whose presence is necessary (but not sufficient) for order.<sup>66</sup> Thus, if the United States has good economic relationships with OECD and non-OECD states, then hegemonic stability seems apparent (Case 1). Conversely, if the United States has bad economic relationships with both types of third party, then hegemonic transition occurs (Case 4). However, if there is a mixed bag — both good and bad economic relationships occur — then a weak hegemon may be the cause (Cases 2 and 3). Chaos and disorder in the form of bad economic relationships can occur, but good economic relationships are still necessary for international stability.

	Good economic relationship with OECD states	Bad economic relationship with OECD states
Good economic relationship with non-OECD states	Case 1: Hegemonic stability	Case 2: Weak hegemon
Bad economic relationship with non-OECD states	Case 3: Weak hegemon	Case 4: Hegemonic transition

**Does U.S. dispute initiation evidence the Power Hypothesis?**

As stated in the introduction, the “power hypothesis” suggests that, “...countries will file fewer complaints if they are poor and politically weak than if they are rich and politically powerful.”<sup>67</sup> Guzman and Simmons’ research does not provide support for the power hy-

64 Leslie Johns and Krzysztof J. Pelc, “Free Riding on Enforcement in the World Trade Organization,” *The Journal of Politics* 80, no. 3 (2018).

65 Strange, “The Persistent Myth of Lost Hegemony,” 2017.

66 *Ibid.*, 554-555.

67 Guzman and Simmons, “Power Plays and Capacity Constraints.” 2.

pothesis, but their research is based on complainants rather than third parties. The pow

er hypothesis may have different implications for third party behavior since third parties choose to become involved in cases without having to bear the cost of dispute initiation. If the United States has good economic relationships with both OECD and non-OECD countries as a result of filing complaints, the results may provide evidence for the power hypothesis. If the United States creates positive externalities through dispute initiation, there is an incentive to file more complaints. In contrast, negative externalities may contradict the power hypothesis. Faced with the consequences of poorer economic relationships with OECD and non-OECD states, the United States may choose to file less.

### **Proposed Research Design**

Lieberman's "nested analysis" method could be used to answer the research question. Nest analysis requires a large number of quantitative cases analyzed alongside a small number of qualitative case studies.<sup>68</sup> His research method is a means of bridging the quantitative versus qualitative debate. Nested analysis "combines the statistical analysis of a large sample of cases with an in-depth investigation of one or more of the cases contained within the large sample."<sup>69</sup> Lieberman argues that quantitative and qualitative research methods have specific advantages which can be complemented. In this research method, "large-N" analysis (LNA) is gathered from statistical tools which "lead to quantitative examples of the robustness of a theoretical model" while "small-N" analysis (SNA) is utilized to generate causal inferences of the independent variable.<sup>70</sup>

Nested analysis is meant to inform both general and specific research. Thus, this method fits both the general research question — how U.S. complaints at the WTO affect its relationship with member states — and the specific research question (how U.S. complaints affect its economic relationships with OECD versus non-OECD third parties). Since the WTO was founded in 1995, cases would range from 1995 to the present day. Separating defendants and third parties into OECD and non-OECD categories is an objective approach which maintains the intention of a developed-developing framework.

The quantitative analysis would be conducted using a logistic regression utilizing the program R. Since the dependent variable is binary (OECD or non-OECD third party member state), this model would be useful in predicting which type of third party is more likely to have a better relationship with the United States after dispute initiation. Since the economic relationship between the United States and third parties is a categorical dependent variable which is discrete, this model matches the research question.

68 Evan S. Lieberman, "Analysis as a Mixed-Method Strategy for Comparative Research," *The American Political Science Review* 99, no. 3 (August 2005): 435-452.

69 *Ibid.*, 435-436.

70 *Ibid.*

The independent variable is U.S. complaints at the WTO while the dependent variable is the economic relationship between the United States and states who are third parties to America's disputes. U.S. complaints would be gathered through the WTO's website which lists disputes by complainant, respondent, and member state. The dependent variable — America's economic relationships with third parties — could be measured utilizing an index which accounts for retaliatory tariffs, PTAs and/or bilateral treaties, and Section 301 Reports.

Having values (OECD and non-OECD) which predict a third party's economic relationship with the United States would allow a researcher to analyze whether a state's market power impacts its broader economic relationship with the United States. If third party market power is not a predictor of an economic relationship with the United States, then liberal institutions seem to supersede power relations. However, if economic relationships differ relative to OECD status, then U.S. dispute initiation may reflect power projection.

## **Conclusion**

A logistic model will tell us whether U.S. complaints at the WTO lead to different economic relationships between OECD and non-OECD states. If there is a difference in the quality of economic relationships between these states, then market power may provide a reason for the variation. Furthermore, hegemonic stability theory provides a framework with which to analyze these economic relationships. Seeing as the United States wields the most power on the world stage, I posit that U.S. complaints will produce a greater amount of good economic relationships with third parties than bad relationships. However, I believe that the United States will have better relations with OECD states than their non-OECD counterparts. Future research directions could examine third party variation using other differentiators such as gross domestic product (GDP) and exports/imports. Other avenues could include institutional variation such as general WTO membership or membership within broader regional trade agreements.

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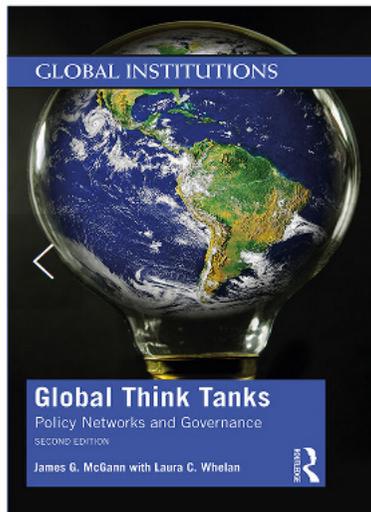
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