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Letter from the Editors

In the year spent producing the 25th edition of the *Journal of Public and International Affairs* (JPIA), we have repeatedly been confronted with the question, “what purpose does a journal specifically dedicated to publishing the work of graduate students serve to the greater public and international affairs community?” Perhaps the most common response is that, as the future leaders of public and international organizations, the views and opinions of policy students on the world’s pressing issues are noteworthy. However, at JPIA, we believe that the views of policy students are meaningful in a more immediate sense, that the combination of practical experience with exposure to the latest academic thinking equips policy students with the ability to offer new insight into the world’s major issues.

With this unique perspective in mind, the pieces in this volume were selected through a rigorous blind selection process from over 120 submissions from members of the Association of Professional Schools of International Affairs (APSIA). The school representation on our editorial staff was as diverse as that of our submissions, and we selected our final nine pieces through many rounds of deliberation. We believe that these articles continue the JPIA tradition of giving voice to the very best research produced by APSIA graduate students.

From pressing foreign policy issues such as territorial disputes in the South China Sea and homicide rates in Honduras to contentious domestic policy debates such as the rights of Mexican immigrants in the United States and the construction of the Keystone pipeline, the topics in this year’s journal are wide-ranging in both functional and geographic focus. However, they all share a strong commitment to seeking solutions to the world’s most serious challenges through sound policy.

We would like to thank all who made this publication possible. First and foremost, we would like to express our gratitude to the Woodrow Wilson School of Public and International Affairs (WWS) at Princeton University, as well as APSIA for generously supporting JPIA. In particular, we would like to thank Karen McGuinness, Associate Dean for Graduate Education at WWS, Wardell Robinson-Moore, Consultant to the Graduate Program Office at WWS, and Leona Rosso-Dzigan, Graphic Designer at Princeton University, for their important contributions to the journal’s publication. We would also like to thank our editorial staff and extend special thanks to Lauren Dunn, Sam duPont, and Joanna Hecht for their tireless work during the 2013-14 academic year. Finally, we would be remiss to not also thank everyone who submitted their work to JPIA. It is their vision for effective policy solutions to the issues the world faces that has made us proud to publish this journal for the past 25 years.

Daphne McCurdy and Chikara Onda
JPIA Editors-in-Chief

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MANILA'S LEGAL STRATEGY IN THE SOUTH CHINA SEA: FORCING BEIJING TO CHOOSE BETWEEN TERRITORIAL AMBITIONS AND REPUTATION

Aaron Aitken

Both China and the Philippines have laid claim to a significant and overlapping portion of the resource-rich South China Sea. Efforts to reconcile these conflicting claims have, however, proved elusive, as China has employed a variety of tactics to avoid addressing the dispute, while simultaneously moving to build its regional presence. Attempting to circumvent China's evasive maneuvering, the Philippines has sought to initiate mandatory dispute arbitration—despite Beijing's strenuous objections to such an approach. Evaluating the Filipino strategy, this article begins by examining the strategic value of the territory at stake, the relevant contents of international maritime law, and Beijing and Manila's claims under said law. Based on this foundation, it then argues that Manila's attempt to use legal mechanisms to curtail China's territorial ambitions is a sound strategy, since this approach has the best chance of maximizing the Philippines' ultimate claim to the South China Sea. The strategy does, however, entail some risk, because China has insisted that it will not respect the results of the arbitral

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tribunal. Addressing this possibility, this article outlines a set of policies that will enable the Philippines to build regional and international support for its case, increasing the odds of Chinese compliance.

INTRODUCTION

In January 2013, the Philippines initiated mandatory dispute arbitration proceedings against China over their conflicting claims to the South China Sea (SCS), as allowed by the United Nations Convention on the Law of the Sea (UNCLOS). The case marks the first time that a SCS claimant has sought to use legal proceedings to challenge another state's territorial claims, which represents a major shift in regional attitudes towards legal mechanisms. Although the area is heavily contested, states bordering the SCS have historically refrained from using legal forums to resolve their territorial disputes (Keyuan 2010). The contesting states have instead relied upon more informal mechanisms, such as confidence building workshops and personal ties, to ameliorate disputes (Weissmann 2012, 87-112). This pattern has, however, began to change. Starting in the late 1990s, the member states of the Association of Southeast Asian Nations (ASEAN), led by the Philippines and Vietnam, began to push for a rules-based approach to ongoing disputes, including the creation of a binding code of conduct for the South China Sea. Not all of the disputants agree on this approach. China, in particular, has objected to the use of legal mechanisms and has actively lobbied against ASEAN's attempts to agree upon a legally-binding code of conduct. It has also been careful to structure its international legal commitments to avoid legal forums whenever possible. Although this will probably not stop the mandatory arbitration sought by the Philippines, as its challenge is of a technical nature, China has said that it will not participate in the case or respect the results, setting the stage for a possible showdown.

At first glance, it seems unlikely that the Philippines decision to pursue a legal case against China will produce much benefit, given Beijing's opposition to legal processes. A careful analysis, however, suggests otherwise. Changing regional and international power dynamics are working against the Philippines. China's persistent resistance to binding dispute settlement is more than an ideological peculiarity. It is part of a calculated strategy designed to delay dispute settlement; the longer the dispute goes on, the more likely it becomes that the final settlement will favor China. By challenging China's claims now, the Philippines has the greatest chance

of minimizing the damage of a future settlement, even though China's compliance is not guaranteed. Fortunately for the Philippines, this risk can be managed. By building national and international support, it can maximize the odds that Beijing will respect the ruling issued.

STRATEGIC VALUE OF THE SOUTH CHINA SEA

In order to make sense of Manila's legal gambit, it is necessary to first understand the factors driving the dispute over the South China Sea. There are currently six littoral parties—Vietnam, the Philippines, Malaysia, Brunei, Taiwan, and China—that lay claim to either some or all of the islands, reefs, and shoals that dot the waters of the SCS, and five of these six parties have forces stationed in the area. Although the islands themselves have little strategic value—most being little more than rocks—control of the islands does play a major role in generating claims to the adjacent sea. It is this vast body of water that is the real focus of the dispute among the contesting claimants. The current dispute between China and the Philippines, for example, centers on the maritime claims generated by the Spratly Islands, which is the largest of three major archipelagos in the SCS, and the Scarborough Shoal, a smaller chain of reefs and rocks to the north of the Spratlys.

The strategic value of the sea adjacent to these features boils down to two major factors: fish and energy. The waters of the SCS have long been a bountiful source of fish for neighboring states. The region's waters now account for a tenth of the global fisheries catch and the fishing industry contributes billions of dollars to neighboring economies (Rogers 2012, 89). Although much of this fishing was originally concentrated in undisputed coastal areas, the rapid depletion of the region's fishing stock has pushed fishermen further out to sea and into contested waters. This depletion has resulted in a number of major tensions between the claimants, as they struggle to both preserve and exploit the region's natural bounty. China and the Philippines, for example, have both taken to imposing fishing bans against local and foreign fishermen in the waters that they claim (Agence France Presse 2012).

In addition to being a bountiful source of food, the SCS is also suspected of harboring considerable deposits of hydrocarbons, particularly liquid natural gas, though the total size of these deposits is disputed. The U.S. Geological Survey estimates that there may be between 7.6 and 55.1 trillion cubic feet of natural gas and several billion barrels of oil under the water's adjacent to the Spratly archipelago (EIA 2013). Estimates produced by the China National Offshore Oil Corporation (CNOOC) tend to be

many orders higher (Hook 2012). No matter which estimate is used, a veritable trove of energy lies under the floor of the SCS, which represents a tempting bounty in a region whose demand for natural gas is projected to annually grow at 3.9 percent in the coming years (EIA 2013).

MARITIME ZONES IN INTERNATIONAL LAW

Under international law, there are a number of different maritime zones that allow states to claim the right to exploit resources found in the ocean, such as the bountiful fish stock and energy deposits of the South China Sea. Understanding these zones and the rules that govern them is critical for understanding the strategies pursued by China and the Philippines. Although originally customary in nature, the basic laws delimiting maritime zones are now codified in the 1982 United Nations Convention on the Law of The Sea, which has been ratified by most of the parties bordering the SCS, including China and the Philippines. The only exception is Taiwan, which has not been allowed to become a party to the treaty, though it has agreed to abide by its regulations.¹

UNCLOS allows coastal states to claim sovereignty over twelve nautical miles of territorial sea (1982, Article 3). These twelve miles are measured from a baseline, which is normally established by the coastal low water line, though there are a number of exceptions to this rule to account for bays and other irregular features, such as archipelagos (Article 4 and Article 47). Within its twelve miles of territorial sea, states are generally presumed to enjoy full jurisdictional rights. They are essentially allowed to regulate the territory much like they would their internal waters or landmass (with some limited exceptions). In addition to a 12-mile territorial sea, states are also entitled to a 200 mile exclusive economic zone (EEZ), which is also measured from the established baseline. Within their EEZs, states have the exclusive right to exploit resources in the water, on the seabed, or under the subsoil, as set out in Article 56 of UNLCOS. This includes both the right to drill for oil and gas and the right to fish. Beyond their EEZ, coastal states are also entitled to claim the right to exploit the subsoil of their continental shelves, as set out in Part IV of UNCLOS. In some circumstances, states may be able to claim a shelf that extends beyond the 200-mile zone set out by a state's EEZ. A state's continental shelf may not, however, extend more than 350 nautical miles from the baseline established by one's coast (Article 76(5)).

Where do islands and other types of maritime features, such as those found in the Spratlys, figure in to this scheme? According to Article 121(1) and (2) an island, which is a "naturally formed area of land...[that] is above

water at high tide,” is entitled to a territorial sea, an exclusive economic zone, and a continental shelf. There is, however, an exception to this rule. As Article 121(3) clarifies, “Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.” They do, however, still generate a 12-mile territorial sea. As will be explored below, this distinction is an important one. While each island in the Spratlys has the potential to generate over 125,663 square nautical miles of EEZ, rocks generate as little as 452 square miles of territorial water. It is also important to note that low tide elevations and submerged reefs, which are features below the water at high tide, generate neither a territorial sea nor an EEZ, though they may be considered when deciding the baseline generated by nearby islands or coastlines (Article 13).

What happens when rival claims to economic zones or continental shelves overlap, as they often do in the SCS? Articles 74(1) and 83(1) stipulate that the delimitation between overlapping claims has to be “effected by agreement on the basis of international law...in order to achieve an equitable solution.” Neither article offers any further guidance as to the relevant content of said law. The International Court of Justice has, however, had several opportunities to weigh in, including the *Gulf of Maine* (1984) case, the *Libya/Malta* (1985) case, and the *Jan Mayen* (1993) case. Although the specifics of each case vary, the Court has usually begun from the premise that the line should be drawn equidistant from the coastlines that generate the EEZ or continental shelf claim (Elferink 2001, 176). It has then adjusted the line based on a variety of factors, in order to achieve what it perceives to be an equitable solution. When considering the status of islands, the Court has usually taken the proportions of the contesting coastlines into account, which generally favors EEZs generated by large coastlines over small islands (Charney 1994, 241). This is not, however, an absolute rule, as the Court has often taken other factors into consideration as well. It has, for example, considered the effect of maritime delimitations on the fair division of resources in the contested area, as it did in the *Jan Mayen* (1993) case. These considerations suggest that each of the islands of the SCS has the potential to generate substantial claims to contested resources, even if they lie in or near an EEZ generated by a larger coastline. Control over said islands is, as a result, fiercely contested.

Beijing’s Ambiguous and Expansive Claims

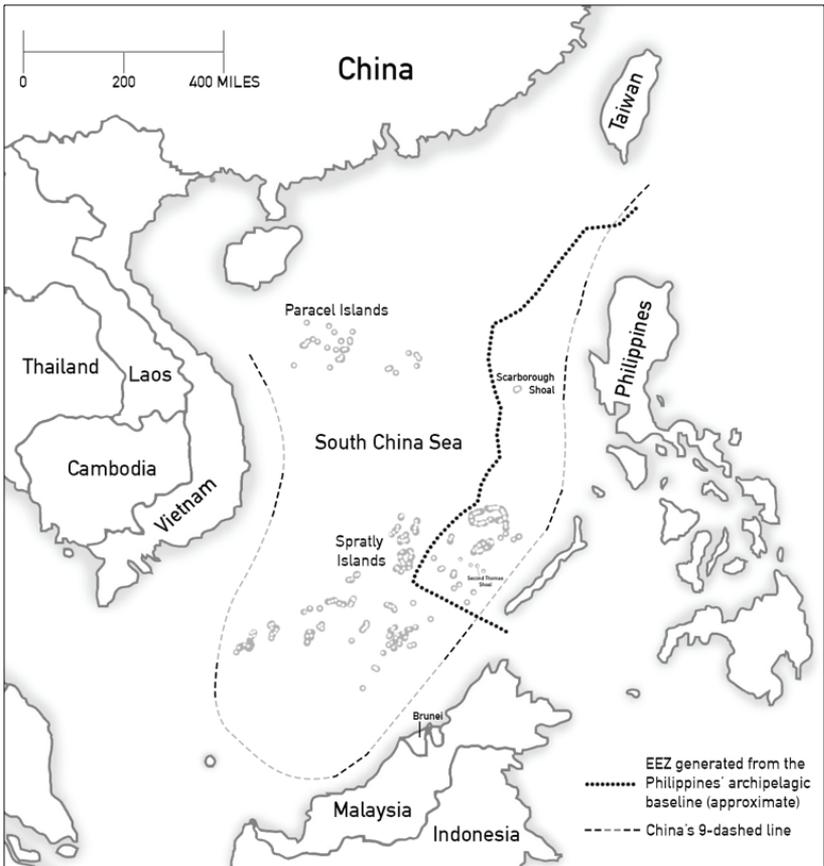
Of the claims made by states bordering the SCS, China’s are the most expansive. Its legal basis for claiming such an extensive swathe of the South China Sea is, however, less than clear, as there a number of ambiguities

to China's claims that, when taken together, make China's claims difficult to assess. As the next two sections argue, this ambiguity is probably deliberate, as it plays into Beijing's attempts to delay dispute settlement. This delay has allowed China to continue strengthening its claim to the features of the SCS, thus increasing the chances that the ultimate dispute settlement will favor it.

In 1947, the Republic of China, better known as contemporary Taiwan, laid claim to all of the territory falling within a giant U-shaped line, composed of eleven dashes, which it drew through the entire South China Sea. After the expulsion of the Kuomintang government from the mainland in 1949, the newly established People's Republic of China (PRC) adopted the same dashed line, which encompasses all of the SCS's major island chains, including the Spratly Islands and the Scarborough Shoal. The only major difference is that the PRC chose to use a nine-, rather than eleven-, dashed line (Jinming and Dexia 2003, 289). This claim has since been reaffirmed on a number of occasions—most recently in 2009 when the PRC sent a copy of its nine-dashed line map to the UN Secretary General in response to extended continental shelf claims made by Malaysia and Vietnam (Song and Tonnesson 2013, 245-49).

There are at least three major elements of ambiguity to China's claims in the South China Sea: its use of the nine-dashed line, a possible claim to historic waters, and its insistence that most of the features of the SCS generate EEZs (Fravel 2011, 294-95). The most obvious anomaly is China's use of a dashed line to demarcate its territory, as seen in Figure I below. China's dashed line presents a number of interpretative difficulties: should the dashes be connected? If so, how? With a series of straight lines? Or, by following the general shape set out by the dashes? Neither international case law nor traditional drafting practice offers much guidance for answering these questions (Miyoshi 2012). It is also unclear whether China is claiming the territory and water within the line or just the territory. Scholars from the region disagree on the question, even within China (Jinming and Dexia 2003, 291). The government, meanwhile, has refused to clarify its stance.

Figure 1.1: Map of the South China Sea



Note: Map is for illustrative purposes only. The Philippines' prospective EEZ is based on the Republic Act 9552, which was passed in 2009 and established the Philippines' archipelagic baselines. Although Manila also claims sovereignty over the Kalayaan Island Group (which forms part of the Spratly Islands) and the Scarborough Shoal, these were not considered while generating its prospective EEZ, as their legal status is actively disputed. China's nine-dashed line has been connected in order to illustrate the extent of Beijing's claims.

Some scholars have raised the possibility that Beijing may be asserting a claim to historic waters (291). As evidence of this claim, they point to *China's Exclusive Economic Zone and Continental Shelf Act of 1998*. Although the act was designed to incorporate the UNLCOS regime into China's domestic laws, it also stipulates that the provisions within the Act "shall not affect the historical rights of the People's Republic of China" (Article 14). Despite not being an explicit part of the UNCLOS regime, historic

waters have long been recognized as a part of customary international law (Pharand 1971). The International Court of Justice (ICJ), which addressed historic waters in the 1951 *Fisheries* case, defined them as “waters which are treated as internal waters but would not have had that character if not for the existence of an historic title.” Setting aside the contentious debate over whether or not China has a historic title to the SCS, there are a number of fundamental problems with such a claim—if that is indeed the claim that China is making. First, China has on a number of occasions made a point of clarifying that its claims in the South China Sea do not interfere with the freedom of navigation, which would not be the case if the SCS were part of China’s internal waters (Fravel 2011, 295). Second, China has laid explicit claim to EEZs in the South China Sea, which would be unnecessary if the SCS were part of its internal waters. These contradictions, as many authors have suggested, makes a claim to historic waters inconsistent with China’s other activity (Jinming and Dexia 2003, 291). Despite this, a number of Chinese scholars and powerful ex-officials continue to maintain the claim (291).

The third source of ambiguity is China’s insistence that all of the features of the SCS qualify as islands and thus generate EEZs (Elferink 2001, 174). It is, however, difficult to reconcile this claim with the definition of islands set out in UNCLOS. As Article 121 lays out, islands must be both above the water at high tide and be able to sustain “human habitation or economic life” (UNCLOS 1983). While questions remain about the size of a feature necessary to sustain habitation or economic life, commentators tend to suggest that the threshold is quite low (Elferink 2001, 174). A feature does not, for example, have to be capable of sustaining a stable community to qualify as an island. It merely has to be capable of sustaining some permanent inhabitants or have resources capable of making a significant contribution to an economically viable activity. Despite this low bar, most commentators argue that the majority of the features of the SCS do not qualify as islands (Fravel 2011, 294). Most of the SCS’s identifiable features are either below the water at high tide, which make them low tide elevations or submerged reefs, or far too small to realistically sustain human habitation or economic life. China’s claims are, as a result, legally questionable.

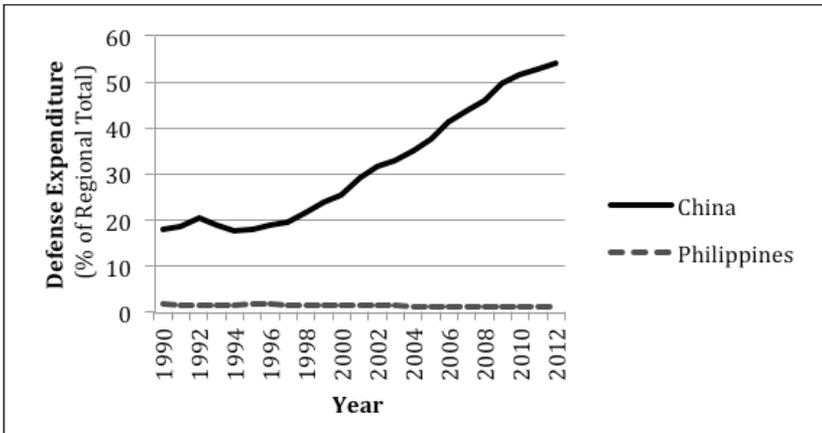
Despite these obvious ambiguities, Chinese officials have offered little official clarification on the nature of China’s claims, nor have they had to. China has crafted its international commitments to avoid the use of international legal forums. It has not, for example, recognized the compulsory jurisdiction of the ICJ, so China’s consent is necessary in order for the

Court to consider a legal dispute between it and other states. Historical precedent suggests that such cooperation is unlikely to be forthcoming. In the 68 years since its creation, China has never given the ICJ permission to decide a case involving it. China has also worked to exclude itself from most other international legal forums. When China ratified UNCLOS, for example, it chose to exclude the application of UNCLOS's compulsory dispute settlement mechanisms for "disputes concerning the interpretation or application of articles...relating to sea boundary delimitations, or those involving historic bays or titles," as allowed by Article 298(1). This exclusion has made it extraordinarily difficult for other states to challenge China's maritime claims in a court of law. It also means that China has not had to clarify said claims, which has made it difficult for states to challenge China in the court of global opinion, as commentators are always left guessing at the actual substance of its claims.

CHINA'S GRADUAL ENCROACHMENT

What should be made of these various inconsistencies and China's refusal to either clarify its position or submit its claims to an independent arbiter, such as the ICJ? Changing regional power dynamics and China's desire to maximize its claim to the SCS probably play a large role in this decision. As the fastest growing state in the region, China has eclipsed all of its regional neighbors in defense spending. It now accounts for 54 percent of the region's total defense expenditure (SIPRI 2013). This growing military gap, which can be seen in Figure 1.2, has made it increasingly difficult for other states to challenge China's provocative policies, even though mainland China is roughly 600 miles from the Scarborough Shoal and over 900 miles away from the Spratly Islands. The Philippines has only one principal surface combatant and 65 small patrol ships with which to enforce its claims in the SCS (IISS 2011, 267). China, by comparison, has 78 principal surface combatants (including 13 destroyers), 68 attack submarines, over 200 patrol ships and coastal combatants, and a newly refurbished aircraft carrier (IISS 2011, 232-33). Taken together, these forces give China an increasingly decisive advantage over other regional states, such as the Philippines.

Figure 1.2: Defense Expenditure (% of East Asia Total)



Note: East Asia figure includes defense expenditure by Brunei, Cambodia, China, Indonesia, Japan, North Korea, South Korea, Laos, Malaysia, Mongolia, the Philippines, Singapore, Taiwan, Thailand, Timor Leste, and Vietnam (SIPRI 2013).

China has used this growing regional advantage to engage in what some analysts have termed “salami slicing” (Snyder 1996). As late as 1988, China did not have any troops stationed within the SCS. Since then, it has muscled its way into the area, seizing territory in fits and starts. Although it has been careful to limit its occupations and seizures to prevent the outbreak of war, China now occupies at least nine features in the SCS (Buszynski 2010, 85). It has also increased naval patrols in the area and its civilian agencies have become increasingly active in enforcing China’s fishing regulations against foreign fishermen.² China has also begun to blockade foreign-held features, such as the Filipino-held Second Thomas Shoal, in order to starve out occupying forces, thereby allowing its own forces to move in. As one PLA general remarked, “once they have left, they will never be able to come back” (Himmelman 2013). All of these activities strengthen China’s claim to sovereignty over the Spratlys and the Scarborough Shoal, as displays of sovereign authority are a key element in solidifying one’s legal claims over territory (Currie 2008, 271). All of this activity makes it more likely that a final dispute settlement, whether obtained by political agreement or legal dispute settlement, will favor China. There is, as a result, little incentive for China to clarify or settle its claims, as its terms of settlement are likely to improve with time—maximizing its ultimate claim to the resources of the South China Sea.

THE PHILIPPINES' DETERIORATING POSITION

Unlike China, the Philippines does not claim sovereignty over all the South China Sea. After the Second World War, the San Francisco Conference of 1951 divested Japan of its ownership over the Spratly Islands, which it had occupied during the war. It was not, however, specified who the islands would be returned to. Arguing that the islands were now *res nullius*, or property without an owner, a Filipino businessman claimed 53 features of the Spratlys in 1957. This group of islands, which are now known as the Kalayaan Islands, were transferred to the Filipino government in 1971. The government formalized this claim in 1978 when it issued a presidential decree, which justified its possession of the islands based on “history, indispensable need, effective occupation, lack of any other legal sovereign, and Kalayaan’s importance to the Philippines’ security and economic survival” (quoted in Thomas and Dzurek 1996, 305). This decree continues to form the basis of the Philippines’ largest claim in the SCS.

Manila has, however, seen its control over the South China Sea wane over the past two decades—a trend which is unlikely to abate any time soon. This decline began in 1994 when China surprised the Philippines by constructing a stilted structure upon Mischief Reef—a mere 130 miles from the Filipino province of Palawan and well within the EEZ generated by its coast. The Filipino government protested, but to little avail. More recently, Chinese and Filipino forces have clashed over the Scarborough Shoal, which is a separate chain of rocks and reefs to the north of the Spratlys. The dispute began when the Philippines’ navy tried to evict Chinese fishing boats from the area. The attempted eviction led a pair of Chinese maritime surveillance ships to intervene and a standoff developed (Perlez 2013). The two sides eventually negotiated an agreement to back off, but China failed to follow through on its side of the agreement. It has since blockaded the shoal and only permits access to its own fishermen (Himmelman 2013).

MANILA'S CALCULATED LEGAL RESPONSE

If the current trend continues, the Philippines’ position in the South China Sea will continue to deteriorate. In order to forestall this slow yet persistent erosion, the Philippines has resorted to legal action to preserve what it has and to reduce the potential damage of a future settlement, despite the risks inherent in such an approach. Unable to directly appeal to the ICJ because China is unlikely to accept the Court’s jurisdiction, the Philippines has exercised its right to seek mandatory dispute arbitration, as set out in Part

XV of UNCLOS. It has, however, had to challenge China on a technical point, because China has a reservation that prevents other states from using UNCLOS's compulsory dispute settlement mechanisms for disputes relating to the interpretation or application of boundary delimitations. Working around this restriction, the Philippines has challenged China's claim that all of the features that it now occupies are islands. Instead of asking the tribunal who owns what, the Philippines has asked it to rule on the technical definition of the features of the SCS. Targeting the eight features China has occupied in the South China Sea, the Philippines has claimed that three, including Scarborough Shoal, are rocks rather than islands and the rest are either submerged reefs or low-tide elevations (Song and Tonneson 2013, 254).

If successful, the challenge will confer a number of benefits upon the Philippines. If, as China insists, all the features it occupies *are* islands, they would generate EEZs that overlap with the EEZ generated by the coast of the Philippines. As it seems increasingly likely that China will retain control of the features it has seized, the Philippines would be obligated to split part of its claimed EEZ and the resources within it in an equitable manner. Such a split would obviously not be in the interest of the Philippines. If, however, the tribunal finds that the features claimed by China *are not* islands, the potential for infringement of the Philippines' coastal claim would be reduced, since rocks only generate 12 miles of territorial waters and submerged reefs/low-tide elevations do not generate any claims by themselves. This would strengthen the Philippines's right to exploit the vast majority of waters within 200 miles of its coast. It would, of course, also prevent the Philippines from extending its claims beyond the EEZ generated by its coast. This limitation is, however, a minor one, as it has become increasingly unlikely that the Philippines will ultimately control the islands that it claims.

A successful outcome would also have the benefit of reducing Chinese activity in the South China Sea or, at the very least, concentrating it in a limited number of features. If the tribunal decides that the features China claims are islands are, in fact, not islands, it is likely that very few of the features of the SCS would qualify as islands under international law, as most scholars have typically suggested (see, for example, Fravel 2011, 294). This would reduce the incentive for Beijing to engage in aggressive maneuvers in the South China Sea, because seizing features would no longer confer the same benefits as previously asserted. It would also help smaller states, like the Philippines, by allowing them to concentrate their forces on the features most likely to be classified as islands, of which

there are only a handful. Historically, the Philippines has defended all the Kalayaan Islands, which has stretched its meager forces thin and made them vulnerable to Chinese pressure.

In launching its case, the Philippines is implicitly relying on the assumption that China will respect the results of the arbitral tribunal, even though China says that it will not. This assumption carries a certain degree of risk, as states that are unwillingly dragged before international legal bodies tend to be less likely to respect the decisions produced, particularly when there is a significant power disparity between the disputing parties (Paulson 2004, 457). While there is certainly some inherent risk to this strategy, there is still a reasonable chance that China will respect the decision handed down by the tribunal. As Heather Jones (2012) notes, there are a number of factors that encourage state compliance with judicial decisions. The international community, for example, often places considerable pressure on states to comply with judicial decisions, in order to maintain the integrity of the international legal order. There are also reputational costs associated with non-compliance. States will often choose to comply with judicial decisions for fear that noncompliance will compromise their reputation in future bargaining situations. In recent years, China has become increasingly mindful of such costs, as it has sought to establish itself as a legitimate player on the world stage. It has also sought to reassure the world that it will play by the rules of the established order (for examples, see Johnston 2003). As such, the odds are actually quite good that China will comply with the tribunal's findings.

There are also other risks to the Filipino strategy. As one international legal scholar has observed, the ICJ has typically been the preferred forum for the adjudication of maritime disputes, even when states have had access to the other mechanisms outlined in UNCLOS (Keyuan 2010, 141). Unlike the ICJ, which has a track record of hearing major disputes and is quite respected, the other dispute resolution mechanisms outlined in UNCLOS have seen limited use. They have only been involved in resolving minor disputes, such as cases involving the prompt release of ships. As a result, their decisions lack the gravitas and legitimacy typically associated with the ICJ. This is even true in Asia, despite the general regional preference to avoid courts in the first place. While Asian states have submitted a number of major cases to the ICJ in recent years, they have only employed arbitral tribunals on a select number of occasions and usually for minor issues (145). As such, the reputational cost of ignoring the ruling produced by the arbitral tribunal may be less than that of other international forums. Despite this, the Philippines has little other choice. Pursuing the case

through an arbitral tribunal it its only real option, because of the way China has structured its international commitments.

POLICY IMPLICATIONS FOR THE PHILIPPINES

The Philippines' decision to break with regional precedent and initiate legal proceedings against China is a sound strategic move. Although there is some chance that China will simply ignore the tribunal's ruling, the costs of inaction are too high for the Philippines to ignore. Shifting regional power dynamics are working strongly against Manila, and the longer that it waits to settle its territorial disputes with Beijing the more likely it becomes that the Philippines will lose control over a significant portion of its maritime territory. By using the compulsory dispute settlement mechanisms laid out in UNCLOS, the Philippines has the chance to minimize its potential losses. A successful ruling will, at the very least, enable the Philippines to preserve the claims generated by its shoreline, thus guaranteeing it access to a large swathe of the resource-rich SCS. It will also help the Philippines determine which features of the Kalayaan islands are the most likely to generate significant maritime claims. Such knowledge will help Manila concentrate its sparse naval resources and increase the likelihood of holding on to the Kalayaan Islands.

As previously noted, there are a number of risks to this strategy that should be acknowledged. In the short run, forcing China into dispute arbitration will strain relations between the two nations. Indeed, there is already some evidence that bilateral ties have cooled. In the immediate aftermath of Typhoon Haiyan, for example, China offered a paltry \$2 million worth of aid to the Philippines—much less than other major nations. It is also far from certain that China will comply with the tribunal's judgment. While international law is clearly on the Philippines' side, there is an incentive for China to continue delaying dispute resolution, since such an approach allows it to capitalize on the growing power asymmetry between it and the rest of the region's claimants. The Philippines cannot, as a result, guarantee that its legal gambit will produce any tangible benefit.

Fortunately for Manila, there are a number of policies available that will enable it to increase the odds of Chinese compliance. As previously suggested, regional and international pressure is likely to be the key to influencing China's response to the tribunal's decision, because Beijing has become increasingly mindful of such pressures in recent years. China is, however, only likely to comply with the result of the arbitral tribunal if the reputational losses of non-compliance outweigh the benefits of monopolizing resource extraction and fishing in the SCS. It will therefore be

important for the Philippines to cultivate regional and international allies to help place pressure on China—and the more the better.

At the regional level, the Philippines' fellow ASEAN members are a major source of potential support. Vietnam, Malaysia, and Brunei all have their own maritime disputes with China. They are also all in the same position as the Philippines when it comes to the changing regional military balance. They are all likely to see their power continue to decline vis-à-vis China, so it is in their interest to see Beijing accept a more rule-based approach to maritime disputes. The alternative, rule by the strong, would bode poorly for ASEAN. Manila should, as a result, be able to attract significant support for its case from its fellow regional states. In some cases, it may even be able to convince them to submit briefs to the arbitral tribunal in support of the Philippines' case, since they are also affected by China's claims in the South China Sea.

The Philippines should also be able to use a similar set of arguments to cultivate international support. Despite not having a direct stake in the dispute, it is in the interest of most foreign powers that China respect the tribunal's decision. Such a result would produce a number of benefits for international peace and stability. First, a judgment in favor of the Philippines would reduce the value of the contested features of the SCS, thereby reducing the chance of a violent incident between rival claimants. Reduced regional tension would, in turn, help ensure the stability of the shipping lanes in the South China Sea, through which \$5.3 trillion worth of goods pass every year (Glaser 2012). Second, Chinese compliance would be an important signal of China's commitment to the current international legal order, thus assuaging regional and international fears about potential Chinese challenges to the existing world order. Delivered in tandem, these arguments should enable the Philippines to attract substantial international support, even from states outside of the immediate region.

While Beijing will certainly push back against Filipino efforts to cultivate support, Manila's case is a convincing one. It is in the interest of nearly all foreign parties to see China accept a more rules-based approach to the SCS. As such, there is good reason to think that the Philippines can overcome China's counter-lobbying and successfully attract enough support to tip Beijing's decision-making calculus towards accepting the arbitral tribunal's ruling. Such an outcome would be a major victory for the Philippines, as it would (1) minimize the potential infringement of the EEZ generated by its coastline, (2) allow Manila to better concentrate its resources to preserve its remaining island holdings, and (3) mark an important step towards the establishment of a peaceful, rule-based order

in the South China Sea. Given these potential benefits, Manila's current strategy is worth pursuing, despite the risks.

NOTES

¹ Excluding Taiwan was one of the conditions set out by China in order to secure its membership in the UNCLOS regime (Song and Tonnesson 2013, 236).

² The Chinese province of Hainan, which has jurisdiction over much of the South China Sea, recently passed new regulations requiring all fishermen, foreign and domestic, to secure permission from relevant Chinese authorities (*The Economist* 2014).

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2

DEVELOPING AN INSURANCE PRODUCT FOR MEXICAN IMMIGRANTS IN THE UNITED STATES

Lucia Adriana Baltazar Vazquez

This article will discuss the impact of remittances from the United States on low-income families in Mexico and how the loss of remittances via the death of the immigrant can create unforeseen financial problems. First, the article will give some background information about migration flows from Mexico to the United States as well as the consequent remittance flows. This section will also give a general overview of the impact that remittances have on poor households and will describe the current demand for financial services from Mexican immigrants in the United States. Second, the article outlines a potential micro-insurance plan that would help Mexican immigrants in the United States cope with the shock of repatriating remains and income loss. A micro-insurance plan would not only attend to the immigrant's desire to access financial services that meet their needs, but would also allow families to recover from loss of income more easily if the immigrant dies while abroad.

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BACKGROUND

Immigration from Mexico to the United States and Remittance Flows

Migration flows from Mexico to the United States increased significantly during the 1990s due to poverty, inequality, social and political persecution, and lack of economic opportunities in Mexico. Recent data suggests the increase has continued over the last 13 years, even after the recent economic crisis: the number of unauthorized immigrants increased from 4.45 million in 2000 to 6.05 million in 2012 (Passel, Cohn, and Gonzalez-Barrera 2013).

Legal and illegal immigrants often send remittances to family members in Mexico so their families can save, invest, build assets, and meet their everyday needs. Household surveys suggest that 71 percent of immigrants in the United States send remittances back to their home country. At the aggregate level over the last 18 years, the flow of remittances from the United States to Mexico has increased more than 400 percent, accounting for 22.4 billion dollars in 2012. Although the number of transactions increased roughly 700 percent from January 1995 to September 2013, the average amount has remained stable at 300 USD. In 2008, household studies show that 5.9 percent (1.6 million) of all Mexican households received international remittances. It bears noting, however, that Mexico is not among the countries that rely most heavily on remittance inflows: out of a sample of 30 countries, Mexico ranked 19th, with an inflow of around 2 percent of GDP in 2012.

Table 1. Remittances of Selected Countries, 2011

Country	Million USD	% GDP
Tajikistan	3,039	46.6
Nepal	4,010	21.1
Lebanon	6,776	17.4
Honduras	2,798	16.1
El Salvador	3,649	16.0
Mexico		
2009	21,306	2.4
2010	21,304	2.1
2011	22,803	2.0
2012	22,446	1.9

Source: Central Bank of Mexico (2013).

Remittance flows from the United States to Mexico are strongest in regions where immigrant workers lack sufficient economic opportunities. Thus, it is not surprising to observe that these states have received more than 40 percent of all remittance flows since 1995.¹

Impact of Remittances on Poor Mexican Households

At the microeconomic level, poor households do not see remittances as an altruistic transfer from migrant relatives, but rather as co-insurance and a financial supplement to the family's consumption levels (Poirine 1997).² For this reason, Amuedo-Dorantes et al. (2005) in a study of remittance patterns, find that the propensity to remit is greater among migrants who have dependents in Mexico.

It is important to consider that remittances represent the main source of income for these households and their use is not directed towards productive activities most of the time. For example, UNICEF (2007) estimates that in 1996, 80 percent of income from remittances was used for everyday consumption, while the remaining 20 percent was mostly spent on home improvement, and only a very small amount was saved.

However, some authors like Lopez (2005) or Dureya et al (2005) argue that even if these investments do not show returns in the short term, remittance expenditures enhance human capital, especially in education and health. Amuedo-Dorantes and Pozo (2009) estimate that 6 out of every 100 pesos in remittance income are spent on health, while Borraz (2005) estimates that remittances has a positive but small effect on schooling for children living in cities with fewer than 2,500 inhabitants and children whose mothers have low levels of education.

Demand for Financial Services by Mexican Immigrants in the United States

Since a significant number of Mexican immigrants in the United States are there illegally, the most popular financial services have lenient identification requirements. Some of these options lack insurance against loss or theft. Some of the methods used are:

- *Money Orders*. These are certificates issued by financial and non-financial institutions that can be converted to cash. The most important providers of this service are Western Union and Money Gram. These institutions charge a fee depending on the state of origin, the amount sent, and the type of service delivery. They offer an exchange rate slightly below the official measure. As an exercise, to send 1 USD from Upstate New York to Mexico

on March 6, 2014, one would face an exchange rate of 12.94 MXN/USD, and all three delivery options available would require paying a fee of 0.99 USD.³ Holding everything else constant, a 100 USD remittance would require a fee of 4.50 on average, while a remittance of 1,000 USD would cost 15 USD for instantaneous service when a credit or debit card, or 4 USD for three-day service with a bank payment.

- *Wire/Electronic Transfers.* These services are bank-to-bank money transfers from the US to Mexico or vice versa, and they can be programmed to occur several times within a determined time span. Using this service requires maintaining an account with a financial institution (e.g. bank or credit union), because the money passes through the Automated Clearing House system maintained by the Federal Reserve and the Central Bank of Mexico (Appleseed Foundation and Texas Appleseed Community Resource Group 2004).
- *Informal money remittances.* These are remittances either in cash or in kind sent through family or friends or well-known individuals within the migrant community. A focus group study among immigrants from Jalisco and Zacatecas in the late 1990s shows that around 28 to 46 percent of remittances are carried by hand to Mexican families and communities (Alarcon 2000).

In the last few years, researchers have observed a substantial change in the money transfer mechanisms that migrants use to send remittances. In 1995, the Central Bank of Mexico reported that, of the total amount of remittances, 51.5 percent was sent through electronic transfers. In September 2013, this mechanism accounted for 97.9 percent of all recorded remittances (Central Bank of Mexico 2008; 2013b).

There are two reasons that help explain the change in preferences for using electronic mechanisms:

1. *Commercial banks in the United States have been successful in attracting more Mexican immigrants to use their financial services.* For example, Ennis (2008) mentions that in 2005 HSBC introduced a service called “EasySend” to transfer money from an HSBC account to a secondary account that can be accessed outside the United States through a card that the sender gives to the recipient.
2. *Changes in the identity requirements to open accounts in the United States.* The “matricula consular” is an identity card issued by the Mexican government through its consulate offices in the United States to Mexican nationals that live outside Mexico. The card includes a photograph, an address outside of

Mexico, and the name of the Mexican national to whom it is issued. The card does not include information about the legal or illegal status of the bearer, because its main goal is to show that the person has an address outside Mexico and is registered with the Consulate office (Mexican Consulate in Detroit 2014). Since the card includes an address, several institutions started accepting it as an official form of identification. This practice was formally authorized for financial institutions in July 2002 through the USA Patriot Act, when the US Treasury announced that financial institutions could use minimum procedures for identifying the identity of customers seeking to open financial accounts. Within these procedures, the acceptance of the “matricula consular” identity card was included (Ennis 2008; United States Government Accountability Office 2004). Ennis (2008) mentions that Bank of America teamed up with several Mexican consulates to increase applications for the matriculation card while promoting remittance services and other banking products.

Although these two practices by private and public organizations have increased access to financial services, there are still problems related to insufficient use. One of the problems is the lack of awareness of recent partnerships between the Mexican and the United States government to facilitate remittance payments. For example, in 2003, the Federal Reserve and the Central Bank of Mexico agreed to connect the countries’ payment systems to facilitate money transfers (Central Bank of Mexico 2014). Since 2004, several United States financial institutions could subscribe to the program “Directo a Mexico” to wire remittances to any banking account in Mexico, as well as to beneficiaries outside the banking system. Through the service “La Red de la Gente,” remittances could be sent through the Mexican government’s development bank to more than 980 municipalities. Even though this agreement increased financial outreach, awareness remained low. A survey in 2008 by Vexler et al. showed that 84 percent of Mexican nationals and Mexican Americans in Chicago were not familiar with the programs, and it is extremely likely that the services they use are connected with the “Directo a Mexico” agreement.

A second problem is that some remittance services have limited availability, which deters consumption. For example, the study by Vexler et al. in 2008 found that, although 63 percent of respondents had a bank account, only 20 percent used the remittance services if their banking institution offered it. The main reason behind this low usage is that other remittance services, like money orders, offered longer client service hours and had more locations. Thus, even if the fees offered by banks are lower,

consumer choices regarding the quality of the service have undermined the adoption of formal financial services.

A third problem is related to the possession of a bank account in Mexico. Even if the immigrant has successfully opened a bank account in the United States, significant barriers to entry still exist in Mexico; specifically, less than 30 percent of people surveyed in a 2011 World Bank survey had a bank account (Hoyo, Pena, and Tuesta 2013). It is not surprising then, to observe that the survey by Vexler et al. (2008) found that, among 328 people, 46 percent of respondents stated that their relatives in Mexico did not have a bank account.

A fourth problem is limits to access to financial services in the United States. The most common response Vexler et al. (2008) received when asking for “reasons for not opening a bank account” was that immigrants lacked proper documentation or identification, or that they did not have sufficient money to avoid paying a monthly fee. The minimum balance characteristic in some cases is prohibitive for immigrants, driving away the incentive for opening accounts in a bank even when the service of free electronic transfers from the United States to Mexico is offered (Ennis 2008; Lindenmayer 2005).

In order to address these four problems, increasing financial education as well as producing higher quality and better-priced services is crucial. As Carstens (2010) notes, promoting banking competition would provide more gains in credit and savings provision. More importantly, increasing competition would foster the design of services for citizens in the bottom of the pyramid, where most immigrants and their family members are situated.

DESIGN AND OPERATION OF A REPATRIATION AND LIFE INSURANCE PRODUCT FOR MEXICAN IMMIGRANTS IN THE UNITED STATES

Motivation

The loss of a family member that sends remittances has important economic repercussions: it can increase vulnerability and the probability that the family members left behind will fall into extreme poverty.

The first repercussion to the family members left behind is funeral costs, which are significantly higher in the United States than in Mexico. In 2006, it has been calculated that funeral services cost between 5,000 to 6,000 USD in California (Lestage 2008). However, since 2004, repatriation services have become more accessible to households, allowing family members to hold funeral services in Mexico for the deceased migrant. In

this manner, basic repatriation services range between 2,400 to 4,900 USD for transporting remains, and families can add up to 516 to 3,500 USD on additional funeral costs per person in Mexico, like decorations, music, clothing, food and drink, transportation, documentation, and burials.^{4,5} The 2004 establishment of an aid program for repatriation services by some Mexican Consulates also influenced poor household's to hold funeral services in Mexico. In 2007, the Foreign Ministry spent 3.7 million USD on repatriation services.

The second repercussion is the probability of family members left behind falling into extreme poverty. From census data, it is estimated that, for 256,000 households in Mexico, remittances represent more than 75 percent of total income received in that year (CONAPO 2010). Thus, the death of an immigrant, especially the head of household, puts the family in danger of falling further into poverty.

Current Situation

Supply-Side Analysis

Currently, efforts to deliver insurance and micro-insurance to migrants in the United States can be classified based on the location of the insurer relative to the migrant. The classification, provided by the Multilateral Investment Fund (MIF) of the Inter-American Development Bank, has three categories: home-based, host, and hybrid products.

- *Home-based products.* The insurer is licensed and operates in the migrant's home country. Some home-based products that directly target Mexican immigrants are:
 - *Banorte – Life and Repatriation Insurance.* This product covers immigrants in the United States and their families in Mexico for natural and accidental death. If insured individuals die during the time of coverage, Banorte pays a lump sum, (between 1,538 and 4,615 USD), which depends on an annual fee of around 50 USD. If the deceased family member is in the United States, Banorte offers repatriation at no additional cost to any address in Mexico. Insurance coverage is only for one year, has to be contracted in Mexico, and the annual fee needs to be paid through a previously contracted Banorte account. It also requires documentation and a health check survey.
 - *Ci Banco – Migrants Protection Insurance.* This product offers repatriation services, legal and psychological help to cope with the loss, and a lump sum in case the migrant dies. The insurance requires an annual fee of 30 USD or a semester fee of 15 USD for a lump sum of 2,300 USD,

and also requires having a bank account. Insurance is not paid if the immigrant had a terminal disease when they signed up.

- *Banco Azteca – Azteca Migrant Insurance.* For 3 USD per month, this product offers a monthly allowance for two years, repatriation services and a lump sum for funerary expenses. The product has age exclusions, and the beneficiary needs to be a family member. In the case of death, there are several documentation requirements that the beneficiary needs in order to be able to collect the policy premium, and it can take a minimum of 7 days after the event. The contract requires ownership of an account in this bank to be able to collect the insurance payment.
- *Host products.* The insurer is licensed and operates in the immigrant’s host country. The MIF states that private insurers have exploited this model in a narrow context. That is, traditional services for health, auto, or life insurance have been targeted to low income, temporary visa workers, or Hispanic communities that have been legally established in the United States for less than 12 months (Magnoni et al. 2010). Several of these companies have been able to provide repatriation certificates⁶ regardless of the immigrant’s nationality, but few offer low payments and larger time spans for coverage. Two examples are:
 - *Grupo Servicios Especiales Profesionales.* The company sells 30 and 50 USD certificates that pay for repatriation costs for a period from 3 to 5 years after the sale in Southern California. The destinations include Mexico and several Latin American countries.
 - *Cristel Telecom – RePatriaR phone card.* With the purchase of a 10 USD pre-paid phone card, consumers can get coverage of 1,000 USD for repatriation costs in Florida. Customers can combine up to 5 cards to get coverage of 5,000 USD. The benefits are good for a period of 30 days.
- *Hybrid products.* The insurer is licensed and operates in the immigrant’s home and host countries. According to MIF, this model is underdeveloped due to its complexity, but could offer potential for product growth in both sides of the border. One example for Mexican immigrants is the following:
 - *Knights of Columbus Insurance.* The Knights of Columbus is an international Catholic organization that offers insurance to members and non-members in Latino communities. The market is targeted toward low-income migrants to cover accident and health insurance, but there are exclusions for people with prior health problems and limited benefits for people over 62 years of age. The institution also offers insurance for a spouse or dependent in Mexico only to immigrants that are members of the Knights of Columbus organization.

In general, the range of products available for immigrants is typical of micro-insurance worldwide: life and funeral products are the most common products (Roth et al. 2007). However, the products that are offered still face shortcomings such as poor quality, management issues, as well as market and regulatory barriers. Moreover, delivery channels have not been able to appropriately transmit client benefits, nor do they fully assist families with continuing coverage after a negative shock such as death. These are key characteristics that build trust, which is essential to generate enrollment.

Demand-Side Analysis

As mentioned in the background, several surveys have attempted to determine the demand for financial services among Mexican immigrants in the United States.

Regarding the possible adoption of more complex financial services, the survey by Vexler et al. (2008) found that over half of the respondents considered access to life or repatriation insurance as necessary. However, only 20 percent owned life insurance and 5 percent had repatriation insurance. The difference between desires and actual acquisition of financial services among immigrants may suggest that adoption is constrained by barriers to access or the existence of services that are not meeting the immigrant communities' needs. Thus, it is not surprising that families often borrow from friends and family, take formal loans at high interest rates, or sell valuable assets to finance funerary costs.

It is important to note that demand for these products depends on the maintenance of migration flows from Mexico to the United States. Although in the last two years the flow diminished due to tighter immigration surveillance, migration flows will likely remain high. A recent projection by Chiquiar and Salcedo (2013) estimates that, for the 2011-2017 period, net immigration inflows from Mexico to the United States could amount to 260,000 persons per year, counting both legal and illegal immigrants. The same study presents alternative scenarios dependent on border enforcement and growth of specific sectors in the economy, and suggests that immigration flows could range between 230,000 to 330,000 persons per year. Given that there are very few insurance products currently available to this group, the potential for revenue is huge.

Proposal

Currently, there are no insurance products that a migrant can voluntarily acquire in the United States for both repatriation and loss of remittances through life insurance. As shown in section b, the available products have

to be contracted in Mexico by the migrant themselves or a family member, and often require a bank account. If the migrant wants to access insurance services in the United States, requirements such as documentation and health checks block access for many migrants. In the case of the hybrid product offered by Knights of Columbus, religious connections might deter some immigrants from using the product for fear of needing to collaborate more with the organization or other personal religious concerns. Yet the availability of this product in the United States is crucial, because use will be higher if the migrant applies for it directly. Family members find it unappealing to buy this type of insurance because it brings to mind the death of their loved ones (Accion International, 2008).

In order to successfully offer a micro-insurance product targeted to Mexican immigrants in the United States, the product should include five considerations in its operation:

- *The product needs to be operated by an insurance group that operates in both countries and has experience in life and repatriation insurance.* Currently, the Pan American Life Insurance Group operates in both countries. In 2008, the company offered accidental death insurance when sending remittances for El Salvador immigrants in the United States.⁷ Currently, they have not announced any similar product offered to Mexican immigrants in the United States; however, their experience in micro-insurance can certainly be extended for Mexican immigrants. Magnoni, et al. (2010) imply that the Salvadoran-U.S. product was not successful because the target population was not sufficiently familiar with insurance and Pan American group would have had to offer a more active sales force than the one it could. However, as will be explained below, Mexican immigrants in the United States are more financially literate, in part due to education programs run by their consulates.
- *The product has to be affordable for immigrants in the United States.* Mexican immigrants earn lower wages than other immigrants on average. For example, Selene (2007) finds that average income per hour for recently arrived Mexican immigrants was 13.20 USD in 2006, while other immigrants earned 23.10 USD. The income disparities are larger depending on age, gender, and schooling characteristics. Given that it is likely that immigrants have low levels of income, any insurance product needs to offer small payments to be affordable. In this case, the insurance currently offered by Pan American Life Insurance Group may seem attractive: it charges 3.00 USD per month for its accidental death insurance. Repatriation coverage could be included for an additional charge. Moreover, if the service adds additional services, it could offer differentiating price packages as long as the costs were not too high for immigrants.

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- *The product must generate trust among clients based on high quality of service provision.* Matul et al. (2013) argue that building trust with clients is essential to winning markets for micro-insurance products, since it increases enrollment. Moreover, making the product delivery client-friendly and incorporating additional benefits increases long-term enrollment. Some key issues that will help gain public acceptance are:
 - *Offer a welcoming environment.* To do this, distribution points could be located in Mexican Migrant Clubs in the United States. These clubs experienced a boom in 1990s and offer a place where migrants from the same areas can gather to celebrate social events and preserve their identity. The Mexican government, through its Consulates, recognizes some of these Clubs formally, while others are more informal in nature. However, their presence is extremely large throughout the United States: as of April 2013, the government formally recognized more than 2,400 organizations in 77 different locations across that country. Although the headcount of members is not clear (some of them count only staff while others also count members), it is estimated that they reach around 3 million Mexican immigrants in the United States. (Instituto de los Mexicanos en el Exterior 2013). Not only would these organizations reach both legal and illegal immigrants, but they also provide a space where immigrants have established trusted social networks where they do not feel rejected (Moctezuma 2011). The clubs, in partnership with the Institute for Mexicans Abroad, have created financial education programs for migrants to help them better manage their resources. The program operates through partnerships with other banking credit unions and remittance sending companies so that immigrants use safe channels to wire money. Moreover, they have been successful in creating credit programs for immigrants, whereby immigrants can act as small business owners while abroad while their families operate the businesses in Mexico. Given this background, it would be natural to offer any micro-insurance product through these clubs. In addition, Mexican immigrants are more aware about the benefits of financial services because certain elements of financial education have been offered through short courses in the Migrant Clubs.
 - *Inclusion of a “family assistant” in the home country to organize funeral services.* Immigrants may be willing to pay additional fees in advance to make sure their families feel less vulnerable in case they die while being abroad. The inclusion of a family assistant would increase trust in the product, because there would be a person in charge of arranging paperwork until the immigrant was buried. This person could also authorize facilitat-

ing childcare, and emotional or legal assistant services (included in the benefits) to help families cope with the loss. Not only could this service help families emotionally, but it could also minimize lost wages due to funeral arrangements. In Colombia, a cashless funeral micro-insurance that added a family assistant is calculated to reduce missed work by an average of 4 days (Micro-insurance Learning and Knowledge 2013a).

- *Having a cashless component to cope with repatriation of remains would diminish pressure and uncertainty for families dealing with different authorities and regulations.* The process for complying with repatriation regulations is lengthy, and waiting for an insurance payout can lengthen the process unnecessarily. For example, some of the existing products take a minimum of 7 days to make an insurance payment, and it can take between 7 to 21 days for the remains to reach a final destination. (Banderas News 2005; National Funeral Directors Association 2012). Incorporating a cashless component might shorten the repatriation process. Repatriation services could include a standardized funeral package agreed on by a network of affiliated funeral homes. The cashless component would not only increase effectiveness by lowering transaction costs (e.g. waiting for reimbursements from the insurance company, facing exchange rate fluctuations, and wasting time waiting for calls or bribing authorities), but would also involve psychological benefits of the immigrant's family in the home country.
- *A cash component in the life insurance payment is crucial.* After the migrant's loss, families face significant payments either for the funeral or to cover outstanding claims, and may face the decision of adding family members to the labor force to cover that lost income. Life insurance is crucial for helping the families avoid poverty. For example, it can delay the transfer of children from school into the labor force or eliminate the necessity of this entirely. A study in Pakistan found a lower incidence of child labor and lower child labor earnings when parents had access to an insurance product provided by a microfinance institution. Additionally, a cash component can change intra-household decisions on adding productive assets to substitute the lost income provided by the immigrant. A study of funeral and life insurance in the Philippines (Magnoni et al. 2012) found that 49 percent of respondents decided to use the life insurance payment to invest in savings, a business, or the purchase of an animal. Also, for each additional 100 USD received and each additional week of waiting for life insurance benefits, respondents were about 2 percent more likely to make some sort of productive investment, provided that the funeral costs were already covered by the insurance.

In sum, a successful implementation of a repatriation and life insurance product for Mexican immigrants in the United States should include: operation by a transnational insurance group that is familiar with regulations and customer service elements in both countries, affordability, a trust factor enabled by the delivery of high quality services during the sequence of events, and both monetary and non-monetary benefits to reduce uncertainty for families.

This insurance product would operate as follows. The immigrant goes to their Club, where they can purchase insurance for a limited time at an affordable price. If there is no accident, the insurance expires and the immigrant can buy another insurance product at a later date. If an accident occurs, Pan American Life Insurance Group processes the cashless component of the insurance by arranging funeral services with a list of affiliated funeral homes that can send remains to Mexico. Finally, Pan American Insurance Group sends a monthly stipend to families for a certain amount time so the economic shock is less pronounced.

Important Considerations

It is important to consider that the idea of supplying more financial services to Mexican immigrants will likely be opposed by several political groups within the United States. Some will argue that the provisions of an insurance product for Mexicans immigrants would be a factor that could change a household's decision to immigrate, the length of its migration spell, or the number of family members to be sent. Thus, if the insurance product is developed as a public policy by the Mexican government to diminish the burden of repatriation costs its Consulates abroad now face, it will likely face significant opposition from the United States government. This one-sided policy would also likely constrain United States-Mexico relations, putting pressure on creating more stringent immigration and deportation laws within the United States.

A public-private partnership may be a solution that avoids this political impasse. For this partnership to happen, the following conditions would have to be met:

1. The United States continues allowing the provision of financial services for immigrants without deportation consequences if they sign-up.
2. Mexico agrees to standardize repatriation policies throughout its Consulates to avoid negative incentives in current and future migrant generations.
3. Both countries agree that a third party, namely an international organization like the World Bank or the Inter-American Development Bank, acts as a

mediator to align interest among private sector companies that could offer the service and public policy concerns.

Regarding the operation of the insurance product, operating costs will be substantial during the first years of the product. Daub and Lagutaine (2010) mention that administering a portfolio of insurance policies of a 40-year time horizon represents significant complexity at the IT and operational level. Daub and Lagutaine (2010) calculate that this complexity can account for up to 75 percent of the operating and underlying costs associated with servicing the policies, while Van den Brande and Van Weegen (2011) estimate that the per policy contract administration costs increase by 45 percent after five years.

Profit margins can get squeezed not only by high operational costs and low prices but also by regulatory requirements. To make sure that the companies that provide the service survive, a public-private partnership could allow for: (1) getting funds through international organizations; or (2) getting a subsidy from the Mexican government for an amount equal or less than the one currently spent on repatriation services through the Consulates.

To stimulate demand for insurance among immigrants, discounted premiums could be offered during an initial period. According to Matul et al. (2013), a subsidy allows for clients to experience the product, appreciate its value, and then renew it, but only if the product's benefit is evident to clients. Thus, before engaging in launching the product, a careful pilot program should be designed to ensure that there will be sufficient take-up. If that is not the case, all interested parties will face a failure even when their intentions are good.

Additional Benefits

There are several benefits that an insurance product, operated through a public-private partnership, can provide low-income families coping with the loss of a family member that acts as a primary source of income.

Demand-Side

- As mentioned by the Micro-insurance Learning and Knowledge Organization (MILK 2013c) in a study of micro-insurance on Compartamos clients, an insurance product helps low income families borrow more from informal sources, like friends or family, in order to cope with immediate funeral costs because they use insurance payments as collateral for these loans.
- Insurance acts as a more effective way to cope with a shock than savings, given that the amounts provided by insurance are higher.

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- Additional coverage given by life insurance can reduce economic and psychological tensions for the family and allow for a better adjustment.

Supply-Side

- A public-private partnership will allow for flexibility to serve a particular vulnerable group. In this way, established banking institutions that have already been targeting products to Hispanic populations can increase their market participation by delivering benefits to families outside the United States.
- Given that participating families will start planning and coping with the possibility of an accident for an immigrant, the government may face lower requests for financing repatriation services in the future. As mentioned previously, the Ministry of Foreign Affairs spent almost 4 million USD in 2007 on repatriation services.
- Increased international collaboration for innovation in the delivery of financial services for the poor.

CONCLUSION

This paper offers a plan for the development of a micro-insurance product that incorporates life and repatriation insurance for Mexican immigrants in the United States. Immigrants' families face significant obstacles during and after the death of a migrant, especially if he or she is their main source of income.

Given that Mexican immigrants form a special group of consumers, a successful micro-insurance product should have the following characteristics: (1) it is supplied by an experienced institution operating in both countries; (2) it is affordable; (3) it offers additional benefits and high quality services to generate trust among consumers; (4) it includes a cashless component for repatriation services; and (5) the life insurance component is paid quickly.

Bridging the communication gap between financial institutions and immigrants allows for the design of more sophisticated but accessible financial services that meet migrants' needs, alleviate negative economic shocks in a more structured manner, and, in the long-run, reduce budgetary pressures that Mexican Consulates currently face for providing financial aid for repatriation.

NOTES

- ¹The five states are: Michoacan, Guanajuato, Jalisco, Estado de Mexico and Puebla. (Central Bank of Mexico 2013a; BBVA Bancomer Research 2013). At the municipal level, Canales (2008) mentions that 414,101 households received remittances in high and very high marginalized municipalities in 2005.
- ²Co-insurance in immigration issues refers to a household's strategy to maximize inter-temporal utility through an implicit contract that links migrant and non-migrant members of the group. Through this strategy, the family acts as an insurer by educating the immigrant and sending him to a developed, urban sector. When the migrant achieves a stable position abroad, he/she acts as an insurer by sending remittances to his family in the country of origin, helping these members make other investments (as in other agricultural or rural activities), securing their income, or financing their education. When he/she comes back, the roles switch, and the migrant becomes a receiver of remittances from the younger family members that he previously helped (Poirine 1997).
- ³The official exchange rate of March 6th, 2014, published by the Central Bank of Mexico was at 13.1476 MXN/USD.
- ⁴The transportation of remains includes preparation of the deceased, embalment, coffin and transportation to the nearest cemetery in Mexico (Lestage 2008).
- ⁵Banco Compartamos (2000). The reported average monthly income surveyed families by Compartamos Bank was 414.50 USD.
- ⁶A repatriation certificate is a type of insurance that guarantees the repatriation of the deceased immigrant back to his/her home country when the product is purchased up until a predetermined period of time. The guarantee covers all expenses related to repatriation fees both in the United States and in Mexico (Lestage 2008).
- ⁷The characteristics of the product are as follows: the insurance group partnered with Gigante Express, a remittance sender that operates in both countries, so that the U.S. Pan American affiliate would offer protection to the Salvadoran immigrant when he/she made a money transfer to his family members abroad. The product offered protection for a period of 31 days starting on the purchase date. If the immigrant suffered accidental death, the product paid a remittance of 350 USD for the following 36 months for family members in Central America.

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REDUCING HOMICIDE IN HONDURAS: HOW THE US GOVERNMENT CAN HELP

*John Paul Bumpus, John Speed Meyers,
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Honduras' staggeringly high homicide rate—deeply linked to a confluence of factors including international narcotics trafficking, the growth of organized gangs, migration and deportation patterns, inequality, and near impunity for criminals—necessitates nontraditional measures. To reduce impunity, the Association for a More Just Society (ASJ) pioneered a witness protection and investigation program that now operates in three neighborhoods: Nueva Suyapa, Flor del Campo, and Villa Nueva. This article analyzes ASJ's neighborhood operations and recommend they infuse another urban anti-homicide strategy, the acclaimed Operation Ceasefire, to combat violence in Tegucigalpa neighborhoods. US support for ASJ, which is currently only financial, should expand to include logistical support from Honduran Government units vetted and aided by the US Government. Together, ASJ's Peace and Justice program and Honduran vetted units can implement a Ceasefire pilot in Tegucigalpa's most dangerous neighborhoods. Evalua-

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tion of all ongoing work is paramount, so that the Honduran Government and outside parties can identify best practices and continue efficaciously working toward a safer Honduras.

INTRODUCTION

Honduras is the murder capital of the world. It has experienced a decade of increasing homicide rates, which can be linked to factors such as international narcotics trafficking, the growth of organized gangs, migration and deportation patterns, inequality, and impunity. These appalling statistics have brought homicide to the attention of the Honduran government as well as the international community, and specifically, the United States. Currently, the U.S. Department of State's Bureau of Conflict and Stabilization Operations (CSO) and the United States Agency for International Development's Office of Transition Initiatives (OTI) maintain a significant presence in Honduras, tasked with, among other objectives, reducing the homicide rate.

This paper provides an overview of homicide in Honduras, a close analysis of homicide patterns in two Tegucigalpa neighborhoods, and an assessment of a particular homicide reduction effort implemented by a local non-profit and partially funded by the U.S. government. It makes recommendations to the U.S. government on how to better work with the Honduran government and local Honduran organizations to reduce homicides. Chief among these recommendations is the implementation of Operation Ceasefire in the nation's capital of Tegucigalpa, the improvement of homicide data, and the increase of its use in the evaluation of anti-homicide programs.

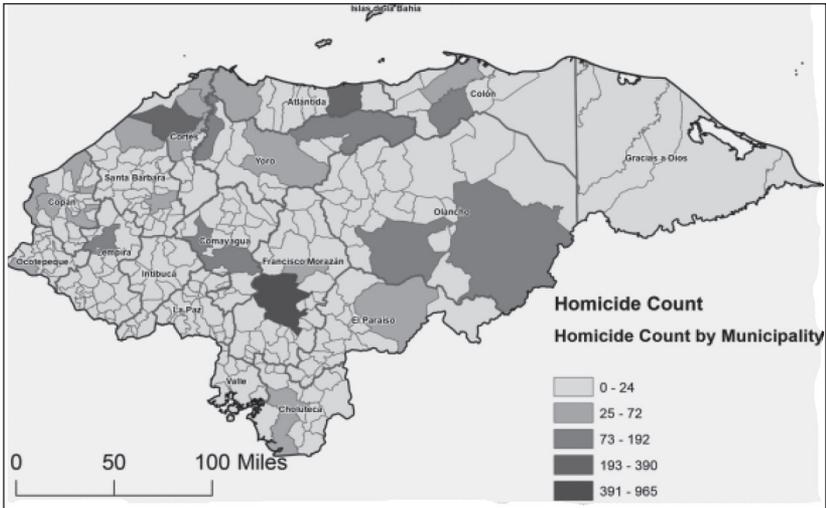
BACKGROUND

We first provide a broad overview of several issues including: the extent and causes of homicide in Honduras, the Association for a More Just Society's (ASJ) current efforts to reduce homicides in Tegucigalpa, and Operation Ceasefire, a U.S. anti-homicide program that could be implemented in Tegucigalpa.

The Murder Capital of the World

Honduras has the highest homicide rate in the world outside of an active war zone. The 2011 Honduran homicide rate exceeded 90 homicides per 100,000 persons, and over 250 in some regions (UNODC 2013; ASJ 2012). By comparison, the 2011 worldwide homicide rate was 6.9 homicides per

Figure 1. Homicide Count by Honduran Municipality



Data: Association for a More Just Society (ASJ), Authors' Own Calculations

100,000. In Central America, a region experiencing relatively high levels of violence, the homicide rate hovers at 25 homicides per 100,000. The Honduran homicide rate even outpaces that of El Salvador and Mexico (see figure 1), countries that have received the greatest share of negative publicity for their high homicide figures (UNODC 2013).

Honduras owes its staggeringly high homicide rate to a confluence of factors. Most importantly, perhaps, is that Honduras resides in the geographic core of Central America, claiming 400 miles of coast along the Caribbean Sea, a geographic fact that explains its attractiveness to tourists and drug trafficking organizations alike. U.S. drug interdiction efforts in the early 2000s focused on Venezuela and Colombia, with the unfortunate consequence of turning Honduras into the drug pathway of least resistance (Bagley 2013). Traffickers increasingly use Honduras' coast to transport drugs from South America to Mexico and the United States; an estimated 90 percent of all cocaine from South America passes through Honduras en route to North America (Dudley 2010). These organizations capitalize on the weakness of the Honduran government, particularly in the country's periphery, even building their own runways in the wilderness of northern Honduras out of view of the Honduran police and military (U.S. Official 2013). The northern region is a well-known hub for drug trafficking, which could account for the especially high homicide rates of coastal municipalities (see figure 1).

Marked by high inequality, Honduras also faces rapid urbanization and outward migration as Honduran citizens search for economic opportunity, leading to a further tightening of societal and government resources (Angel 2004). Some credit high rates of emigration with the dissolution of the Honduran family unit, which in turn causes social instability and exacerbates the violence problem (Honduran official 2013).

In addition, U.S. immigration policies fueled gang activity beginning in the mid-nineties, as 46,000 Hondurans, many gang-affiliated, were deported back to Honduras (PNPRRS 2012, 24). This has led to the growth of Honduran gangs and violence (Ribando-Seelke 2009, 4). The two largest Honduran gangs, Mara Salvatrucha 13 (MS-13) and Barrio 18 (18th Street) have since joined the drug trade, further stoking violence (Colindres 2013). Gangs also engage in the collection of a “war tax” (extortion charged to local businesses and even individual households), murder for hire, and robbery.

Lastly, corruption levels are the highest in the region, with news accounts frequently reporting on low-paid civil servants being bought off by drug trafficking organizations (DTOs) or engaging in their own extortion of citizens (Transparency International 2013). Most concerning, criminals carry on with impunity as an under-paid and overwhelmed police force and criminal justice system struggles to prosecute crimes.

Association for a More Just Society

To reduce criminal impunity, one local nongovernmental organization known as the Association for a More Just Society (ASJ) pioneered the Peace and Justice Program. ASJ, in collaboration with National Directorate for Criminal Investigations (DNIC) lawyers and investigators already working in the neighborhood, dedicate their own lawyers and investigators to end impunity in violence-wracked communities. ASJ has operated for almost a decade in one neighborhood, Nueva Suyapa, and has recently expanded the Peace and Justice Program to two other Tegucigalpa neighborhoods, Flor Del Campo and Villa Nueva. The U.S. State Department’s Bureau of Conflict and Stabilization Operations (CSO) has financially supported ASJ. We partnered with ASJ in order to conduct interviews with investigators and lawyers with a deep understanding of the homicide problem in Honduras in order to assess the applicability of an American intervention in Honduras.

Learning from the American Context: Operation Ceasefire

Our research team considered the applicability of Operation Ceasefire, a

prominent U.S. urban anti-homicide program, to the Honduran capital city, Tegucigalpa. The Ceasefire model, first implemented in Boston in the mid-1990s, has been remarkably successful throughout the United States (Braga, Kennedy, Waring, and Piehl, 2001).

Before the intervention, police identify and map the violent groups, collecting as much intelligence about individual members as possible. Representatives from these violent groups are then convened and given a simple message: stop shooting or all members of the offending gang will be targeted. Law enforcement officials then wait for a violent incident, and target all members of any gang whose member violates the ceasefire, using the intelligence gathered before the intervention began. In this way, the intervention rests on pressure that gang members exert on one another to uphold the ceasefire and to avoid group punishment.

Operation Ceasefire requires several enabling factors. First, because it targets group-based violence and relies on negative social pressure, offenders must be a part of group whose members are able to exert social influence on each other. Second, Operation Ceasefire assumes that the local police forces can gather sufficient intelligence to identify group members and then wield it as a deterrent to violence once the ceasefire begins. Third, the law enforcement team should be able to deliver a swift blow if and when a gang member violates the ceasefire, punishing all members of the offending group (Tita et al. 2003, 18). This last element requires an enforcement team capable of delivering a credible threat.

A Quick Roadmap

We now focus on ASJ and its ability to expand its operations to neighborhoods beyond Nueva Suyapa and to incorporate elements of Operation Ceasefire. We then turn to how ASJ and the State Department, CSO in particular, can use better homicide data and enhanced evaluation methods to improve their anti-homicide efforts.

The rest of the paper is organized as follows: we explain our interview process and methodology; we then use the findings from these interviews to examine the potential applicability and implementation of Operation Ceasefire in Tegucigalpa. The analysis specifically examines the groups in Tegucigalpa and the Honduran criminal justice system to determine if conditions are similar enough to American gangs and cities so that Operation Ceasefire could be successful in Tegucigalpa. Next, we discuss ways to improve the evaluation of ASJ and other anti-homicide programs so that Embassy Tegucigalpa can better apportion its anti-violence funds.

The paper concludes with recommendations to the U.S. government,

local Honduran organizations, and the Honduran government regarding steps to reduce the homicide rate in Tegucigalpa. The top recommendations include: coordination between the U.S. government and ASJ to implement a pilot version of Operation Ceasefire, potentially employing the U.S.-trained vetted units; publishing full and detailed raw homicide data by a credible organization like the Violence Observatory; and a more extensive evaluation of ASJ's Peace and Justice Program.

METHODS

In an effort to assess applicability, the research team partnered with ASJ and a student-professor team from the Autonomous University of Honduras (UNAH) to conduct interviews and primary research between October 26 and November 1, 2013 (Castro, Serrano, and Cerrato, 2013).

The research team interviewed individuals in various branches of the Honduran National Police (HNP) including the DNIC, a senior representative of the Violence Observatory at the UNAH, officials of the Department of State and the United States Agency for International Development; and conducted primary research with investigators from ASJ and the DNIC.

The research team also performed primary research in the form of incident reviews similar to those employed by practitioners of Operation Ceasefire in order to gain a clearer understanding of violence at the neighborhood level in Tegucigalpa (Crandall and Wong 2012). Interviews centered on two Tegucigalpa neighborhoods, Nueva Suyapa and Flor del Campo. The team interviewed ASJ and DNIC investigators and lawyers who had deep local knowledge about the homicide cases in these neighborhoods. The team sought to determine the proportion of total homicides that could be attributed to street groups in 2012 and the motivation of the violent actors. Questions included incident narrative, location, weapon used, victim group involvement, age, gender, offender group involvement, age, gender, and motive. Investigators and lawyers reviewed 27 homicides in Nueva Suyapa and 9 homicides in Flor del Campo; these investigators and lawyers were aware of the research team's objectives.

The team also gathered the information necessary for a group audit, an assessment of the violent groups present in Nueva Suyapa and Flor del Campo. Through both interviews and documents provided by ASJ, the team researched the membership, activities, hierarchy and criminal histories of violent groups present in these neighborhoods.

Lastly, the research team obtained homicide datasets from various sources, including ASJ. Collected data included date, time of day, weapon

and victim gender, age, race, occupation, and motive for crime.

This information allowed the research team to create hot spot maps displaying the density of homicides, to analyze clustering of homicide types, and to map the relationship between infrastructure and homicide counts at the neighborhood and municipal levels.

TRANSFERABILITY OF OPERATION CEASEFIRE FROM INNER-CITY AMERICA TO TEGUCIGALPA

Figure 2. Group-Involvement of Homicide Offenders in Nueva Suyapa and Flor del Campo

	Nueva Suyapa	Flor Del Campo
Group-Related/ Total	19/27	5/9
Gia	2	0
Puchos	5	0
Rodas	5	0
Motorcycle Gang	1	0
18 th Street	2	5
MS-13	4	0

Data: ASJ, Authors' Group Audit

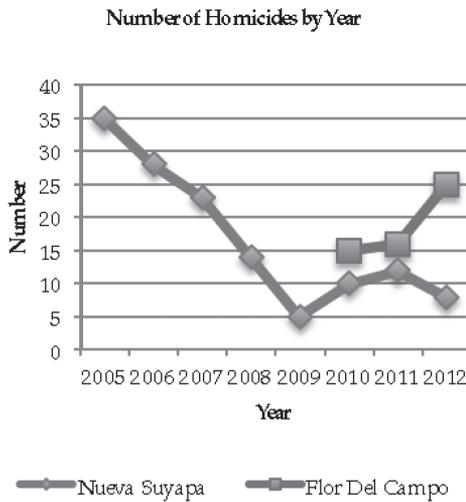
Operation Ceasefire is most effective when violent groups perpetrate the majority of homicides, local police forces can gather intelligence on offenders, and when the law enforcement team can deliver a credible threat to offending gangs. We assess the extent to which these enabling factors are present below.

Operation Ceasefire is most effective when violent groups are responsible for the majority of homicides since the deterrent effect works through negative peer pressure. Analysis of homicide cases in both Nueva Suyapa and Flor Del Campo suggests that a large segment of the homicides and violence in these neighborhoods does stem from violent groups, though the motives and type of group differ dramatically between the two neighborhoods (see figure 2). In Nueva Suyapa, a range of small groups is associated with homicides. In Flor del Campo, which is more representative of Tegucigalpa neighborhoods, one large group (18th Street) exercises a monopoly on homicide. This proven connection of homicides to violent groups means Operation Ceasefire, or a similar method that relies on

negative social pressure within a group, could be effective, assuming that the other conditions are also satisfied.

Second, Operation Ceasefire assumes that the local police forces can gather sufficient intelligence to identify group members. This intelligence becomes crucial when the intervention begins; the authorities inform gang members that ample intelligence has already been collected and that this information will be brought against them should more homicides occur. ASJ already performs the intelligence-gathering portion of this work in the neighborhoods where it operates. Interviewees presented the authors with detailed organization charts of violent groups, demonstrating that ASJ can track the members and activities of violent groups. These neighborhood-

Figure 3. Homicide Trends in Nueva Suyapa and Flor del Campo



Data: ASJ, Authors' Own Calculations

level characterizations of violence are similar to the characterizations conducted in American cities. There is also preliminary evidence—in the form of declining homicide rates in Nueva Suyapa compared to the rest of Tegucigalpa (see figure 3)—that indicates ASJ's work may also be having a deterrent effect. While questions remain about the ability of the local police to conduct this type of intelligence gathering, a coordinated partnership between the police, investigators, and ASJ seems possible for this intelligence effort.

Third, and most important, the law enforcement team has to be able to deliver a swift blow if and when a gang member violates the ceasefire,

punishing all members of the offending group (Tita et al. 2003). This last element requires an enforcement team to be capable of delivering a credible threat to the violent group. The authors suspect that law enforcement and ASJ already provide and can continue to provide such a credible threat in Nueva Suyapa. Specifically, law enforcement officials exploit the weakness and disorganization of the violent groups there. In Flor Del Campo, with the presence of the highly organized 18th Street, delivering a credible threat will be much more difficult. Whether law enforcement and ASJ can demonstrate a credible threat in Flor Del Campo against 18th Street remains to be seen, but the vast difference of 18th Street compared to the violent groups of Nueva Suyapa's suggests that ASJ's success in Nueva Suyapa does not guarantee success in Flor Del Campo. 18th Street might be too strong, too large, too organized, and too resilient for Operation Ceasefire to succeed. Some suggestions on how to overcome this particular problem are below.

RECOMMENDATIONS

Adapting Operation Ceasefire To Tegucigalpa

The U.S. Embassy in Tegucigalpa should consider expanding ASJ's Peace and Justice Program into a Ceasefire pilot program by coupling the work of the U.S. Embassy's vetted units with ASJ. This approach could allow ASJ to pose a credible threat to 18th Street in Flor Del Campo.

U.S. Embassy vetted units are particular Honduran law enforcement units vetted by officials from Embassy Tegucigalpa's Narcotics Affairs Section (NAS). The NAS has supported vetted units since 2001, by providing investigative training and assistance programs. The units are all within the Government of Honduras' Ministry of Security's Directorate of Special Investigations. They operate in priority issue areas, such as kidnappings, homicides, auto thefts, drug and arms trafficking, organized crime, money laundering and alien smuggling.

This partnership would serve to strengthen the credibility of the law enforcement threat, a key aspect of the Ceasefire model. The structure of the partnership will be such that ASJ's investigators continue to do their investigative work, while Embassy vetted units target neighborhoods rather than issue areas. Thus, the Ceasefire message would be delivered together by DNIC investigators (reinforced by ASJ's Peace and Justice program) and by the vetted units. Furthermore, securing community participation in message delivery could reinforce the credible-threat element. Community participation could come from established community organizations such as neighborhood associations, or *patronatos*, and religious institutions.

Community organizations throughout the country have already begun to form partnerships to tackle the violence problem. For instance, Alianza is a coalition building effort between over 220 Honduran NGOs and civic institutions including the Roman Catholic Church, Protestant Church, and the Honduran Autonomous University. Evaluation of the efficacy of such partnerships would be straightforward, as detailed in the next section.

Improved Homicide Data and Impact Evaluations

Embassy Tegucigalpa can further reduce homicide in Honduras by working with local partners to improve the public availability of transparent, comprehensive homicide data and using this data to conduct evaluations of its anti-homicide efforts. High-quality, public homicide data and refined evaluation methods would help U.S. government organizations working to reduce homicide in Honduras (e.g. CSO, USAID, and the International Narcotics and Law Enforcement bureau of the State Department) to understand more accurately the effectiveness of their anti-homicide efforts. These improvements will also help Honduran government agencies, civil society, and researchers to conduct sorely needed analysis and research on the causes and prevention of homicide in Honduras.

Embassy Tegucigalpa should encourage the creation of a comprehensive, transparent and public homicide database.

The homicide data collected by the Violence Observatory at the National Autonomous University of Honduras (UNAH) comes closest to achieving the qualities of comprehensiveness, transparency, and public availability. The observatory collects homicide data from the HNP, hospitals, news agencies, international development agencies, and local NGOs, creating the most comprehensive homicide dataset nationwide. After collecting the data, the Observatory publishes bulletins that present aggregate homicide trends throughout Honduras by geographic area and by homicide type (National Newsletters, IUDPAS 2012). In comparison, other Honduran homicide datasets are incomplete, viewed suspiciously, and unavailable publicly.

However, although the UNAH homicide data is the most comprehensive, transparent, and available dataset, it is still inadequately transparent and public. This impedes the analysis and evaluation needed to help those involved in reducing homicide make informed decisions about investing scarce resources in anti-homicide programs.

Most importantly, the names and identifying details of victims are not published, making validation of the UNAH data impossible, and the data is publicly available only at such a level of aggregation that detailed, inde-

pendent analysis is severely hamstrung. The decision to not publish victim names or similar information that would allow data cross-checking prevents law enforcement agencies, the media, and other researchers from assessing the validity of the data, ensuring that homicide data will continue to be highly contested in Honduras to the detriment of good public policy and informed decision-making. The aggregate nature of the data further handcuffs interested parties, as detailed analysis must proceed from detailed data.

Embassy Tegucigalpa can help create the appropriate public homicide data through its relationship with the Violence Observatory. Because the USAID mission in Tegucigalpa partially funds the observatory, USAID ought to encourage the observatory to publish detailed homicide data that other organizations and analysts can use for purposes of analysis. Specifically, the observatory ought to include sufficient victim information to enable validation of UNAH's victim list. The data published would then be comprehensive due to the observatory's collection methods, transparent due to the detail, and public.

This accessible, detailed dataset would then enable interested organizations and researchers to analyze Honduran homicide data. Embassy Tegucigalpa could then jumpstart this new research avenue, funding studies at the Autonomous University and related institutions to investigate the causes and consequences of high homicide rates in Honduras. Potential research topics include the effect of income inequality on homicide rates, the impact of deploying military police on homicide rates, and evaluations of the many anti-homicide programs already operating.

Evaluating Current Anti-Homicide Programs

After the creation of an improved homicide dataset, Embassy Tegucigalpa ought to then initiate a series of evaluations of its past and existing anti-homicide programs. Such analysis would inform the Embassy about the cost-effectiveness of different anti-homicide efforts and therefore guide the Embassy's future funding. This section will illustrate this recommendation with the example of ASJ, which received State Department funding for its Peace and Justice Program. After describing the current evaluation method employed by CSO, the State Department office that has funded ASJ and worked more broadly to reduce homicides and violence in Honduras, the section explains how to use improved data and a refined evaluation method to create a more reliable estimate of ASJ's effectiveness. The section then explains how the Embassy should similarly evaluate the other anti-homicide programs it conducts or funds.

CSO's current approach toward evaluating ASJ consists of the in-country

CSO team, with the help of ASJ, reporting the homicide count in the three neighborhoods in which ASJ operates its Peace and Justice Program (Internal CSO Document, “Metrics Tracker”). A downward trend in homicides presumably demonstrates ASJ’s success and the effectiveness of CSO funding, while an upward trend reveals the opposite.

CSO’s current evaluation method for ASJ’s Peace and Justice Program potentially provides misleading results to Embassy Tegucigalpa decision-makers. For example, imagine that the homicide rate across all Tegucigalpa drastically increases, while the rate in ASJ’s neighborhoods moves only slightly upward. Because it tracks the homicide count only in ASJ’s neighborhoods, CSO’s method would mark ASJ as unsuccessful because the homicide rate increased in ASJ’s area of operations. ASJ and the effectiveness of this anti-homicide funding would then be marked as ineffective despite the much larger homicide increase in neighborhoods where ASJ does not operate. In other words, the slight rise in homicides in ASJ’s neighborhoods might actually indicate the success of ASJ’s Peace and Justice Program: ASJ prevented an even larger increase in violence from materializing.

Therefore, in addition to improving homicide data, CSO must adopt a new method to evaluate ASJ so that Embassy Tegucigalpa can accurately understand the effects of its funding. A relatively illuminating method would be to compare (with the aid of simple graphs) homicide trends in Tegucigalpa neighborhoods where ASJ has intervened with trends in other similarly violent Tegucigalpa neighborhoods; the extent to which the slope of the ASJ line is less than the non-ASJ line (i.e. the ASJ line is “flatter”) indicates the potential success of the Peace and Justice Program. ASJ could also adopt more rigorous methods such as difference-in-differences or propensity score matching. The first method statistically compares the homicide trends across different neighborhoods to isolate the effect of ASJ. The other compares the homicide trends in Nueva Suyapa and Flor Del Campo to trends in neighborhoods with similar levels of violence.

Embassy Tegucigalpa should apply this same logic to the other anti-homicide programs it operates or funds. For instance, USAID funds a number of initiatives aimed at improving citizen security and reducing violence (USAID 2014). Embassy Tegucigalpa should ensure that these programs are similarly evaluated so that State Department decisionmakers can make informed choices when funding anti-homicide efforts.

CONCLUSION

To conclude, Honduras' staggeringly high homicide rate—deeply linked to a confluence of factors including international narcotics trafficking, the growth of organized gangs, migration and deportation patterns, inequality, and near impunity for criminals—necessitates nontraditional measures. To reduce impunity, the Association for a More Just Society (ASJ) pioneered a witness protection and investigation program that now operates in three neighborhoods: Nueva Suyapa, Flor del Campo, and Villa Nueva. The authors analyzed ASJ's neighborhood operations and recommend they infuse another urban anti-homicide strategy, the acclaimed Operation Ceasefire, to more efficaciously combat violence in Tegucigalpa neighborhoods. US support for ASJ, which is currently only financial, should expand to include logistical support from Honduran Government units vetted and aided by the US Government. Together, ASJ's Peace and Justice program and Honduran vetted units can implement a Ceasefire pilot in Tegucigalpa's most dangerous neighborhoods. Evaluation of all ongoing work is paramount, so that the Honduran Government and outside parties can identify best practices and continue efficaciously working toward a safer Honduras.

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4

FALLING APART? GOVERNMENT FAILURE, USURPED SOVEREIGNTY, AND ALTERNATIVE GOVERNANCE IN AFRICA

Yolaine Frossard de Saugy

“Failed states” are considered a national security challenge by many countries including the United States, leading to a global effort to find ways of detecting and fixing them. The approach chosen for the last two decades is misleading as state failure is actually a long-term process affecting states, which were not necessarily functional in the first place. Supporting local governance schemes is in some cases preferable to reinstating central states at any cost.

There is a tendency upon observing problems in distressed regions of the world to see only on [sic] the failure of the current situation, ignoring the quite possibly even worse state of affairs that preceded it.

-Peter T. Leeson

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INTRODUCTION

It is generally assumed that state performance can be assessed using a pre-defined list of criteria such as economic growth or governmental monopoly on authority and strength. If a given state does not meet these criteria, it is considered as “failed” or “collapsed.” Such a verdict generally prompts an intervention from outside to tackle the chaos, anarchy, and violence that ensue from the disappearance of central authority. This belief has driven attempts at foreign intervention in Africa and other parts of the world for two decades. However, assessing the performance of a state is not as straightforward as this approach suggests. Whereas the actual collapse and disappearance of central government can be dated, the weakening of state authority is a long process, and a state usually fails long before the government collapses. Moreover, the final withdrawal of state authority does not imply the disappearance of the society the state rules; society has its own structures that re-surface when the political entity collapses, providing a different sort of governance.

Drawing on the work of scholars such as Peter Little and Christopher Clapham, this paper aims to question the notion of state failure itself, arguing that contemporary approaches to understanding and making policy towards ‘failed’ states are not effective. I begin this paper by retracing the rise of the notion of state failure in policy-making. Next, I will demonstrate how state failure is more complex than commonly thought by defining and analyzing the difference between failure and collapse, and linking each definition with intervention policies. Finally, I will argue that other forms of governance can step in as the state steps out and that these alternatives should be considered in any policy addressing “failed states.” Somalia and the Democratic Republic of Congo (DRC) will be used as case studies as they have both been chronically diagnosed as failed and continue to be seen as at least “fragile” today.

THE STATE IN CONTEXT: FAILURE AND THE OUTSIDE WORLD

Defining the overlapping notions of state weakness, fragility, failure or collapse is a difficult task, and neither academics nor policy makers have succeeded in proposing a unified definition of these terms. Despite this lack of consensus, the weakness or failure of government became an important concept in policy making after the end of the Cold War, particularly after the “Black Hawk Down” incident in Somalia in 1993 illustrated the difficulties linked with intervention in places where authority was either

weak or non-existent. During this infamous episode, U.S. troops intervening in Somalia to protect and assist humanitarian relief were attacked by militias in Mogadishu as they had become entangled in local struggles between warring factions, leading to the death of 18 American soldiers after a Black Hawk helicopter was shot down. Following this episode the United States retreated from Somalia, considering it too dangerous an environment to intervene.

Failed states were at first defined as places where governments were deemed incapable or unwilling to provide infrastructure and public goods to their populations and could not be reliable partners to the international actors trying to do so¹. International actors, be they the Australian Agency for International Aid (AusAID) or the U.S. Central Intelligence Agency (CIA),² strove to design ways of explaining and detecting risks of state fragility or failure to avoid intervening in unsafe environments without having a fitting strategy. At this point, state failure was not a matter of global security; intervention was primarily driven by “the need to ‘do something’ about a wrenching tragedy given saturation media coverage” (Menkhaus 2004, 7).

This outlook was reassessed in the wake of 9/11, when the attitude of the United States, in particular, shifted radically as stated by the U.S. National Security Strategy of 2002: “The events of September 11, 2001, taught us that weak states, like Afghanistan, can pose as great a danger to our national interests as strong states [...] poverty, weak institutions, and corruption can make weak states vulnerable to terrorist networks and drug cartels within their borders” (George W. Bush, NSS 2002). The states considered failed were then seen as major threats in the context of the “war on terror.” This slight redefinition of the meaning of state failure is linked to a shift in the conception of the state itself. The ability to control one’s territory and ensure the rule of the law now becomes the state’s most important features, not simply enabling conditions for development.

This shift in perception put state failure in the spotlight, but the ways of assessing failure remained the same, with international organizations or government devising their own indicators or general models. Examples include the CIA State Failure Task Force’s model, involving “statistical logistic regression analysis and a pattern recognition methodology known as ‘neural networks’ to try and predict state failure” (CIA State Failure Task Force Report 1995, VII), or the World Bank’s Country Policies and Institutional Performance Assessment relying on “16 criteria grouped in four clusters: (a) economic management; (b) structural policies; (c) policies for social inclusion and equity; and (d) public sector management and

institutions”.³ These mechanisms can produce interesting quantitative observations and parallels but they rely on pre-defined categories which do not account for the political diversity of non-Western political entities: “developed countries of the West set the standard against which other states are measured. It reifies the ‘Western state’, failing to see divergences between OECD state models, while ignoring other means of provision of public goods, such as those provided by informal traditional systems” (Lemay-Hébert 2013, 7). Moreover, they focus on the threat posed by a given state to global security, and the impact of that state on the outside world, which means overlooking a sizeable part of the long-term, internal process of state failure.

Such miscalculations have led to policy failure, most notably in Somalia. The 1992-93 “Black Hawk Down” disaster has been studied extensively, but the events of 2006-07 deserve their share of attention as well. As opposed to 1993, by 2006 nominal central authority existed in Somalia in the form of the Transitional Federal Government (TFG), established in 2004 after a series of reconciliation conferences held by Kenya and Ethiopia. However, the TFG was unable to exert its authority outside a small region in the South of the country and its legitimacy was deeply questioned because it was largely considered a product of foreign interests by the population. Another faction emerged gradually during the year 2006: the Union of Islamic Courts (UIC), initially made out of local Islamic tribunals based in the region of Mogadishu. They were able to oust most of the warlords from the capital region, bringing back stability, and enjoyed widespread support from the population.

Yet as the UIC movement grew, its leadership began to adopt more radical policies, to the point that it declared a jihad against Ethiopia. This decision triggered a military intervention from Ethiopia to support the TFG against a UIC terrorist threat now portrayed as part of the U.S. “war on terror.” Washington agreed to support this intervention and the TFG when Ethiopia asserted the existence of links between the UIC and Al-Qaeda as well as the perpetrators of the 1998 bombings in Tanzania. Somali warlords took advantage of the United States’ designation of the UIC as a terrorist organization and formed an “Alliance for the Restoration of Peace and Counter-Terrorism” to present themselves as allies in this fight and receive support and funding (Elmi 2010). As described by Aysegul Aydin: “Ironically, the warlords who fought in Somalia’s civil war between 1988 and 1991 and drove peacekeepers out of the country in 1993 were put on the U.S. payroll as a bulwark against religious terrorism” (Aydin 2012, 137). The military intervention that ensued disrupted the

fragile equilibrium which had allowed the region of Mogadishu to start regaining stability and endangered the renewed economic development that had arisen.

Ethiopian forces remained in Somalia for three years before being replaced by the African Union force, AMISOM, which is still on the ground to this day. The TFG is still unable to exert its authority on the entire country, and a radical, terrorist movement, Al-Shabaab, has emerged since 2007 and is responsible for numerous attacks in the region, including the Westgate shooting in Kenya in September 2013. The too easily-made association of a failed state with terrorism led the United States to support the shadow of a central state through a military operation with dubious consequences without paying enough attention to the complexity of the power struggle at play, unleashing an even more complex chain of reactions: “Far from rendering Somalia a less dangerous terrorist threat, the effect of the 2007–08 Ethiopian occupation was to make Somalia a much more dangerous place for the U.S., the West and Ethiopia itself” (Menkhaus 2009, 230).

THE PITFALLS OF SOVEREIGNTY

This reaction from the U.S. government is an interesting illustration of the tendency to consider central government as the only legitimate authority in a country, linked to a broader perception that states are the basic and essential units of political authority and must be preserved, or reinstated, in any case. It is not a new trend: the centrality of states was first asserted in 1648 with the Treaty of Westphalia in Europe and was then exported worldwide, being at the core of international laws, treaties and organizations ever since. The nation-state as a political form has taken over the planet, even more so after the decolonization wave of the 1960s, which saw in Africa (and other places) empires being replaced by western-like states. The Cold War reinforced this phenomenon as states were potential allies for both sides, and some of them were heavily supported even though they were no longer relevant in their own country because their presence served strategic purposes. As Rosa Brooks states: “During the Cold War, these *faux* states were propped up by the competing superpowers; with the end of the Cold War, many were revealed as the houses of cards they had been all along” (Brooks 2005, 1169).

Nevertheless, today states are still perceived as the primary unit of analysis in political science and international relations, being at the core of most of the literature on the topic and the reference in every political order. In this context, the failure of a state can only be perceived as the

worst-case scenario, as revealed by the words chosen in a *New York Times* article on Sierra Leone: “With the country still teetering on the brink of war *or, worse, collapse*” (Onishi 2000, *The New York Times*, November 19, emphasis added), explaining why it needs to be monitored and fixed as quickly as possible. The emphasis on security since 9/11 only reinforced this trend, as the ability to maintain order, not infrastructure or public goods distribution, has become the primary focus, shifting the definition of failed states to those incapable of maintaining order in a given territory and thus putting the entire world at risk. This evolution of the concept of state has put the idea of sovereignty at the core of our perception of the world: as long as an authority is considered sovereign over a territory, violating its sovereignty through intervention is disapproved internationally and interpreted as an act of war⁴. Hence the international community can only monitor the situation until a state is no longer able to maintain the illusion of authority and intervention is possible.

However, such an orientation towards the ability to intervene overlooks deeper phenomena to focus on their final expression. If indeed collapse as the disappearance of authority is quantifiable, the actual failure of a state is a more subtle, long-term process that can be, sometimes only, completed by collapse. The difference between failure and collapse as defined by Jennifer Milliken and Keith Krause—stating that failure involves the functional dimension of a state when it is no longer performing as it should be whereas collapse means the actual disintegration of authority—seems better able to capture the essence of the phenomenon (Milliken and Krause 2003). Failure can happen a long time before collapse, and is not necessarily synonymous with weakness, but is more widely understood as the failure of a state to perform the functions that justify its existence. Moreover, it implies that a society can continue to function, with different types of governance and a “parallel” economy, even after the disappearance of the foreign body that the state had become.

This idea of failure as a process and state as foreign to its society can be found, or derived from, the literature concerning Somalia and the DRC. In both cases academic study has shown that governments ceased to be effective, or at least to serve their peoples, before they were considered as failed or collapsed by the outside world. Concerning Somalia for instance, Mark Bradbury describes a situation where the state’s authority became more autocratic and violent after the defeat of Siyad Barre in the Ogaden War against Ethiopia in 1977 and relied on clan lines and personal allegiances to strengthen its power, to the point that “although the overthrow of the Barre government in 1991 appeared sudden, state collapse did not

happen overnight. [...] If a primary purpose of the state is to contain violence and provide security for its citizens, then the Somali state under Barre had ‘failed’ before it ‘collapsed’” (Bradbury 2008, 41).

The case of DRC allows for similar observations. President Mobutu came to power in 1965, five years after the independence of Congo had been proclaimed, and amid a civil war involving local and international actors. Mobutu remained in power officially until 1997, but the Mobutist state is often said to have disappeared from the life of the Congolese long before it officially collapsed (Reyntjens 2009), leaving people to fend for themselves under the reign of the infamous popular saying “*article 15 : débrouillez-vous.*”⁵ In this case too, the situation is generally blamed on a state that relies on a small fraction of the population, the President’s “clan”, which monopolizes power and wealth causing the institutions to decay and the public space and security to be privatized⁶. This is especially true of the Mobutu regime, which survived essentially through patronage networks sustained by the transfer of public goods to private hands since the 1970s (Reyntjens 2009). The population of the DRC could therefore no longer rely on government as an institution because it had become deeply personalized (Rotberg 2004) and detached from the society it was supposed to rule. Mobutu’s system was only strong as long as he could sustain his network of allies and his authority shattered as soon as this ability faded away, since the state had lost or sold its ability to function correctly.

Hence there seems to be a sizeable discrepancy between the moment when a state starts failing its citizens and the moment it is declared a failure by the international community. To capture the true nature of state failure one must then move away from short-term “fixing”-oriented policies constrained by the dogma of sovereignty, applicable only in the terminal stage of state collapse and go back to the nature of the state, its capacities and its functions. If we consider the state as an institution providing to its population not only security but infrastructure and public goods and exerting a legitimate authority on its citizen, then the moment this institution ceases to serve its entire population (because it focuses on a small fraction of it or because it has become an instrument of personal rule), the moment it loses its legitimacy to govern is the moment it has failed and must be considered so by all observers. State failure is the divorce between a state and its society.⁷ It is thus quite telling that in both examples mentioned, the situation started going awry after various political coups or military invasions which put non-elected rulers in power⁸. One could go even further and argue that more than a divorce, state collapse is an annulment, and

that the state was never a truly functioning institution serving its people. Then, as Peter Little wonders, “can we really speak of a failed state, if it is questionable whether a meaningful state ever existed?” (Little 2003, 14) The obsession for an international system built around states might therefore be even more of a mistake because some states were dysfunctional from the off.

Somalia is a particularly good example of this phenomenon of a dysfunctional remote state. According to the War-torn Societies Project (WSP, now Interpeace) program for Somalia: “colonial and post-colonial state structures had become less ingrained into the Somali fabric than in most other African countries. Modern state apparatus retained an alien quality in relation to the basic forms of social organization in Somalia. [...] When the post-colonial regime of Siyad Barre increasingly made use of the repressive powers invested in a centralized government, this only underscored the alienation of the state from the society for which it was supposed to provide” (WSP Somali Program 2001, 31-32). The Somali state that failed in fact never really succeeded, and other structures have re-emerged since its collapse that are probably more closely intertwined with society and more successful at organizing it.

Not only is Somalia quite different from the picture one can find in the media of an anarchic and chaotic place; it has its own systems of governance, the most effective of which are not recognized internationally because they do not fit in the mold of the internationally agreed upon “Somalia.” This partly explains why Peter Little is able to argue that “the ultimate paradox [...] is that some sectors of Somali economy and society are doing quite fine—as, if not better than during the pre-war (pre-1991) period.” Ersun Kurtulus mentions however that this economic “miracle” happened before the 2006 intervention mentioned, and might have been somehow dampened since then (Kurtulus 2012). Nevertheless, even when it was considered entirely stateless Somalia fared better than most expected, and definitely better than under a *faux* government. During the 1980s, the Somali “state’s” economy suffered 300% percent inflation, which was reversed after it became “stateless” in 1991 with a boom in money transfers (one of the largest money transfer companies in the world, Dahabshiil, is based in Somaliland), mobile telecommunications and cattle trade.

Moreover, even though centralized government has disappeared, social structures have led to different forms of authority: “Somalia is, in other words, without government but not without governance” (Menkhaus 2006-2007, 82). One can see various forms of organizations, from autonomous regional entities to local judicial systems that help bring stabil-

ity to the Somalis; among those, Somaliland stands out from the rest of Somalia with its stability and the existence of a genuine political body. Even though it has not been spared internal conflict and outbreaks of violence, Somaliland has an administration with “nineteen ministries, a civil service, a high court, security services and a central bank” (Bradbury 2008, 85). Bradbury explains that such an achievement has been made possible through internal peace processes and reconciliation conferences relying on traditional, grass-root clan structures—held away from international attention—which managed to curb violence. The absence of a central state is a handicap in a world where it is considered the primary structure of power, but alternative solutions can emerge, particularly if the state as it was did not make sense for its citizens.

This analysis made about the “textbook case” of state failure can be extended to other states in Africa and elsewhere, falsifying the assumption that the state is the only meaningful governance structure. One must underline that striving to re-build the state as it was before its collapse without questioning the profound roots of failure is not necessarily the best of ideas: “although ‘collapse’ at one level may seem synonymous with ‘disorder’, it may not require a reflex reaction intent on putting that same order back in place” (Doornbos 2003, 54). There is a real need to fight the “sense of unease at the sight of blank spaces emerging on the world’s map” accentuated by the fear of terrorist networks settling in. It would be more appropriate to leave more space and time to locally-owned forms of governance instead of directly trying to reinstate central governments. Even though it is certain that the collapse of a government is never benign for a population and has tremendous repercussions, artificially maintaining a state or propping it back up from the outside may not be the perfect solution either, especially if its relevance is doubtful and it seems to exist only because it is recognized by others. States are only relevant as political units as long as they are strongly linked with the society they rule and serve their populations rightly. If they lose this relevance, then policy makers must accept to see them being redrawn and re-thought to better encompass their populations’ needs, and should even encourage such a process.

BEYOND FAILURE

The re-definition of state failure, as well as the nature of the state itself, has important consequences for policy making. It is vital to stop considering Westphalian-like states as the only desirable outcome, and to stop applying a single solution to various problems. The first attempt to form a government in Liberia, another African “failed state” in 1997, illustrates

this point perfectly: the international community, mainly through the United Nations force UNOMIL, tried to forge an agreement between all warring factions to organize presidential elections as soon as possible; the process was presented as the way to restore a legitimate central state. However, this intervention targeted procedural politics only, and made no attempt to “cope with the past as a way of relegitimizing the state or preventing future abuses” (Miller 2013, 151). As a result, Charles Taylor, the leading warlord partly responsible for the conflict, was re-elected but only “out of fear that he would resume the war if he lost” (Miller 2013, p.150). Even though the elections were deemed fair, they did not represent a step towards better political governance because the process in itself was not adapted to the situation. Unsurprisingly, the civil war resumed in 1999 and lasted 4 more years before a much more comprehensive process started, aimed at strengthening all aspects of society and truly rebuilding a legitimate authority.

The only way to avoid such setbacks is to admit that each country functions differently, despite the fact that they look similar on the map; it is misleading to believe that there is only one tool to fix all cases. The first step to act in a failed or collapsed state should be to study its particular environment and identify the remaining power structures. As shown in the case of Somalia, society can be a significant supplier of structure and organization. Intervention should not be about creating but supporting existing locally or regionally-owned initiatives—even if they seem to diverge from our favored models of political structure—that take time to be put in place and evolve along their own dynamics. Local elders could do more to reinstate political authority in Somaliland than the 14 or so internationally-sponsored “national” reconciliation conferences for Somalia taking place in the last two decades, because they headed a locally-owned system and slowly built on their authority to reconstitute the political system. They were able to do so because they enjoyed more popular support and legitimacy in the eyes of the people they ruled than the current TFG. Somalia is a particularly complex environment, but one thing has been proven over the years: authority imposed from the outside is particularly badly perceived, and the governments backed by foreign support have never been able to assert their authority. It is therefore necessary to stop forcing solutions from the top or outside, and allow different, more local types of political orders to emerge.

The solution favored at the moment in the case of Somalia is federalism. This can be a good solution, as it would allow the country to have fair relationships with its neighbors without falling back into the trap of an

over-centralized power and given the risk of appropriation by competing clans. But federalism should not be constructed from above; if it corresponds to the wish of the population, it should emerge from below, along the lines of what happened in Puntland, a region that reconstituted its own structure while defining itself as the first block of a future federal Somalia. The path recently pursued by the United Nations Assistance Mission in Somalia (UNSAM) seems promising as it supports the building of regional administrations, but its links with local actors should be strengthened to ensure the participation of the entire population in this process. It is crucial to engage with the existing structures of governance to make this process sustainable, even if it takes longer than expected. Moreover, negotiations with Somaliland should aim to turn it into a privileged partner, instead of trying to include it in the federation, in order to respect its decision to remain independent, as it has proven its sustainability as a separate entity.

In addition, favoring a federal and regional approach to governance will be helpful in avoiding the pitfalls of a centralized authority observed under Barre's regime, and is necessary to re-establish or strengthen the police or the justice system. But, it cannot be the only scope of intervention. To bring stability back to Somalia, it is essential to assist all aspects of civil society and economic development at the local level. Investments in microfinance, small businesses or social enterprises should be encouraged in order to allow Somalis to tackle economic and social challenges on their own and rebuild a cohesive society. Somali entrepreneurs, businessmen, and intellectuals should be allowed and encouraged to forge their own solutions to the problems of their country, building a solid base for political reconstruction and enabling the growth of a functional and active civil society.

This attitude is valid in the case of Somalia as it has witnessed a collapse of central authority, but there are many other cases in Africa and elsewhere in which the authority of the state is questionable and should be carefully studied. The DRC for instance, where the United Nations force MONUSCO is still supporting the authority of the Kabila regime, is not a collapsed state today but should still be considered fragile and also requires policies particular to its situation. In this case, as in Somalia, international armed intervention fulfilled an important role fighting and disarming the rebels. This is insufficient. There is a deeper need to re-build trust in the government and its institutions throughout the country, or vacuums will continue to exist for other rebel movements to easily form and find support. Aid and attention should go to the central government but also to regional and local authorities to ensure that the whole system

is strengthened and able to access the entire country with provisions of public goods, infrastructure, and services. Moreover, local and individual initiatives aimed at solving social problems should be encouraged as well, even if they are not directly linked to the government; a strong civil society is the best way to keep political power in check and ensure sustainable development and stability. In the DRC case, relying on multilateral organizations as partners might be particularly useful as they are in a position to reach the population more directly with less diplomatic repercussions.

Each and every territory has its own particularities and histories, and no solution can be applied to all of them indifferently. The DRC and Somalia are or have been considered failed states, but the mechanisms that led to their failures are radically different: the appropriation of resources played a key role in the DRC, whereas this kind of riches never were at stake in Somalia. Moreover, the kind of civil war or clan rivalries they face do not follow the same dynamics. Therefore, in designing efficient policies for failed or collapsed states, it is first essential to re-think both our attitude towards them and the way we conceive of state failure itself. It is imperative to recognize that assessing failure through the final loss of all claims to sovereignty prevents one from grasping the subtleties and nuances of the actual meaning of state failure. Policy makers must move away from most of the definitions of state failure put forward to date and redesign one taking into account the long-term processes described in this paper instead of considering only their possible final consequence—state collapse. State failure must be understood as the fracture between a state and the society it serves and rules, and the loss of legitimacy should be at the center of any effort to detect fragile states. In fragile or failing states, aid should be directed at all levels: through the government in order not to marginalize it, but also through regional and local authorities and to empower people at the grassroots level. Government should not be left out but must not be the sole interlocutor so that the whole social structure is strengthened and resources are not captured by neo-patrimonial networks. Helping to build a strong and resilient society should be the primary objective of any intervention, instead of putting other priorities first.

In any case, we must remember that governance does not necessarily mean state, all the more so if the state was never really linked to its society. It must be emphasized that this does not mean that state collapse is a positive or desirable event. As Peter Leeson wrote, “It may not be true that *any* government is superior to no government” (Leeson 2003, 690) and neither is the absence central government necessarily synonymous with war-torn, ever-lasting chaos. Most importantly, failed states should not be

looked at simply as potential dangers for others; they present challenges, but those can and must be addressed while putting their populations' aspirations at the core of all projects. This is the only way to avoid supporting oppressive structures and ineffective nation-state-building initiatives, not only in Africa but on every continent, and to promote peace in the long term by bringing stability instead of stirring conflict. The international community needs to accept the blanks in the map and start imagining different ways of progressively, sustainably coloring them in, taking into account that one color does not fit all.

NOTES

- ¹ This perspective is attested by the various definitions given by international agencies, such as AusAID: "Poorly performing countries are those with weak policies and institutions and where there is little chance of sustainable development" or the United Kingdom's DFID: "Fragile states include those where the government cannot or will not deliver core functions to the majority of its people, including the poor" (Cammack, McLeod, Menocal and Christiansen 2006, 17).
- ² Incidentally, the CIA's State Failure Task Force was founded in 1994-95.
- ³ See *IDA Resource Allocation Index*, <http://www.worldbank.org/ida/IRAI-2011.html>.
- ⁴ The notion of "R2P", responsibility to protect, is still widely debated and does always not seem to justify intervention in a civil war, as demonstrated most recently by the Syrian conflict.
- ⁵ Meaning "Article 15, find a way to get by."
- ⁶ A weak formal economy entails few means for the state, leading to the incapability to maintain infrastructure and provide public goods, and as a consequence leading to their privatization, as explained by Nicolas Van de Walle about Zaïre in "The Economic correlates of state failure: taxes, foreign aid, and policies" (*When States Fail*, Rotberg 2004, 106), an aspect also discussed by Cameron Thies ("State fiscal capacity and state failure in sub-Saharan Africa" in Ndulo and Grieco 2010).
- ⁷ Ken Menkhaus supports this theory in the case of Somalia, describing "a weak, nominal central government [that] has managed to maintain juridical sovereignty as a 'quasi-state', deemed to exist primarily because other states say it does" (Menkhaus 2004, 17); Jochen Hippler adds that one of the key features of Barre's state was that it "*ne représentait toutefois pas toute la société, mais seulement quelques secteurs limités*", it did not represent the whole society but only a couple of its segments Hippler 2006, 41).
- ⁸ This has been the case for Mobutu in 1965 and Siyad Barre in 1969.

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5

LEADERSHIP ANALYSIS: IRANIAN PRESIDENT HASSAN ROUHANI

Melanie Harris

This article presents a political and psychological profile of Iranian President Hassan Rouhani using leadership analysis. Such analysis, which fuses political science with psychology, serves as a common tool of the intelligence community. In detailing President Rouhani's political career and his position within the Iranian power structure, this article seeks to inform the future of the U.S. policy toward Iran, with an eye towards strengthening the position of Iranian moderates.

INTRODUCTION

In an attempt to construct a practicable leadership analysis of Iranian President Hassan Rouhani, this paper outlines the general principles and potential shortcomings of leadership analysis as intelligence community (IC) tradecraft. Mindful of these concepts, it then offers a preliminary leadership analysis of Rouhani. The primary objective of the analysis is to assess the forces that govern Rouhani's behavior and limit his political freedom of movement. The paper addresses the theory, technique, and shortcomings of leadership analysis. It then briefly addresses previous intelligence community analyses of Iranian leaders before offering a political and psychological profile of Rouhani. President Rouhani's potential policy agenda will be contextualized by a discussion of his place within the factional power balance in Iran. Finally, the paper will discuss implications that arise from this early assessment of the new Iranian president.

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LEADERSHIP ANALYSIS AS INTELLIGENCE TRADECRAFT

“In war it is not the men that matter—it is the man.”

– Napoleon

“There is no history; only biography.”

– Ralph Waldo Emerson

The impact of individual actors is paramount to international politics. While some dispute the importance of individual leaders—preferring to ascribe state behavior to overriding social trends and cultural forces, the dynamics of group decision-making, or structural elements at the national level—the intelligence community has commissioned studies of key foreign leaders since the inception of the Office of Strategic Services during WWII (Omestad 1994).

Careful, systematic research and analysis of influential actors and their environments serves to supplement the personal interactions of U.S. diplomatic representatives, whose assessments can be subjective and impressionistic. Leadership analysis may be exceptionally important for authoritarian regimes such as Iran, where the trappings of a decentralized political process serve as mere “window dressing” and the whims of an individual leader can be decisive (*ibid.*, 107).

Leadership analysis fuses psychology with political science. Yet analysts face the unique challenge of evaluating a subject from afar and deducing internal motivations from speeches, writings, unrehearsed/spontaneous remarks, and human sources where available. Like psychologists, they seek to uncover behavioral motivations, themes, and values, but they do not aim to arrive at clinical diagnoses. Their task, rather, is to help U.S. officials understand the behavior of their foreign counterparts (*ibid.*). The goal is to find trends, not make firm predictions (*ibid.*, 114).

The endeavor is susceptible to a few weaknesses:

Inaccuracy/unavailability of information: Obtaining accurate data about a high-profile leader, especially one from a closed society, is difficult. Drawing the correct conclusions from incomplete information—which is often filtered through the highly subjective lenses of human intelligence (HUMINT) assets—poses another significant hurdle. It is notoriously difficult to uncover details about foreign leaders’ early years, an especially problematic setback for psychologically-oriented analysts who believe that “political identity is usually consolidated in adolescence” (*ibid.*, 114). The historical influence of the field of psychology on IC leadership analysis has repelled some government officials, who have complained that leadership

profiles are replete with caveats and “psychobabble” (ibid., 106).

Overemphasis on the individual and on stable preferences: There is a risk that analysts and policymakers will “overestimate the power and stability of the individual and underestimate those of situational variables” (ibid., 120). Consumers of leadership analyses should also guard against interpreting the actions of a foreign leader as representative of the broad consensus in his or her country. Further, policymakers must be mindful of the tendency to underestimate a leader’s inclination to change his or her behavior, sometimes unpredictably, in response to the actions of the U.S. or other relevant powers (ibid.).

Analytical biases: Though not exclusive to leadership analyses, certain biases are especially common in this type of profiling. Confirmation bias, the propensity to seek information that confirms one’s beliefs and ignore contrary evidence (Jervis 2010, 150), is probable when analysts become intellectually attached to their personal assessment of a foreign leader. Another pitfall is mirror imaging, the assumption that the target of analysis thinks like the analyst (Witlin 2008). Finally, a misinterpretation of the national or institutional culture of the foreign leader can handicap leadership analysis.

Some combination of the above fallacies was likely responsible for notoriously inaccurate leadership analyses that were produced by the IC. For example, IC profiles of Saddam Hussein from the early 1990s wrongly interpreted the raw intelligence, concluding that he was “ultimately a pragmatist who would give in under pressure” (Carey 2011). In 1993, the CIA provided lawmakers with a profile alleging that Haitian President Jean-Bertrand Aristide was manic-depressive. The analysis leaked, prompting a furious denial from Aristide, and was later discredited (ibid.). During the Ford administration, a profile of Leonid Brezhnev depicted the General Secretary as “sort of a buffoon,” a characterization with which National Security Advisor Brent Scowcroft disagreed. Scowcroft, unlike the profilers, had interacted with Brezhnev personally and perceived Brezhnev to be “wilier and more clever” than the analysts believed (Omestad 1994, 118). In an even earlier example, the CIA in the 1950s incorrectly assessed North Vietnamese leader Ho Chi Minh, exaggerating his Marxism and underestimating his strong nationalism. The agency was then caught off guard by his later attempt to unify the country (ibid.).

HISTORICAL IC MISSTEPS IN ASSESSING IRANIAN LEADERS

In addition to considering common shortcomings of leadership analysis, profiles of President Rouhani must also be informed by previous errors committed regarding Iran's rulers. Noting earlier misjudgments can help analysts avoid pitfalls that flow from an agency's institutional understanding of the target country's perceived patterns of behavior.

Such mistakes include a CIA profile of Shah Mohammad Reza Pahlavi that failed to appreciate his "insecurity and indecision" as well as his "unwillingness to employ big force" to quash the incipient 1979 revolution (Omestad 1994, 120). In a telling illustration of the importance of comprehensive factual data, this analysis also fell short due to the agency's ignorance of the Shah's terminal illness, which he effectively concealed from the United States. The agency had no way of knowing, as demonstrations erupted across Iran, that the Shah's cancer and chemotherapy would weaken his resolve to stay put (*ibid.*). This lack of intelligence about the Shah's willingness to maintain a firm grip on power, combined with the agency's failure to penetrate the Iranian opposition, contributed to the production of a deeply flawed 1978 National Intelligence Estimate that declared Iran was "not in a pre-revolutionary stage" (Reidel 2008, 102).

Ten years later, the CIA also incorrectly predicted that then-Speaker of the Parliament (and soon-to-be-president) Hashemi Rafsanjani would succeed Ayatollah Khomeini as Supreme Leader of Iran. After another important transition of power in Iran another decade later, when "reformist" President Mohammad Khatami took office in 1997, the IC did not anticipate the degree to which Khatami's conciliatory outreach would be stymied by aggressive hardline elements in Iran. Indeed, Khatami may have only been donning the pretense of reform to act out a highly choreographed scheme designed by the Supreme Leader to temporarily placate the West. This possibility is especially intriguing because of its potential application to Rouhani's case today (Rubin 2002).

These errors were not necessarily the result of poor tradecraft, but instead encapsulate the formidable challenges endemic to the long-distance profiling of furtive and enigmatic leaders. From these illustrations, key lessons can be drawn about the analysis of Iranian leadership. First, it is critical to pursue assets from many segments of Iranian society, in order to expand the pool of sources who have interacted with the leader in different environments and at multiple points in his professional and personal development. In addition, it is important to consider salient forces of a

more intimate and interpersonal nature—such as a leader’s health and relationships—that may affect their behavior. Finally, it is essential to critically assess the domestic dynamics that constrain a president’s political mobility. Leadership analysts who integrate such country-specific lessons as well as the general pitfalls of the practice will be best able to produce an accurate and useful profile.

LEADERSHIP ANALYSIS OF PRESIDENT ROUHANI, “THE DIPLOMAT SHEIKH”

While Supreme Leader Ayatollah Ali Khamenei undoubtedly holds the ultimate position of authority in Iran, the role of the president remains consequential. In addition to liaising directly with foreign powers and acting as the public face of Iran, the president selects top ministers, formulates budgets, and helps steer and execute national security policy (Takeyh 2013). It is thus critical that the IC monitor and analyze President Rouhani’s behavior, seek to determine the degree of unity around his leadership, and identify possible cleavages that might undermine his autonomy. The below information is drawn from English-language biographical profiles and public political commentary, and thus is subject to some of the shortcomings discussed above. Though writing from a distance, many of the authors cited in this profile are Iran experts and this composite should thus be viewed as an informed but preliminary analysis.

Formative Days Foreshadow Political Engagement and Cosmopolitan Ethos

Hassan Rouhani was born Hassan Feridon on November 12, 1948, in Sorkheh, Iran, and is now sixty-five years of age. His parents’ opposition to the Shah instilled in him a concern with national political matters, and their support for Ayatollah Khomeini influenced his interest in the study of religion. He attended religious seminaries in the 1960s, studying under leading Shia scholars. While in seminary, he adopted the name “Rouhani,” which means “community of clerics” (Hassan Rouhani Biography 2013).

In 1969, Rouhani enrolled at the University of Tehran, graduating three years later with a bachelor’s degree in judicial law. Rouhani would ultimately return to school in the 1990s, earning a doctorate in constitutional law at Glasgow Caledonian University in Scotland—an interesting choice considering his rising stature within a theocracy “that had little use for European credentials” (Maloney 2013). His decision to study in the West contributes to the perception, held by some foreign observers, that he is more cosmopolitan than most Iranian elites; he has also travelled

widely and developed contacts with Western officials through his later post as Iran's chief nuclear negotiator at the United Nations. He is fluent in Persian, English, and Arabic, and speaks some French, German, and Russian (Banai 2013b).

Government Service Forges National Security Powerbroker and Tough Negotiator

Shortly after graduating from the University of Tehran in 1972, Rouhani joined the movement supporting Ayatollah Khomeini and traveled across the country to speak out against the Shah's regime. He was forced to flee Iran in 1977 because of this subversive activity, and joined the Ayatollah in exile in Paris, traveling further to deliver speeches to student groups across Europe. After the 1979 revolution, Rouhani returned to Iran to join the new government.

He has held multiple national security posts, including as secretary and representative of the Supreme Defense Council (1983-1988), commander of the Iranian air defenses (1985-1991), deputy commander of the armed forces (1988-1989), national security adviser to the president (1989-1998), secretary of the Supreme National Security Council (1989-2005), and head nuclear negotiator from 2003 to 2005. It was during his tenure as nuclear negotiator that his judicious demeanor and religious training cemented his reputation as "the diplomat sheikh," (Hassan Rouhani Biography 2013) a nickname originally coined by a reformist Iranian newspaper and repeated frequently in domestic and foreign Persian-language media.

In 2003, Rouhani represented Iran in talks with the International Atomic Energy Agency (IAEA) in an attempt to stave off severe reprisals to its newly-disclosed nuclear program. Rouhani's concessions as IAEA representative is evidence of his longstanding alignment with the camp of Iranian moderates that is willing to negotiate over the nuclear program. The Supreme Leader rescinded the suspension in 2005, believing that too few of the incentives promised by nuclear negotiators had materialized (*ibid.*). Until the November 2013 agreement, this short-lived effort represented Iran's most significant compromise on the nuclear issue (*ibid.*).

The suspension of the agreement, election of Mahmoud Ahmadinejad, and increasingly hostile exchanges with the Bush administration brought renewed Iranian defiance of international agreements and of the Western-backed global order. Long a vocal critic of Ahmadinejad, Rouhani stepped down from his post as secretary of the Supreme National Security Council in 2005 after sixteen years of service (*ibid.*). He also resigned responsibility for the nuclear portfolio, and emerged as the "whipping boy" for Iran's

ascendant hardliners, for whom Rouhani's diplomacy "represented a surrender to the rapacious West: exchanging diamonds for peanuts, conceding Iran's resources and its influence as irresponsibly as the monarchy had" (Maloney 2013).

As a result of the strengthening of Iran's hardliners under Ahmadinejad, Rouhani found himself consigned to a government think tank. Not to be subdued, in this post he "inveighed in surprisingly frank tones against Ahmadinejad's ideologically-driven excesses," playing the role of "informal spokesman for Iran's embattled realists" (ibid). Rouhani also penned a surprisingly candid memoir of his involvement in Iranian political life that critiqued the regime with trademark bluntness (ibid). For example, in the book he laments the Islamic Republic's penchant for taking extreme positions from which it is difficult to retreat, including "issuing needlessly extravagant demands for the release of American hostages" during the embassy crisis and insisting that the Iran-Iraq war not end until Hussein was deposed (Takeyh 2013).

Interestingly, during the Ahmadinejad years Rouhani appears to have retained his closeness to Khamenei while being publicly scapegoated for the tarnished nuclear negotiations (ibid.). This dynamic reveals as much about Iranian domestic politics as it does about Rouhani. A trusted asset to the national security infrastructure, he seemed comfortable taking the fall while retaining influence with the Supreme Leader and preserving his centrist inclinations and technocratic allies.

Throughout his years of service to the Islamic Republic, Rouhani earned a reputation among European negotiators and others as a tough negotiator (Arkin 2013a). He is regarded as a hard-headed but strategic realist who is accessible to both hardliners and reformers (Banai 2013b). He appears to possess the ability to persuade multiple Iranian factions that he is "one of their own," owing to an ability to listen intently and project the impression that he deeply understands a colleague or adversary's position (Arkin 2013a).

Rouhani seems to seek to "transcend the trap of partisanship," and argues that he represents the "reasonable faction," which he describes as comprising those in Iran who care first and foremost about problem-solving (Maloney 2013). U.S.-based analysts characterize him as a "political natural" whose demeanor can help undo the "public relations damage left by Ahmadinejad" (ibid.). Some anticipate that Rouhani will serve as a "unifying presence" and capitalize on his centrist position to mitigate infighting between ossified political factions. Moderate politicians in Iran must pander to popular grievances about the elite while avoiding outright

confrontation with the regime (Arkin 2013b), and Rouhani seems to have effectively done so during his presidential campaign.

A President with a Mandate, But Facing Constraints

It is critical to analyze Rouhani's ascent to the presidency in order to deduce his political latitude. Even if Rouhani possesses the capacity to bridge internal divides, the circumstances of his election—particularly whether he has been empowered by the Supreme Leader to act independently—play a crucial role in determining how much leeway he has as president.

Presidential Campaign: Values and Rhetoric

First, it is important to consider the effects of the 2009 Green Movement protests in Iran on the 2013 presidential election. While the opposition was violently and effectively quashed in 2009, suppressed public frustration resurfaced in milder form during the 2013 elections. After the moderate reformist and former president Akbar Rafsanjani was unexpectedly disqualified from the contest, Rouhani's candidacy "became a vessel for carrying the public's message of lingering discontent" (Banai 2013a). This does not imply that Rouhani was regarded as a reformist, but rather that the marginalized opposition came to believe that of the Supreme Leader's hand-picked pool of candidates, he would be most likely to make concessions to the international community in order to improve the economy (Maloney 2013).

Rouhani conducted his campaign with a boldness and openness that seemed to electrify the electorate. In May 2013, a state news report quoted Rouhani hinting at his capacity for conciliation with the United States: "It is not that Iran has to remain angry with the United States forever and have no relations with it. Under appropriate conditions, where national interests are protected, this situation has to change" (Arkin 2013b). On the campaign trail, Rouhani denounced the recklessness of Ahmadinejad's inflammatory rhetoric and spoke straightforwardly of the costs of international isolation on Iran's economy (Maloney 2013). He confidently defended his nuclear record, and during a debate coined a slogan—that Iran needs working factories as much as it needs spinning centrifuges—which was considered "catchy enough that his campaign tweeted a variation of it within moments of his having uttered it" (ibid.). His frankness and strong focus on economic issues propelled him to the presidency in the first ballot by an unexpectedly large margin.

Relationship with Supreme Leader Ali Khamenei

In order to understand Rouhani's political latitude as president, it is necessary to silhouette his office against the authority of the Supreme Leader's

position. Ayatollah Khamenei still controls the policy agenda in Iran, and the status of many important issues, including Iran's nuclear program is, ultimately, not "a presidential prerogative" (*ibid.*).

Since 2003, Ayatollah Khamenei has made the strategic calculation that an illicit nuclear program will bring prestige, security, and regional influence to Iran and distract U.S. attention from threats of regime change. Khamenei has found plentiful support for this position among influential segments of the hardline wing of Iranian politics.¹ Iran's hardliners regard themselves as charged with protecting the ideals of the regime, and have amassed significant state subsidies and a privileged position in Iranian society (Banai 2013b). The hardliners object to a nuclear agreement with the U.S. for various reasons: some are invested in Iran's nuclear advancement as a matter of national pride; others believe the nuclear program ensures critical leverage. There are also those who benefit economically from the illicit activities that circumvent the sanctions (Einhorn 2013b).

Yet Khamenei is beholden to constituencies beyond the hardline elements, and his foremost preoccupation is with regime survival. His oscillations between allowing reformist and conservative presidents reveal that he is not entirely insulated from public pressure, and the deep divisions about the nuclear program that were revealed during the 2013 election may have had an effect on the Supreme Leader. With sanctions devastating the Iranian economy, he likely concluded that it is worthwhile to pursue some accommodation with the West in order to ease economic pressure and allay popular discontent (Einhorn 2013a). Khamenei has articulated his belief that reform measures be led by "a powerful and restraining center" so that they do not spiral out of control (Ganji 2013). Regardless of whether or not President Rouhani's election was engineered by the Supreme Leader, it is likely that Khamenei views Rouhani as conveniently representative of such a political center.

Indeed, much uncertainty remains as to whether Rouhani was the Supreme Leader's preferred candidate. This ambiguity hampers our understanding of whether or not the Ayatollah planned to seek greater accommodation with the West before the election. The Supreme Leader's political support for candidate Rouhani remains an important unknown that leadership analysts must continue to investigate. There are arguments and evidence to support both hypotheses: that Rouhani was Khamenei's favored candidate, or that Rouhani's victory was the unintended consequence of the Ayatollah's delicate balancing act in which he attempts to exercise control over elections while upholding the appearance of a legitimate democratic process.

Those who argue that Rouhani was shepherded into the presidency by the Supreme Leader's channels of control over Iran's electoral process cite Rouhani's close relationship with Khamenei. Rouhani has long been in Khamenei's orbit, and his continued presence there after the 2005 nuclear flap indicates the Ayatollah's deep trust in Rouhani. Some believe that Rouhani's independent-mindedness is an asset to the Supreme Leader, who seeks to satisfy an unruly and deeply aggrieved population that demands a more nuanced discourse than that offered by Ahmadinejad. It is possible that the "diplomatic sheikh" was backed by the Supreme Leader because of his capacity for international outreach and his ability to usher the public through the transition to a reformed nuclear policy (Erdbrink 2013a). Some supporters of this view claim that the Ayatollah brought Rouhani to power to serve the explicit purpose of "shifting course from the Ahmadinejad years and testing President Obama's sincerity about reaching a nuclear deal" (Erdbrink 2013b).

There are others who believe that Rouhani was not Khamenei's chosen candidate. Rouhani's behavior on the campaign trail appeared "calculated to shake things up" (Maloney 2013). For example, with characteristic assertiveness, Rouhani confronted the nuclear question directly and proudly defended his record of compromise with the West. In an interview on state television, he "upbraided an interviewer for misrepresenting his record on the nuclear issue," and instructed the journalist to revisit his memoir in order to "get his facts straight" (ibid.). Rouhani just as aggressively sparred over the nuclear issue with the campaign staff of another presidential contender, Saeed Jalili. It is difficult to imagine the Supreme Leader giving explicit consent to such behavior, considering previous assessments of the regime as "obsessed with retaining its nuclear infrastructure and presenting a united front to the world" (ibid.). Rouhani also attended the funeral of a dissident cleric who had publicly criticized Khamenei's regime for "deviation, abuse, and lawlessness" and described its leadership as "henchmen of tyranny," (ibid.) and yet sustained no formal recrimination in response.

It is possible that Rouhani's election was the negotiated outcome of the conservative wing's inability to unify behind a single candidate and the establishment's determination to avoid a contested election that might spark protests like those seen in 2009 (Banai 2013a). While Khamenei might have preferred a candidate more solidly entrenched in the conservative faction, such as Saeed Jalili, Rouhani's election may have been a compromise sanctioned by the Supreme Leader in order to appease the public, who were "fed up with the ultra-conservative turn of Ahmadinejad" (ibid.).

Ultimately, the answer depends on the degree of control the Supreme Leader exercises over the electoral process. While Iran is no stranger to accusations of ballot rigging, it is also possible that Khamenei has the power to steer but not wholesale engineer the outcome of elections. Further intelligence should be pursued to obtain a better understanding of the Ayatollah's control over the electoral process in Iran.

Tentative Nuclear Accommodation and Cabinet Selection

Regardless of the circumstances of Rouhani's election, major foreign policy decision-making authority still rests with the Supreme Leader. It must thus be assumed that Rouhani has been empowered by the Supreme Leader to pursue accommodation on the nuclear question. He swiftly did so, negotiating a landmark interim nuclear agreement with the United States only three months after taking office. Rouhani did not mask his intention to pursue a deal, telling the Iranian parliament early in his term that his government's top priority would be to "ease tensions with the outside world" and repair Iran's sanctions-battered economy (Maloney 2013). Crucially, the November 2013 deal was crafted with enough diplomatic ambiguity that the United States and Iran can present it to their respective publics as a "win." Indeed, Rouhani's defense of the interim deal as good for Iran is only strengthened by the angry cries of U.S. capitulation arising from some corners of U.S. and Israeli political circles.

Rouhani's focus since taking office has largely been on sharpening the constructive ambiguity of the nuclear deal's language and managing backroom horse-trading in order to keep hardliners quiet in the wake of the agreement. He has also found time to make noteworthy ministerial appointments. His cabinet nominations largely bypassed Iran's most well-known reformists and conservatives in favor of moderate technocrats, especially in the realm of foreign policy. This is noteworthy, as presidents and their ministers in Iran are not usually foreign policy experts, but rather "bubble up as a result of internal factional politics" (Banai 2013b).

For example, Rouhani's foreign minister is Mohammad Javad Zarif, an admired diplomat and former Iranian representative to the United Nations who purportedly possesses an "unusually rich Washington rolodex" (Maloney 2013). Zarif's portfolio includes oversight of the nuclear talks. Rouhani has also assembled an "Islamic Republic dream team" of economic ministers, men with "considerable technocratic credentials, substantial experience, and a commitment to market-based reforms and foreign investment" (ibid). Rouhani has deliberately appointed officials who are more interested in substantive progress than rhetorical grandstanding.

Rouhani's Political Challenge

Iran's internal politics are complex and contentious. Even if President Rouhani was hand-picked by the Supreme Leader and is surrounded by a winning team of savvy ministers, his ability to drive a change agenda depends on his success in navigating the domestic factional landscape. Rouhani, himself, belongs to the centrist camp of Iranian elites, who seek to strike a deal that avoids a tradeoff between nuclear enrichment and economic prosperity (Pollack and Takeyh 2005). This group is flanked on one side by the hardliners, who "disparage economic and diplomatic considerations and put Iran's security concerns ahead of all others," and on the other by reformists, who "believe that fixing Iran's failing economy must trump all else if the clerical regime is to retain power over the long term" (ibid.).

In order to prevent the hardliners from undermining the nuclear agreement, Rouhani must reassure them while inoffensively undercutting their arguments. To assuage their concerns, he must uphold a level of rhetorical belligerence toward the United States and Israel and be unflagging in his support for Iran's right to nuclear enrichment. In order to undercut the hardliners, Rouhani will need to package the interim deal as economically beneficial to the Iranian public and ensure that such relief is attributed to his administration's successful negotiating strategy. He must also convince the Supreme Leader that any nuclear agreement, even during the tough implementation stages, provides a public relations boon that can help insulate Ayatollah Khamenei from the pressure he will continue to receive from those within the regime who oppose compromise.

United States Officials Must Be Serious, But Circumspect

U.S. officials involved in negotiations with President Rouhani and his staff should proceed cautiously. Rouhani's apparent empowerment by the Supreme Leader to explore limited accommodation on Iran's nuclear program should be taken as a positive sign, but easy concessions cannot be expected. President Rouhani and his negotiators will haggle fiercely over details and seek interim statements and agreements with sufficient constructive ambiguity so that they can be presented to the Iranian public as diplomatic victories that protect Iran's right to enrichment and ensure meaningful economic progress. Progressive sanctions relief must be structured so that it trickles down to the general Iranian population, but also permits openings that benefit the hardline elites who profit from the illicit circumvention of the sanctions regime. Otherwise, their internal revolt may prove too powerful for Rouhani to overcome.

All diplomacy must be crafted with an eye toward strengthening the moder-

ates across the Iranian regime who advocate abandonment of Iran's aggressive nuclear posture. This will involve refraining from imposing additional sanctions and a calculated preservation of the domestic image of Rouhani's team as tough negotiators who do not accede to sweeping or insulting demands. U.S. officials should employ a similar approach when seeking limited cooperation on other issues affecting the bilateral relationship, including the security of Afghanistan and Iraq and the ongoing crisis in Syria.

Regardless of hopeful early signs about Rouhani's moderation and political acumen, U.S. policymakers should not take for granted the obstacles impeding progress in the U.S.–Iran relationship. It remains true that Iran's current regime was founded on a revolutionary ideology born out of opposition to American "imperialism." A grand bargain with the Islamic Republic is a chimera unless tectonic shifts in Iran's political composition occur. To strike a broader deal with the U.S. would be to abandon Iran's quest for regional hegemony, which relies on its posturing as the vanguard of anti-American antagonism (Banai 2013b). If any rapprochement is possible in the near term, it will be limited, for the Supreme Leader cannot sacrifice Iran's resistance to the "Great Satan" and remain in control of the volatile power distribution that coalesces to support him (Ganji 2013). Ayatollah Khamenei will, for the time being, continue to promote Islamic "democracy" as the alternative to the liberal model.

Henry Kissinger once said that Iran has to decide whether it wants to be "a nation or a cause" (Ignatius 2013). As the founding fathers of Iran's revolution retire and a new generation assumes leadership, the essence of the Islamic Republic may shift toward the former. This evolution, however, is largely beyond the control of the United States. In the meantime, the intelligence community serves an essential function as it continues to reevaluate its assessments and provide policymakers with updated analyses of President Rouhani and other Iranian leaders. These profiles will inform critical interactions with Iran in the months and years ahead, and can help the United States craft policy that strengthens the position of Iranian moderates such as Hassan Rouhani.

NOTES

¹The "hardliners" generally refers to the clerics and Revolutionary Guard and Quds Force commanders who have consolidated control over powerful institutions in Iran, including "the military and intelligence services, the judiciary, state-run news media, Friday prayer venues, and a wide circle of state-run businesses." (Erdbrink, 2013)

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6

DRILL, MAYBE, DRILL: USING A BILATERAL ENVIRONMENTAL AGREEMENT TO CLEAN UP THE TAR SANDS

Steve Moilanen

The Keystone XL oil pipeline has become a flashpoint in the debate over energy policy in the United States. The environmental community, in particular, objects to the pipeline on the grounds that approving its construction would exacerbate climate change, contaminate water supplies, and disturb pristine lands. This article questions the efficacy of this approach, given that denying the construction of the pipeline is unlikely to stem the flow of oil from Canada's so-called "tar sands." Accordingly, a more effective policy may be to conclude an international agreement under which the United States approves Keystone, conditional on the Canadian government committing to reduce the environmental impact of the tar sands.

INTRODUCTION

If the past few years are any guide, an extraordinary change in the fossil fuel industry is underway. Buoyed by persistently high oil prices, companies are moving to exploit fossil fuel deposits known as "unconventionals" which

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had been, until recently, deemed too difficult and expensive to extract. These unconventional include oil in the Bakken shale formation, the salt formations in Brazil's Santos Basin, and, perhaps most prominently, the "tar sands" located primarily in Alberta, Canada (Yergin 2011, 253).

The extraction of oil from the Alberta sands has fueled a major debate over the risks associated with unconventional oil—indeed, over American reliance on fossil fuels generally—in the furor that has erupted over the Keystone XL pipeline. Opponents of Keystone argue that approving the pipeline would exacerbate climate change, contaminate groundwater, and disturb pristine wildernesses (Grant, Lemphers, and Fischer 2011). The environmental community, in particular, has been vociferous in its opposition; climate advocate James Hansen (2012), for example, has characterized approval of the pipeline as "game over for the climate".

In this paper, I argue that those who oppose Keystone correctly identify the ramifications of tar sands extraction, but are unlikely to achieve a policy outcome that effectively addresses these negative consequences. I propose, in lieu of categorical opposition, an alternative path forward for those concerned about the environmental impacts of tar sands development. Specifically, I contend that a more effective policy approach would be for the United States to pursue a bilateral agreement with Canada under which the U.S. approves Keystone conditional on the Canadians acceding to environmental objectives related to tar sands development.

A LONG TIME COMING

In contrast to other unconventional, the Alberta tar sands have been of interest to major oil producers for decades. As early as the 1910s, the Canadian government conducted geologic surveys of expanses of Alberta in anticipation of finding oil. By the mid-20th century, a number of hardy entrepreneurs began small-scale testing of oil sands extraction techniques. The first full-scale mining facility began production in 1967, using a technique developed decades prior, in which raw bitumen is separated from sand using jets of hot water (Humphries 2008).

Even after commercial production was proven technologically viable, development of the sands was dogged by unfavorable economics. Canadian federal and provincial governments were forced, in the late 1970s, to purchase equity stakes in the operations of Suncor—an early player in the tar sands—as a result of construction cost overruns. During the 1980s, the costs per barrel of Syncrude, a major producer, regularly hovered above market prices per barrel of oil (Humphries 2008, 12). Until 1997, in fact, tar sands producers proved so unprofitable that the Canadian govern-

ment exempted companies from both income taxes and royalty payments (Humphries 2008, 12; Humphries 2008, 21).

Over the past two decades, however, oil sands extraction has become substantially more lucrative. The costs associated with tar sands production continue to be quite high—according to an industry report published last year, extraction costs ranged from \$48 to \$68 per barrel (Lewis 2013). Even so, the market price of crude oil has risen to the point where extraction from the tar sands makes economic sense. After bottoming out at less than \$20 per barrel in the late 1990s, crude prices rose to nearly \$140 per barrel in 2008 and now hover around \$100 per barrel (Macrotrends 2014). This upward trend has meant that “with increasing momentum... giant firms including Chevron, ExxonMobil, and Shell joined Canadian firms in buying up vast Athabasca acreage and preparing for massive extraction efforts” (Klare 2012, 104).

The recent initiative to bring the Keystone pipeline online is, in essence, an outgrowth of this phenomenon; as extraction of tar sands ramps up, producers are seeking out ways to bring more to market. By 2020, oil sands production is projected to increase to three million barrels per day, double the rate of one and a half million barrels per day in 2010 (Yergin 2011, 256). With total recoverable reserves from the tar sands estimated at 175 billion barrels¹, extraction is expected to continue climbing in the decades ahead.

As they look toward the future, oil producers are contemplating not only how to bring oil to market, but how to bring oil to market in a way that will maximize profit-making. From the perspective of producers, tar sands extraction is hampered by the fact that a majority of the oil is currently being funneled to refineries in the Midwest (United Press International 2014). This arrangement presents two problems for developers. First, the Midwest refineries are ill suited to handle “heavy” crude of the sort extracted from the oil sands. Second, the Midwestern market for crude is relatively small (Schwartz 2013).

The Keystone XL pipeline—the ultimate goal of which is to connect oil in Alberta to refineries in the Gulf Coast—is an effort to remedy both these issues simultaneously. In contrast to Midwest refineries, Gulf Coast refineries are designed to process heavy crudes from Venezuela and Mexico, and thus are well equipped to process tar sands oil. Moreover, the proximity of these refineries to shipping ports in the Gulf creates a potentially lucrative export market for the tar sands oil (Schwartz 2013).

In sum, while the petroleum engineers have known of the tar sands for some time, only recently has extraction of the sands become economically attractive enough to merit attention from major oil companies. The

Keystone XL Pipeline can be seen as an effort to bring this additional oil to market, in light of these new economic dynamics.

THE BASIS FOR THE OPPOSITION

The outcry over the Keystone pipeline is motivated by two key factors: the expansive jurisdiction of the federal government in regulating transnational pipelines, and the environmental impact of tar sands extraction. Put another way, the oil sands are dirtier than conventional oil, and the Obama Administration seems positioned to do something about it.

The Role of the U.S. Federal Government

In general, the federal government has limited oversight over the building of an oil pipeline in the United States. A handful of federal agencies carry out a limited regulatory role with respect to the construction of most pipelines—the U.S. Fish and Wildlife Service, for instance, mandates that projects consider impacts to endangered species—but siting authority rests entirely with states. Interestingly, this siting authority has proven to be another front in the battle over Keystone. The state of Nebraska previously had no laws on the books pertaining to the siting of oil pipelines, forcing the state hurriedly specify the process by which pipelines were to be approved. This law is now being challenged in the courts (Knapp 2014).

The important exception to this rule is an oil pipeline that crosses from another country into the United States. Signed by President George W. Bush in 2004, Executive Order 13337 mandates that the Department of State, in conjunction with other relevant federal agencies, approve or deny a permit for an oil pipeline on the basis of whether that pipeline “serve[s] the national interest” (White House 2004). As I will discuss later, the Order does not clarify how this determination is to be made, leaving the federal government wide latitude with respect to its decision over transnational pipelines writ large, and over Keystone XL in particular.

The Environmental Impacts of Keystone

The second and related driver of opposition to Keystone is the fact that the extraction of oil from tar sands has a disproportionately large environmental footprint. The environmental community has raised three concerns, in particular: (i) carbon intensity; (ii) land use impacts; and (iii) the creation and management of hazardous material.

First, opponents of Keystone note that the extraction of tar sands is a more carbon-intensive process than the extraction of conventional oil. In a paper that compares lifecycle analyses across a variety of sources, the

Natural Resources Defense Council finds that, depending on the method of extraction and refining, tar sands emissions are eight to thirty-seven percent higher than the baseline for an “average” gallon of gasoline (Mui et al. 2010). The oil industry, for its part, claims that the tar sands are only six percent more carbon-intensive than average. Producers also note that the burning of gasoline by end users accounts for seventy to eighty percent of the “well to wheels” emissions of these oil products (American Petroleum Institute 2010).

A second environmental concern is the land use impact of oil sands extraction. The nature of these impacts is dictated by whether oil is extracted via mining or so-called *in situ*² methods. On the one hand, the mining approach—which currently represents approximately one half of oil sands production but may decline over time—has impacts comparable to surface mining of other commodities, including deforestation, interference with native plants and animals, and extraction of water resources (Dyer and Huot 2010). The *in situ* method, on the other hand, does not require land to be “cleared” to the same degree, and industry has claimed that it is therefore less impactful than the surface mining approach. Recent evidence, however, has cast doubt on whether the *in situ* extraction is any less detrimental than full-scale clearing of forest area under surface mining operations (Jordaan 2012). And although land currently impacted by oil sands development is limited to approximately 1000 square miles, this figure is expected to rise substantially in coming years (Jordaan 2012, 3611).

Third, especially in the case of surface mining operations, oil sands extraction requires the use—and therefore disposal—of hazardous waste. After chemically treated water is used for mining operations, it is stored in large tailings ponds, which have proven costly and difficult to remediate. These ponds harmed waterfowl populations in 2010 (Canadian Broadcasting Corporation 2010) and may also be responsible for groundwater contamination (Shogren 2013). *In situ* operations generate solid waste that tends to be more manageable than that produced by surface mining operations, although some observers have expressed concern over the carbon intensity of these remediation processes (Walker 2012).

MITIGATING THE IMPACTS: WHAT IS THE BEST APPROACH?

The seriousness of the environmental impacts outlined above is beyond dispute. Oil producers themselves have acknowledged—if sought to downplay—the need to mitigate the carbon intensity, land use impact, and contamination risk associated with tar sands extraction (Canadian

Association of Petroleum Producers 2014a). From a policy perspective, then, at issue is not *whether* the tar sands present a set of environmental concerns, but instead *how* these concerns ought to be addressed. More to the point, what are the most effective policy instruments available to those interested in addressing these concerns? And is outright opposition to Keystone such an instrument? I argue, in this section, that it likely is not.

What Happens When Irresistible Market Forces Meet Immobile Opposition?

A common argument against Keystone is premised on the idea that denying the pipeline permit will retard—or even halt entirely—the development of the Alberta tar sands. As a prominent Canadian academic characterized it, “stopping Keystone XL would be a major step toward stopping large-scale environmental destruction” (Homer-Dixon 2013). Columnist Thomas Friedman has stated, “I hope the president turns down the Keystone XL oil pipeline. (Who wants the U.S. to facilitate the dirtiest extraction of the dirtiest crude from tar sands in Canada’s far north)?” (Friedman 2013) According to this reasoning, every year that developers find themselves unable to bring oil to market is a year with less carbon pollution, less clearing of pristine forest, and less hazardous waste to manage.

Embedded in this argument, however, is the assumption that Keystone is the only means that developers have to bring oil to market, such that denying the pipeline will cause extraction to slow. But it is not clear that this is the case. Indeed, even as the Obama Administration weighs its final determination on the pipeline, the oil industry has plowed ahead with other midstream infrastructure for the oil sands to serve as substitutes and supplements to Keystone XL.

One option already being exercised by developers is to freight oil sands by rail, rather than by pipeline, to Gulf Coast refineries. In its evaluation of the risks associated with Keystone, the State Department affirmed the viability of this approach, noting that “...the transportation of Canadian crude by rail is already occurring in substantial volumes. It is estimated that approximately 180,000 bpd of Canadian crude oil is already traveling by rail” (U.S. Dept. of State 2014a). Indeed, the increased use of rail to transport oil from Alberta mirror developments currently underway in the Bakken formation in North Dakota and Montana. Lacking immediate access to a pipeline, rail transport of oil from these areas has spiked in recent years, and now accounts for nearly two-thirds of the midstream infrastructure (Krauss and Wald 2014).

To be sure, transporting oil by rail is more expensive than transport-

ing oil by pipeline. In an earlier report on the environmental impact of Keystone, the State Department estimated that rail is more expensive by a factor of four: freighting tar sands oil by train costs an estimated \$31 per barrel, against \$7 per barrel should the oil be sent via sent pipeline (McCown 2013). But part of this price spread reflects a supply bottleneck that is likely to be resolved in the near term. As of October 2013, nearly 74,000 rail cars were on back order, “a relatively high level from a historical perspective” (Vantuono 2013). And even if rail transport continues to command a price premium, the economics for developing the tar sands may still be favorable enough for oil producers.

Moreover, even in the event developers do not find it compelling to bring oil to market within the United States, they are likely to seek out—and find—another global outlet for the tar sands. In particular, industry is eyeing the opportunity to transport oil to the coast of British Columbia for shipment to Asian markets such as China, which has recently become eager buyer of fossil fuels (Reuters 2014). Despite running into resistance from First Nations groups and local activists, Enbridge’s proposed Northern Gateway pipeline may be approved by Canadian regulators this June (Reuters 2014). An effort by Kinder Morgan to expand capacity in its existing Trans Mountain Pipeline is also underway (Anderson 2011).

In sum, developers are likely to find a way to ramp up tar sands extraction and move this oil to market, even in the absence of the Keystone XL. Thus, the environmental benefits that result from rejecting the pipeline are, *on a net basis*, modest. Indeed, this scenario would approximate the sort of “leakage” often afflicts international environmental issues (Keohane and Victor 2010, 18): the negative environmental impacts associated with tar sands extraction would be “displaced” from the United States to markets elsewhere, but would continue nonetheless. Thus, the question becomes whether there is a policy available to the United States that is likely to be more effective in mitigating the impact of oil sands extraction, particularly in light of this “leakage” problem.

TOWARD A BILATERAL ENVIRONMENTAL AGREEMENT ON THE TAR SANDS

If opposition to the Keystone pipeline is unlikely to mitigate the negative environmental impacts of the tar sands, what can and should be done? In this section, I argue that a promising approach would be for the Obama Administration to craft a bilateral environmental agreement with the Canadian government that seeks to curb the negative impacts associated with tar sands extraction.

A useful framework for thinking about an agreement along these lines is the consistent “regime complex” paradigm espoused by scholars Robert Keohane and David Victor. This paradigm is premised on the idea that “there is no integrated regime governing efforts to limit the extent of climate change. Instead, there is a...loosely-coupled set of specific regimes” (Keohane and Victor 2010, 1). In this way, climate change is likely to be addressed not with one overarching international agreement but with a set of “mini-agreements.” In turn, Keohane and Victor argue, the success of such regimes hinges on the following criteria: coherence; accountability; effectiveness; determinacy; sustainability; and epistemic quality (Keohane and Victor 2010, 16-17).

Below, I draw on a number of these criteria in order to consider how an agreement between the United States and Canada around the oil sands might be structured. I focus, in particular on the following: (i) why an agreement of this sort would be *coherent*; (ii) what sort of *determinate* rules would be appropriate to such a regime; and (iii) how the *effectiveness* of such a regime could be ensured.

Coherence: Why Unlikely Bedfellows Can Be Brought Together

As a starting point, it is worth recalling the latitude granted to the federal government in determining whether a transnational pipeline is in the “national interest.” The Executive Order that established this decision-making process does not delineate any criteria that should be employed in determining whether a project is in the national interest or not. The State Department has indicated that, in the past, it has relied on the following criteria in making this determination: “energy security; environmental, cultural, and economic impacts; foreign policy; and compliance with relevant federal regulations and issues” (U.S. Dept. of State 2014b). Beyond this, the State Department has not specified how it should and will arrive at its decision; it does not, for instance, commit itself to privileging one criterion over another.

In light of this, there is no apparent reason why the national interest determination process could not be tied to a bilateral agreement around the tar sands. The Obama Administration conceivably could make approval of the Keystone pipeline contingent on the Canadian government acceding to a regime managing the environmental impacts of tar sands development.

But would the White House be motivated to do so, and would the Canadian government submit to such an agreement? As Keohane and Victor argue, these questions form the foundation of a *coherent* complex,

defined as a “regime whose components are compatible and mutually reinforcing” (Keohane and Victor 2010, 16). Along similar lines, Keohane identifies institutional agreements as more likely to arise in “situations in which mutually advantageous bargains are possible” for the actors involved (Keohane 2013).

For the United States, the motivation to reach an agreement with the Canadian government is clear enough. Politically speaking, it would be attractive to offer an olive branch to the environmental community while simultaneously giving industry and organized labor groups their desired outcome. Similarly, from a policy perspective, a robust agreement that offers material environmental benefits while imposing limited costs on consumers may be a first-best solution. An arrangement of this sort should be in the interest of the Canadians as well. Assuming the compliance costs of a new agreement were not too steep, economic self-interest would compel developers to support any arrangement that accelerates the development of midstream infrastructure that represents a cost savings relative to the status quo. Meanwhile, given the international opprobrium it has received for withdrawing from the Kyoto Protocol (Carrington and Vaughan 2011), the Canadian government will likely be interested in any agreement that burnishes its environmental *bona fides*.

In short, a bilateral agreement would meet Keohane and Victor’s test of *coherence* because it has the potential to offer positive-sum outcomes to all parties involved, including the environmental community, oil sands developers, labor groups, the Alberta provincial government, and the Canadian and American federal governments.

Determinacy: Setting the Rules of the Road

A second dimension along which regime complexes can be judged is that of *determinacy*. Keohane and Victor note that an agreement’s “rules should have a ‘readily ascertainable normative content,’ with more prescriptive regimes being preferred to less prescriptive regimes on an issue such as climate change” (Keohane and Victor 2010, 17). Put another way, an agreement should contain a set of rules related to the policy issue it is intended to solve. In light of the environmental impacts outlined above, I argue that the key prescriptions in an agreement on the tar sands should focus on: (i) carbon intensity; (ii) land use impacts; and (iii) handling of hazardous materials.

Carbon Intensity

The foremost concern of any bilateral agreement should be a reduction in the carbon emissions associated with tar sands extraction. In view of the

projected growth of the industry, an absolute reduction in emissions is likely unworkable. These prescriptions should therefore focus on reductions in emissions intensity (i.e. a lower amount of carbon pollution per unit of overall output).

One possible approach that could ease compliance with carbon intensity targets would be to piggyback off existing regulations created by the Alberta provincial government in 2007. Under these rules, developers must reduce the carbon intensity of their operations 12% against a projected business as usual case or else face a fee of \$15 for each ton of emissions over and above the cap. The revenue raised by this fee is, in turn, directed to a “green technology” fund (Dyer 2013).

Over the objection of industry, the Alberta provincial government is considering a new “40/40” plan that increases the stringency of the cap and the fine associated with non-compliance to 40% and \$40, respectively (Dyer 2013). In the context of a bilateral arrangement, the Obama Administration could negotiate over the appropriate design of the cap and fine. One prominent environmental organization in Canada, for instance, calls for using the 40/40 plan as a starting point and ramping up the stringency of the cap and amount of the fine over time (Dyer 2013).

Assuming there is a tradeoff between stringency and compliance costs, the United States and Canada could contemplate diverting some of the revenue directed to a technology fund into joint research into oil sands extraction technologies. Two promising avenues of research would be to encourage “fuel switching” from coke to natural gas as a feedstock for processing oil sands and to reduce the amount of steam required for *in situ* extraction processes.

Land Use Impacts

In addition, a bilateral agreement should target the land use impacts associated with oil sands extraction. As noted above, these impacts are a function of whether oil is extracted via surface mining or via *in situ* operations, with *in situ* operations leaving a smaller land use footprint. One important focus of negotiations should therefore be how to accelerate the transition from surface mining toward *in situ* processes.

More broadly, there is a question of how best to hold industry responsible for reclamation of impacted lands, after mining operations at a particular site has been completed. To date, reclamation of lands impacted by oil sands extraction has been minimal: as of the beginning of 2013, the Alberta government estimated that approximately 30 square miles were under “active reclamation,” which represents a small percentage of the overall impacted land (Alberta Provincial Government 2013). Accordingly, under

an arrangement over the tar sands, the Canadian government could commit to accelerate reclamation processes. For instance, government entities could condition permits for new oil sands operations on the reclamation of dormant operations—industry could be prohibited from undertaking new development until meeting a set of benchmarks related to reclamation of past development sites.

Management of Hazardous Materials

Finally, any agreement should address the management of the toxic chemicals used in tar sands extraction. Of particular concern is the storage of wastewater, used in surface mining processes, in large tailings ponds. While companies are legally obligated to fully reclaim these ponds, little progress has been made since extraction began (Canadian Association of Petroleum Producers 2014b). To that end, in negotiations over an oil sands arrangement, the United States could insist that the Canadians enforce rules around fine particular tailings capture promulgated in 2009 (Flanagan and Grant 2013). In light of ongoing uncertainty over proper method of tailings ponds reclamation, the United States could instead compel the Canadian government to craft a set of industry “best practices” around reclamation.

In sum, there are a variety of policy prescriptions around carbon intensity, land use impacts, and hazardous waste management that the United States could trade off in exchange for approval of the Keystone XL pipeline.

Effectiveness: Giving Any Agreement “Teeth”

A third criterion that Keohane and Victor argue for in this approach is *effectiveness*, which is described as “a reasonable compliance with the rules” -- the notion that regimes should function as they are intended. Applied here, the question is how an agreement around the tar sands should be structured such that Canada is compelled to comply with the agreement even after Keystone is approved.

Some authors argue that bilateral treaties rarely require formal enforcement mechanisms. Chayes and Chayes, for instance, argue the states only enter in agreements with which they intend to comply: “states’ behavior in entering into treaties suggests that they believe they are accepting significant constraints on future freedom of action to which they expect to adhere over a broad range of circumstances” (Barrett 2003, 270). Beyond that, Barrett argues that the international community has created a kind of normative obligation around treaty compliance that encourages states not to deviate from international agreements. A third option available to

states short of taking punitive action, Barrett goes on to say, is simply to nullify the agreement (Barrett 2013, 271-275).

It may well be that, as a matter of principle and custom, the Canadian government can be counted on to abide by its treaty commitments. But the proposed arrangement—under which the United States would agree to move forward with Keystone if Canada agrees to reduce the environmental impacts of the tar sands—represents an atypical international regime. Once the United States commits to building Keystone, it has effectively signed away its leverage over the Canadian government. In particular, the threat that Barrett proposes—for the United States to nullify the arrangement—lacks credibility, since Canada would not suffer any repercussions if the United States were to do so.

Given these conditions, enforcement mechanisms could prove central to the United States in an agreement around Keystone. One such mechanism available to the United States would be an import restriction. Under this approach, if the United States deemed Canada to be out of compliance with provisions of the treaty, the United States could restrict imports of oil extracted from the tar sands. The closest historical analogy to such action would be the Shrimp-Turtle and Tuna-Dolphin cases presented to the WTO, where the United States sought to ban imports of a good on the basis of the process by which it was produced (Oppenheimer 2013).

Second, in case it is unable or unwilling to sanction the oil industry itself, the United States could impose economic sanctions that target other industries, rather than the oil industry directly. Perhaps the closest precedent to this approach is the United States' past efforts to sanction states over failure to comply with the International Whaling Convention. In 2000, the United States restricted the ability of Japanese fishermen to operate in its exclusive economic zone and, more recently, has threatened Norway and Iceland under the Pelly Amendment.

Neither type of enforcement mechanism would be without limitations. The most apparent issue is that sanctions along these lines may contravene WTO rules. In addition, as Barrett points out, sanctions impose costs not only on the targeted state but also on the state that issues the sanction (Barrett 2003, 273). Third, sanctions may lack credibility and therefore the capacity to deter a target state if a target state does not believe a punitive measure will be carried out.

Overall, the atypical nature of a bilateral agreement between the United States and Canada on oil sands means the United States may need to seek out enforcement mechanisms to include in any arrangement. These mechanisms, however, may prove flawed, and often bring environmental and economic objectives into tension.

CONCLUSION

In this paper, I argued that opposition to the Keystone pipeline will not effectively address the environmental impacts of oil sands development. I proposed, in lieu of outright opposition, an alternative path forward for those concerned about these consequences. Specifically, a more effective policy instrument may be for the U.S. to conclude a bilateral agreement with the Canadian government under which the U.S. approves Keystone on the condition that Canada commits to environmental objectives related to tar sands development.

Such an agreement will not halt the development of the oil sands, nor will it begin to address climate change in a meaningful way. Nevertheless, a bilateral regime of this sort is still more likely to produce environmental benefits than would outright opposition to Keystone XL. If, as Keohane and Victor suggest, climate change will need to be addressed in a bottom-up rather than top-down fashion, it is as good a place as any to start.

NOTES

¹As a point of comparison, recent analysis from the Department of Energy *estimated total recoverable reserves within the United States to be 32 billion barrels* (Meyer 2013).

²The key difference between these two approaches is the point at which the petroleum product is separated from the sands that surround it. In the case of surface mining, the petroleum is separated from the sands after it is extracted from the ground. In the case of the *in situ* technique, the bitumen is treated underground so that it can flow to the surface.

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7

CYBER SECURITY AND INTERNATIONAL CONVENTIONS: THE PLAUSIBLE, THE PITFALLS, AND THE POTENTIAL

Stephen Pritchard

Progress towards a single, global “cyber security” treaty remains unfeasible in the near term given the deep ideological divisions between two primary “blocs” of states. The international community should instead seek to reinforce cooperation on specific areas of existing mutual interest: namely, intellectual property (IP) and critical infrastructure protection (CIP).

This article begins with key definitions and a brief history of cyber security. It describes the main actors in “blocs” and the fault-lines and common ground among them. The second half of the article examines other cases in which international dialogue has been sought to control stakeholders’ behavior. It concludes by making specific recommendations on international cyber-security agreement architecture. The article draws examples from two specific areas similar to cyber space: Arms Control, and *res communis omnium* (common goods for all).

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Cyber security measures prevent and mitigate attacks against states' political and economic security propagated through the cyber domain. Such cyber attacks fall into four broad categories:

- Threats to critical infrastructure, including utilities and telecommunications networks;
- Theft of economic information, including Intellectual Property (IP);
- Degradation of military capability; and
- Threats to the political establishment and socio-cultural cohesiveness.

The last category causes contention in global discussions on cyber security and internet governance. Some countries have a high tolerance of criticism and activism. Others seek to restrict and control internet content generated by and available for consumption by its citizens.

The world needs a universally adopted, international body of law and a commonly agreed technical vocabulary on the behaviors of stakeholders interacting within cyberspace. Cyber attacks have multiplied exponentially in the past decade. Prominent examples include distributed denial of service (DDOS) attacks and defacement of government websites against Estonia in 2007 and Georgia in 2008, the Stuxnet worm against the Iranian nuclear program, and IP theft on a scale described by the Commander of the US Cyber Command as the "greatest transfer of wealth in history." This has resulted in a hive of international discourse conducted bilaterally, through regional fora, and by the United Nations' Group of Governmental Experts (GGE).

In 2001, the Council of Europe (2001) adopted the Budapest Convention as part of its portfolio of on Economic Crime. It seeks to establish a common framework of legislative and regulatory measures on internet crime. With the exception of Russia, most European nations have adopted the Convention, and a handful of non-European countries including Japan and the United States have accepted it as well.

Two years ago, Russia produced two documents related to "cyber security," including a draft Convention on International Information Security submitted to the United Nations (Russian Ministry of Foreign Affairs 2011). This document was presented as an alternative to the Budapest convention for reasons explained below.

Box 1: Reasons for Russian submission of draft Convention on International Information Security as alternative to Budapest Convention

The term “**domain**” is used in accordance with a North Atlantic Treaty Organisation (NATO) conference paper: *“The sphere of interest and influence in which activities, functions, and operations are undertaken to accomplish missions and exercise control over an opponent in order to achieve desired effects”* (Allen and Gilbert, 2009, 2).

The phrases “**cyber domain**” and “**cyberspace**” are used in line with the extant UK Cyber Strategy: *“Cyberspace is an interactive domain made up of digital networks that is used to store, modify and communicate information”* (UK Cabinet Office 2011, 10).

These two terms above are associated with the “West bloc” described in the paper. In contrast the “Russia bloc” uses the term “**information security**” in the spirit of the definition from the Russian draft Convention on International Information Security: *“A state in which personal interests, society, and the government are protected against the threat of destructive actions and other negative actions in the information space,”*

Particular attention should be drawn to the Russian definition of “**information space**”; especially the words underlined which implies inclusion of human entities in addition to electronic media: *“The sphere of activity connected with the formation, creation, conversion, transfer, use, and storage of information and which has an effect on individual and social consciousness, the information infrastructure, and information itself.”*

PERSPECTIVES AND “BLOCS”

The “Russia Bloc” and “Information Security”

A bloc of countries, here referred to as the “Russia bloc,” insists on strong state control over the use of the cyber domain by its citizens. These countries view human-generated content as an inseparable aspect of cyber security, which they call “information security.” Other than Russia, this bloc includes China, Cuba, Uzbekistan and Tajikistan, who along with Russia submit-

ted a “potential General Assembly resolution” on the code of conduct in the “information space” (Li et al. 2011). The letter was subsequently co-sponsored by Kazakhstan and Kyrgyzstan. The bloc considers certain uses, for example the spreading of political views unaligned with those of the state, of information and communications technology (ICT) to pose a threat to national security through their political and social structures. It insists on strong state control over the use of the cyber domain by its citizens. The bloc objects to the Budapest Convention because of the following provision relating to mutual assistance on investigative matters (Fedorenko 2012):

“Article 32 – Trans-border access to stored computer data with consent or where publicly available

A Party may, without the authorization of another Party:

- a* access publicly available (open source) stored computer data, regardless of where the data is located geographically; or
- b* access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system.”

The possibility that a third party may access data with the permission of “the person who has the lawful authority,” and potentially without the consent of the state, is anathema to the governments of the Russia bloc (Keir 2012, 5). The bloc regards the state as the ultimate and sole arbiter on matters related to information control. Its countries wield this control for state goals: for example, in March 2014, Russian internet service providers closed several opposition websites ahead of the referendum on secession in Crimea.

The “West Bloc” and “Cyber Security”

The United States, Japan, Australia, United Kingdom and other Western European countries define cyberspace as limited to electronic networks. They minimize regulation of content. The Budapest Convention is the signature international treaty of this “West bloc.” The bloc promotes freedom of expression and association in cyberspace, and it considers the draft Russian Convention to be a surreptitious vehicle by oppressive states to erode freedom of speech. With liberal markets and economies, West bloc countries are more concerned about cyber attacks on its economies,

especially economic espionage and IP theft. A typical action of the West bloc is the United States' promotion of IP provisions drawing heavily from domestic laws into the Trans Pacific Partnership (TPP) trade agreement currently under negotiation.

In December 2012, Russia and China teamed up to promote furthering state control of content under the banner of information security at the World Conference on International Telecommunications (Rid 2013, 171): the United States and a group of similarly-minded countries including Egypt, Poland, Kenya, Costa Rica, Canada and New Zealand refused to sign the subsequent revision of the International Telecommunications Regulations (ITRs) because of their objection to widening the scope of the ITR to include content (Blount 2012).

The Private Sector

Theft of IP held by private companies poses a serious economic threat to both developed and developing countries. Systematic disrespect for IP is a double-edged sword in emerging and developing economies in that domestic companies are not spared cyber attacks, discouraging international investment and stifling innovation.

Both blocs claim to be the victims of cyber criminality, the prominent plaintiffs being the United States (see below) and China (Global Times 2012). Whilst both countries appear to be disposed against each other in a high-stakes battleground of IP theft, their positions are quietly converging.

In 2010, the Director of the National Security Agency and Commander of US Cyber Command, General Keith Alexander, described IP theft—of which 50 to 80 percent was estimated to be initiated by Chinese entities (The National Bureau of Asian Research 2013, 2-3)—as “the greatest transfer of wealth in history” (Alexander 2012). Such activities were estimated to cause annual losses equivalent to that of all US trade with Asia—estimated to be over \$300 billion in the report—and a subsequent opportunity cost equated to millions of jobs. These figures, being estimates, based at least partly on confidential material, and being not the aggregate of transparent, quality-assured data, are subject to skepticism: one Director for a global, United States brand-name company commented to the author that the figures stated above were “grossly exaggerated by government.” Other skeptics claim that theft of IP cannot be directly translated into losses based on loss of retail at prices in the home market (Harris 2013).

In recent years, China has submitted a significantly increased number of patents to the World Intellectual Property Organization (WIPO). It already has home-grown, innovative industries producing added-value and

innovative products that it wishes to protect: this is evident by United States technology manufacturer Apple Inc. being called to defend in a Shanghai court its Siri voice recognition software against a Chinese plaintiff which claimed it invented it first (Neumeyer 2013). As the economic development of China and other countries compels them to become more economically interdependent with the rest of the world, attempts to reduce IP theft will be of growing common interest.

WHAT IS NEEDED, TODAY

Recent developments through the United Nations Group of Government Experts (UN GGE) on “Developments in the Field of Information and Telecommunications in the Context of International Security” provide grounds for optimism. Comprised of governmental experts from fifteen member states, including both “blocs” (the United States, Russia and China are all members), the first rounds of the GGE in 2004 and 2005 failed to achieve consensus even on a final report (Krutskikh 2010, iv). The second GGE commenced work in 2009 and was able to publish a final report (Stokes et al 2013, iv). In its latest report, the GGE acknowledged that the international community remains at an early stage of developing a common understanding “on the security of and in the use of information communications technology and that it “should play a leading role in promoting dialogue” (Stokes et al 2013, 7).

GGE 2013 Recommendations

The latest GGE recommendations were derived from a multilateral discussion whereby public and private, military and civilian, “Russian” and “western” bloc interests were represented (Stokes et al 2013): they may therefore indicate a potential baseline for consensus between the West and Russia blocs. The recommendations include the consideration of cyber security as inextricable from international law, state sovereignty and human rights, and that states should engage the private sector and civil society to play an appropriate role in the use of information communication technologies, including dissuading unlawful behaviors.

Working on Common Ground and Avoiding Pitfalls

States are not alone in the cyber domain: Civil Society and the Private Sector must be empowered to play an active role, including in the development of international agreements. This is reflected in GGE’s final recommendations. Contemporary debates about global trade and poverty reduction are replete with expert commentary that the old “Westphalian

order” is obsolete (Lamy 2012). A relevant question is *how* private sector and civil society should be included in the debate on behaviors within cyberspace.

Jurisdiction and enforceability will be a challenge, but not an existential one: “attribution”, meaning the capacity to ascribe any cyber attack to a specific assailant, must not become a prerequisite to any international agreement. The World Trade Organization’s (WTO) agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) requires WTO members to protect certain types of IP. However, enforceability of breaches, especially if a cyber attack has been routed through a potentially “innocent” country, has been difficult (Fidler 2013).

The net worth of any international agreement is linked to the “enforceability” of its key provisions. In cyber security, any proscribed cyber attack would need to be traceable to a “belligerent” thereby forming a basis for punitive measures or mediation. In practice, this is difficult. A possible solution would be a system whereby the principle of *cui bono* (literally “who benefits”) could be adopted for dispute resolution (Hare 2012). Under this principle, the “case by case” approach could be augmented by analyzing trends of IP theft. A “plaintiff” country could then maintain that observed economic benefits of the accused would constitute sufficient body of evidence to justify arbitration and formal redress.

A meaningful treaty would imply universality and would not simply appease the blocs. The world is once again becoming multi-polar. Global trade and development has increased the “voice” of countries that were once considered to be of lesser strategic significance. The preferences of the “blocs” may be fickle and subject to change. For example within the “West bloc,” Austria, Germany and Switzerland all recently released national cyber strategies, each with greatly differing scope and terminology. Any international conventions should be designed with the aim of universal adherence.

Taking New Responsibilities

States

States must foster greater international cooperation towards mutually beneficial goals in global cyber security - they must also consider the needs of other states. Without it, states will at best fail to share timely information or best practices: at worst they will maintain a defensive posture within a culture of “every man for himself” in the cyber domain.

To highlight the dichotomy facing policy makers in the West, some

recommendations of the US IP Commission Report are examined. One positive recommendation is that it recommends that the US government conduct capacity building measures through engagement with other countries' institutions (The National Bureau of Asian Research 2013, 6). A budget provision for similar activities is included in the UK's Cyber Strategy (UK Cabinet Office 2012, 6). While it is no silver bullet, this represents an opportunity to broaden engagement internationally at little relative cost (the UK expenditure has amounted to less than 1 percent of its National Cyber Security Program). The US IP Commission Report then makes other recommendations (The National Bureau of Asian Research 2013, 5):

“Greatly expand the number of green cards available to foreign students who earn science, technology, engineering, and mathematics degrees in American universities..... Many ... would gladly stay in the United States....”

The above recommendation requires careful implementation: whilst an appropriate response to countries with a high supply of technically skilled personnel, it risks contributing towards a damaging “brain drain” in lesser developed countries that don't pose an IP theft threat. Illegal technology transfer is a problem but legal technology transfer can be part of the solution. Strong IP protection can be coupled with managed technology transfer—including IP through licensing agreements—thus providing an alternative to IP theft. An instructive case study from the pharmaceutical industry's investment in R&D facilities in the developing world has actually contributed to IP protection: such cooperation should be actively sought in the cyber domain: developed countries are best placed to provide this through capacity building programs (Waldron 2013, 91).

Likewise the following general recommendation for US policy, whilst worthy for consideration within national debate, should be treated with caution:

“Support American companies and technology that can both identify and recover IP stolen through cyber means. Without damaging the intruder's own network, companies that experience cyber theft ought to be able to ... prevent the exploitation of their stolen information.”

While this may seem fair and appealing to those currently suffering

from IP theft (Selby 2013), it contains a proposition that without tight government control (and therefore endorsement) may lead to unintended consequences. The potential of unwanted entities accessing data within the information space under jurisdiction of a state, without the permission of that state, is indeed one of the key reservations of Russia.

In addition to moderating their own behavior, **states should also engage with the private sector and civil society and take more responsibility for domestic cyber security matters.**

Private Sector

Companies have long engaged in espionage against each other: conversely, they have also learned the value of securing critical information, from cash flows to business engagement to research and development of upcoming products even before the computer age. Data in the cyber domain must be treated in the same manner as if in the physical domain: it should be classified and protected accordingly. Whilst most corporate boards realize this principle, they face difficulties in putting it into practice for the following reasons:

- Cyber-threats evolve faster than companies can keep up;
- Private companies have historically suffered inferior knowledge about protection;
- The option to “market” the risk through bespoke insurance is unavailable.

These challenges may be overcome with **greater engagement and coordination among companies, with government, and other domestic stakeholders such as internet security companies** (such as Kaspersky, Symantec, AVG etc.) and **internet service providers**. Former WTO Director Pascal Lamy has commented, “*international life is about an interaction between governance and nations’ own domestic constituencies.*” (Lamy 2012) Firms could, for example, take greater responsibility by reporting all observed cyber attacks. This would improve clarity on the extent and nature of cyber threats and also provide the basis for more effective collective response. At present, firms perceive a disincentive from sharing such data and damage caused because they fear punitive responses by government, competitors, or their own shareholders. This could be rectified through mandatory reporting of cyber attacks and limits on the response to such within reason.

LESSONS FROM RELEVANT INTERNATIONAL CONVENTIONS

This section describes lessons from other fields comparable in some way(s) to cyberspace. Firstly, I examine *res communis omnium* because the cyber domain is a shared public good, much like air or the sea. The cyber domain differs in that access is determined not only by physical proximity but also by economic factors and infrastructure, i.e. the cost of a computer and the availability of internet access. Nevertheless, it is a domain in which the ungoverned behaviors by some users may cause reduced utility by others. Secondly, arms control initiatives are examined. Cyber attacks do not involve the direct projection of physical force, as do other weapons; however, they are means that states covet in order to both defend their interests and attack others.

Cyber Security as *Res Communis Omnium*

The traditional fear of a “tragedy of the commons” is that unchecked behavior will lead to over-exploitation and under-maintenance. In contrast contemporary fears on the “commons” of cyberspace relate to harm through espionage, criminality, sabotage, and (in some cases) destabilization of the socio-political order.

Climate Change

The 2009 United Nations Climate Change Conference in Copenhagen (“COP15”) was widely hoped to produce a legally binding treaty. Instead, a watered-down “Copenhagen Accord,” reflecting none of the compromise or ambitious targets hoped for by the environmental lobbying community, was announced by a “breakaway” group including China and the United States. Aspirations for a treaty were not blighted by one single factor: a complex interaction of technicalities, “bloc forming” behavior, and differences in position all contributed to the outcome. The causes and effects of climate change are environmental, societal and economic, as is cyber security with the exception that environmental considerations may be replaced by national security ones.

If the similarity between negotiating climate change and cyber security holds true, one useful lesson can be drawn from the Copenhagen experience: while “cyber security” or “climate change” are simple phrases, the nomenclature masks that they comprise several interwoven threads which could also be addressed as separate issues. **It would therefore be practical to break down the “cyber security” and “information security” debates into multiple pre-existing or new subjects, instead of a single over-arching theme.**

The “Law of the Sea”

The United Nations Convention on the Law of the Sea (“UNCLOS”), which entered into force in 1994, has been ratified by most member states of the United Nations. The United States, a non-signatory, generally acts in the spirit of the convention and harbors considerable internal debate to accede. China has ratified UNCLOS yet it articulates a self-serving interpretation to further its territorial claims in the South China Sea.

A product of what has been described as the “largest and most complex international negotiation ever held,” UNCLOS’s key provision includes *inter alia* the definitions of limits of maritime zones and their relationships with sovereign rights and responsibility. It also stipulates the framework for dispute resolution, including an International Tribunal and procedures related thereof, which has adjudicated 16 out of a total of 19 cases submitted since entry into force (United Nations Division for Ocean Affairs and the Law of the Sea 2013).

Like the maritime domain, cyber space may be considered *res communis omnium*. The lifeblood of global trade relies on both domains to a greater extent than air or space. The distribution of offensive capabilities is also similar. In maritime, select few states possess navies capable of inflicting strategic damage to foes. Similarly, the possession of significant offensive cyber capabilities, while largely untested, is probably only within the hands of half a dozen states. Likewise, the capability to inflict blows on nation states and other enemies lies within reach of the ordinary citizen or organized groups without state backing in both domains, as evinced by the attack on the USS Cole by Al Qaeda and the rise of “outing” confidential state information by Bradley Manning, Edward Snowden and Wikileaks.

Despite their differences, the challenges facing those negotiating UNCLOS would be similar to those negotiating the behavior of states in cyber or information security. **The lessons learned from developing UNCLOS should form an integral component of the baseline review by the GGE and other such multilateral negotiations on cyber security.** The UNCLOS experience suggests that **under certain conditions states’ behaviors may gravitate toward that intended by an international convention even if they are not party to the convention.**

Arms Control

Nuclear Cooperation

The process of regulating fissile materials and nuclear warheads is decades old and is still ongoing. Nuclear weapons were invented and deployed in

World War Two: this provided the world with a vivid frame of reference from which to imagine where escalation might lead. Over the next few decades, a nuclear arms race developed, characterized by a small number of “nuclear powers” maintaining arsenals to the scales that led to a morbid stalemate of “Mutually Assured Destruction” (MAD). As those powers engaged in bilateral talks and confidence building means to reduce their arsenals, global concern shifted to today’s focus on proliferation and proper use of nuclear technology. At various points in history, the list of potentially nuclear-armed states included not only Iran and North Korea but also Brazil, Argentina, Libya and South Africa.

The nuclear example has some parallels with cyber security: the weapons had assumed great destructive capacity before any meaningful, formalized dialogue had commenced—with the potential destructiveness of both forms of attack being captured by alarmist media and popular culture. The notion of “cyber attacks” has been around for decades - much as nuclear weapons had been before the non-proliferation treaty in 1968. It took decades of “coping with MAD” before any constructive dialogue took place between states, and in that time the world lurched worrying close to widespread nuclear weapons proliferation. The nuclear story informs us again that **the spectrum of significant stakeholders may widen beyond those around whom concerns are today focused and the development of norms will take time and should be based on observed activities rather than extrapolated threats.** In this regard, the Russian bloc’s objective to define behavioral norms may be considered premature, and any treaty drafted by a bloc “power” with only the involvement of a small group of supportive states would be of short-term utility.

The Mine Ban Treaty and Convention on Cluster Munitions

The Anti Personnel Mine Ban Convention, otherwise known as the Ottawa Convention or Mine Ban Treaty (“MBT”) of 1997, represented a watershed event in arms control. At the time of its adoption, the MBT was oft derided as “impractical” in a world where landmines had become as accepted and commonplace as the assault rifle and mortar. It was a broad treaty that included provisions not only for limiting the production, transfer, and use of specific weapon systems, but also for mitigating the harmful effects of such, whether realized or potential. Both the MBT and its “sister treaty,” the Convention on Cluster Munitions enjoy widespread ratification amongst states that were former user/producers, were “affected,” or neither. Yet in both cases, the most significant user/producers have yet to ratify: the US has not signed the MBT partially because

of its strategic commitment to the defense of South Korea, and neither has Russia, China, Pakistan or India. Theoretically, the significance of the non-signatories would have negated the effectiveness of the treaties: however, in practice, the new usage of such weapons has diminished to negligible levels, indicating success.

Non-state stakeholders with state support also used mines. The MBT resulted in restrictions on that state support (new mines are now only produced and deployed by a handful of pariah states compared with dozens pre-MBT) so non-state actors have reverted to developing locally-produced improvised explosive devices (IEDs) instead of factory-produced landmines. Any cyber security convention must consider that cyber threat attack capacity will almost certainly morph and proliferate. Again, **cyber security negotiations must not focus only on bloc concerns but seek as universal adherence as possible as well as a flexible design.**

Another salient lesson from the MBT is derived from its success despite criticism that it contains no provisions on anti-vehicle mines on which agreement could not be reached. Similarly, in the international debate on cyber security, every state agrees on almost everything, but considerable disagreement exists over a few crux issues. In the case of the MBT, the omission of anti-vehicle mines is at face value a failure: anti-vehicle mines cause residual and indiscriminate harm, the same undesirable characteristics of anti-personnel mines that led to the MBT, arguably at greater levels. Some non-signatory states cited the omission as contributing toward their decision not to sign. However, since the adoption in 1997, the behavior of all states whether signatory and non-signatory has altered significantly: the use of landmines of all categories has reduced to negligible levels globally.

The MBT experiences provides a precedent for “cyber security” as an “arms control” issue in that **success may still be derived from an international convention through stigma should a threshold volume of signatories be achieved, even if it is criticized as “incomplete” in terms of signatories and substance.**

RECOMMENDATIONS

The experience of COP15 indicates that work towards a single “cyber security” treaty should be discarded in favor of multiple agreements on issues which already have a baseline of support indicating potential universal adherence. The experience of MBT and nuclear cooperation indicate that universal support on specific goals can work well. The lengthy development of nuclear cooperation and UNCLOS should be reviewed in detail for baseline reference.

Recommendation 1: Establish an International Convention on Critical Infrastructure Protection

Every State desires to protect its critical infrastructure yet no such international agreement on the subject exists. Such an agreement would stand a good chance of achieving universal adherence. A new convention would include the following key provisions:

- Attacks against non dual-use, critical infrastructure, utilized for serving civilian populace, shall not be allowed *in the absence of declaration of war*;
- States have a responsibility to ensure that neither their territory are used nor their citizens are party to planning, supporting, or implementing such attacks;
- States have a responsibility to *inter alia* compel internet service providers to maintain the capability to detect and refuse service to originators of such attacks;
- States have a responsibility to ensure that domain names registrars are subject to due diligence on existing and new customers (Christin 2011, 22,23);
- In the event of an attack, states have a responsibility to cooperate and share information in order to allow a technical investigation to determine attribution.

This Convention would be invalidated upon the declaration of war between one state and the other—it is *jus ad bellum* in nature—thereby providing no false illusion that adequate protection of CIP could be simply done away with. The objective of this treaty would be to regulate peacetime behaviors by removing the potential for *sub rosa* attacks offered by the cyber domain. It would therefore require state parties to implement and enforce sufficient legislation to prevent citizens and groups from conducting such cyber-attacks from within its jurisdiction.

Recommendation 2: Additional Protocols to Trade Agreements on Economic Espionage including IP Theft

The provisions against IP theft in existing agreements such as TRIPS are difficult to enforce. However, they have near universal state membership (coinciding with that of the WTO) including both “blocs”: WTO/TRIPS may therefore be a preferable starting point compared with a new dialogue. An additional protocol, with the following key provisions, may strengthen TRIPS and possibly other such “regional” agreements such as the Trans Pacific Partnership (TPP):

- A common respect, understanding and acknowledgement of IP for all products and services of all signatory states (this includes a potentially contentious debate on the lifetime of IP);
- States have a responsibility to ensure that neither their territory are used nor their citizens are party to planning, supporting, or implementing IP theft;
- States have a responsibility to implement sufficient legislation and ensure the capacity of its judiciary to enforce IP protection;
- States have a responsibility to cooperate on international IP theft investigations, and an additional responsibility to advocate to their private sectors and civil society;
- Private sector entities within all state signatories have a responsibility to report IP theft;
- Private sector entities within all state signatories shall fully cooperate with all enquiries of investigations related to IP theft, including the disclosure of details of any and all relevant research and development;
- *Cui bono* and patterns of economic advantage may constitute sufficient evidence to initiate dispute arbitration, possibly leading to redress or sanctions, by the trade body.

Recommendation 3: Separate Treatment of Freedom of Speech

This paper recommends against tying attempts to solve wider cyber security problems along with debates on the bloc positions on content. The product of any such process will, given the current spectrum of positions by states, only continue to achieve intra-bloc agreements. This in turn may produce a truly meaningless agreement: the successes of UNCLOS and the MBT are partly due to the broad range of state signatories across political-ideological divides and between the developed and developing worlds. Bundling the debate of freedom of speech vs. State sovereignty into the cyber security debate would over-load the cyber-security debate with a wider issue, and risk going the same way as the Climate Change debate in 2009. Cyber security is a basket of issues: states should be encouraged to collaborate on those specific issues on which they already have clear agreement in principle.

Nevertheless, the debate is unlikely to go away, in which case the wording used in the latest GGE recommendations may form a useful blueprint for inclusion in any future Convention's preamble by both recognizing the state's sovereign authority whilst drawing attention to the Universal

Declaration of Human Rights. This wording acknowledged both blocs without favoring either.

Recommendation 4: Separate Treatment of Strategic Cyber Security

This paper recommends against the international community prioritizing any attempted regulation of military or strategic espionage. While classifying cyber “weapons” would be useful there is great debate on whether cyber has been effectively weaponized to date (Rid 2013). The prospect of a “cyber disarmament” treaty has been discussed among academia and industry practitioners (Arimatsu 2012; O’Connell and Arimatsu 2012, 11-12). However, cyber technology evolves at a faster pace than diplomatic discourse and its effects have been less visible than conventional or nuclear weapons. States are, quite simply, highly unlikely to disclose their cyber attack capacities—the potential “game changer” weapon of the 21st century - any more than they would have with nuclear weapons. It would be better to focus discussion around the *effects* of cyber attacks: this, as nuclear cooperation demonstrated, will take time.

With regards to state-on-state espionage, the cyber domain presents only a new conduit to an age-old problem. The Law of Armed Conflict does not recognize espionage as an act of war; no special new provisions need be made for cyber-security. States should invest more into securing their own information integrity rather than striving for better global behaviors on espionage.

CONCLUSION

Lessons from other cases of arms control and *res communis omnium* should be applied to cyberspace because the cyber domain has fundamental characteristics in common with both. More specifically, this paper recommends that immediate international discussion should focus on a new convention on civilian critical infrastructure protection, and on strengthening existing trade agreements with new systems to address IP theft grievances: this will require more innovative legal thinking rather than new technical or policy work. International interests are already aligned on critical infrastructure protection: every state needs functioning utilities. On IP protection, common global interests are emerging: China seeks to protect its innovative private sector and is becoming more invested in the sanctity of the patent system. A cyber arms treaty may be premature and non-economic espionage through cyberspace requires new security methods not new behaviors. Above all, the subject of state control of content should be resolved through

political evolution and diplomatic cooperation: cyberspace experiences the effects but is not a cause of that wider ideological debate.

NOTES

¹ DDOS is a cyber attack whereby the assailant overwhelms the victim computer or server with messages, thereby rendering it inoperable.

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8

POVERTY, INEQUALITIES, AND ETHICS IN THE ALLOCATION OF FOREIGN AID

Nicolas Collin dit de Montesson

Over 50 percent of the 3.1 billion people living on less than two dollars per day live in middle-income countries, and yet these countries have difficulty accessing international aid. The existing literature on the importance of institutions in aid effectiveness constitutes one argument in favor of a greater allocation of aid to middle-income countries, while specifically targeting the poor population. Nonetheless, this argument raises an ethical question: Should the efficacy of aid drive its allocation? There are two aspects in tension; since an individual living in poverty cannot choose to belong to country X or Y, he or she should be given equal priority and should not be discriminated based on something he or she cannot control (the quality of the institutions). However, the donor has the responsibility (vis-à-vis tax-payers or private donors) to optimize the use of resources and reach a maximum number of people. The author argues that the allocation of aid should and could satisfy both principles by giving the same priority to the poor populations living in low- and middle-income countries. The central argument is that aid allocation should be decentralized and target specific sub-national units within middle-income countries, taking into account the local level of development.

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The effectiveness of aid would, on the whole, increase since a larger proportion of funds would be directed to countries with stronger institutions.

INTRODUCTION

Over 50 percent of the 3.1 billion people living on less than two dollars per day live in middle-income countries (World Bank 2008). So why do these countries have more difficulty accessing international aid than sub-Saharan or Southeast Asian countries, for example? Since the establishment of the Millennium Development Goals in 2000, the international community has agreed that the main objective of aid is global poverty alleviation. Nonetheless, the current pattern of aid allocation presents some inconsistencies because middle-income countries such as Brazil, India, Mexico, or China are not a priority for major donors even if they have the highest number of individuals living in poverty and higher levels of inequality than low-income countries.

This sets important questions around the way to allocate aid. Should donors allocate aid to the poorest countries or to those with the highest number of poor people? If aid is likely to be more effective in some countries than others, is it ethically correct to reallocate aid towards these countries, deviating it from poorer countries?

I argue that it is ethically just and effective to reprioritize middle-income countries to the level of low-income countries in the service of global poverty and inequality reduction. The central argument is that aid allocation should be decentralized and target specific sub-national units within middle-income countries, taking into account the local level of development.

THE AID SYSTEM

Aid primarily takes two forms: grants or concessional loans.¹ Concessional loans have to be repaid by recipients, whereas grants are not reimbursed. The criteria used by actors from the Development Assistance Committee (DAC)² countries (and followed by many other sub-state and international organizations) principally prioritize the flux of international aid on a country's "overall richness basis" and/or the fragility of state institutions. Thus, middle-income countries such as Mexico and India have limited access to aid, which often comes in the form of loans rather than grants. However, countries with relatively high rates of extreme poverty

and generally weak governments, such as Haiti and many sub-Saharan countries, have easier access to grants. These criteria often extend to non-governmental organizations (NGOs) that operate in these countries and are funded almost exclusively through grants. This system overlooks the poor in middle-income countries. For example, in 2010, Mexico's GDP per capita reached approximately USD 14,000, but 46.2 percent of its population live in poverty (over 52 million people; 4 million more than in 2008) (CONEVAL 2011).

The ineluctable consequence is that the magnitude of poverty in these countries does not match the incoming aid flow. Some would argue that it is principally their governments' responsibility to implement poverty eradication policies. However, this understates the fact that they may not have the sufficient financial resources to carry out such policies, nor the necessary consolidated public administration to effectively implement them, even though they may be relatively more effective than in low-income countries and fragile states. They also tend to prioritize national economic development in large urban areas over rural and marginalized regions. Notwithstanding its Green Revolution, India's current growth also excludes a large proportion of the population from its national development dynamic (UNDP 2011). Conditional cash transfer programs implemented in Mexico and Brazil demonstrated positive impacts on poor communities (mainly in health and education) but have not succeeded in reducing poverty significantly after almost 15 years of activity (Behrman 2005).

The current aid system will not further reduce poverty if it does not evolve, adapt, and find ways to increase its impact, reaching the populations who most need it, in both low- and middle-income countries.

EFFICACY AND ETHICS IN ALLOCATING AID

Several studies have explored the relationship between aid and economic growth, with its implied effect on poverty alleviation. Some research supports the idea that aid has a very limited or nonexistent effect on economic growth (and thus on poverty) (Easterly 2004, 2006) whereas other research concludes that it may have a positive impact on growth, particularly in countries with better institutions (Collier and Dollar 2001). The few publications on aid and inequality are also inconclusive. Some seem to indicate that aid has no effect on income inequality or if any, only when institutions reach a minimum quality (Calderón 2006). Another study supports the decreasing effect of aid on income inequality when interacted with democracy (Bjornskov 2010). However, a recent working paper pub-

lished by the World Bank finds that “aid exerts an inequality increasing effect on the distribution of income” (Herzer and Nunnenkamp 2012).

In summary, there is no clarity about the effectiveness of aid at a country-level on either poverty or inequality.

Nevertheless, there is a shared belief that institutions are important to increase effectiveness. It is more likely that middle-income countries have stronger institutions than low-income countries. Low-income countries usually have weak institutions, with almost nonexistent accountability mechanisms and high dependence on foreign aid to pay for their public sector’s operational costs. The probability that aid is diverted from poor populations to serve other interests is higher. Some studies suggest that aid increases inequalities in such countries because political elites enrich themselves rather than providing aid to the poor (Layton and Nielson 2009). This issue constitutes one argument in favor of a greater allocation of aid to middle-income countries, while specifically targeting the poor population.

Nonetheless, this argument raises an ethical question: Should the efficacy of aid drive its allocation?

There are two aspects in tension; since an individual living in poverty cannot choose to belong to country X or Y, he or she should be given equal priority and should not be discriminated based on something he or she cannot control (the quality of the institutions). However, the donor has the responsibility (*vis-à-vis* tax-payers or private donors) to optimize the use of resources and reach a maximum number of people.

While there are necessarily tradeoffs, the current system satisfies neither of the previous considerations. It prioritizes aid towards countries with low accountability and weak institutions, exposing aid to significant loss in effectiveness. It also discriminates between individuals with the same level of poverty by giving higher priority to low-income countries than to middle-income countries, even though the majority of poor people live in the latter.

I argue that the allocation of aid should and could satisfy both principles by giving the same priority to the poor populations living in low- and middle-income countries. The effectiveness of aid would, on the whole, increase since a larger proportion of funds would be directed to countries with stronger institutions.

DECENTRALIZATION OF AID

A final step is to ensure that aid actually targets the poorest population in middle-income countries. In fact, an examination of the distribution

of poverty in middle-income countries reveals that it is not homogenous on the territory since most of it is predominantly rural. In India, there were around 231 million poor living in rural areas in 2010, representing approximately 72 percent of India's total population living under the national poverty line (World Bank 2013). Some scholars argue that poor people concentrated in rural areas have less bargaining power to attract the interest of the central government (Ranis 2012). Targeting directly these local units, where the poorest are concentrated, would increase the likelihood that aid is not diluted through several levels of government or diverted to a population that is not the priority.

Decentralization of aid is an essential process to increase the accuracy of the targeting of the population. To succeed, donors should use mixed criteria based not only on country-level indicators but also on local poverty information. This alternative implies that, independent of the national poverty rate, local areas within a middle-income country could benefit from international aid. Some tools are already in place. First, middle-income countries provide local indicators that can be used to determine eligibility. Mexico and Brazil already have the Human Development Index (HDI) and detailed poverty data at the municipal level. For example, the municipality of Mixtla de Altamirano in the Mexican State of Veracruz has an HDI of 0.41, which puts it on par with countries that have the lowest HDI, such as Togo or Gambia. Hundreds of similar examples can be easily found in the rest of Mexico, Brazil and other middle-income countries.

The real challenge and potential of this proposal relies on turning financial aid into action, which could be done through governmental entities or NGOs. It is widely recognized that the ability to focus on specific local contexts (without overlooking exogenous factors) can determine a project's success or failure. The current expansion of decentralized cooperation could enable local governments to gain direct access to these funds and ensure that international aid is effectively directed towards poor populations. This option presents the advantage of preventing political conflicts between different levels of government (in a federal system), which could block the projects' implementation. Moreover, it would foster the recipients' ownership of aid. Nevertheless, it doesn't guarantee that local governments have the capacity to assume the execution of funds. This is where NGOs could play a key role by adapting poverty alleviation actions to specific local conditions. It is difficult for nationally designed policies to respond to specific needs, especially when dealing with federal systems in large territories like India or Brazil.

In any case, the decentralization of aid, whether it is carried out through

local governments or implementing NGOs, narrows the distance between the population's needs and the source of funding. This allows people to better voice their demands. For example, in Sri Lanka in 2004, "the tsunami humanitarian aid process failed to make use of public institutions in the district for the purpose of aid distribution and thereby missed the opportunity to promote accountability and transparency of public institutions" (deSilva 2009). Decentralization will enable foreign assistance to be tailored to the specific needs of a given local population and make it more likely that resources reach marginalized communities.

Admittedly, there is risk of fungibility associated with the decentralization of aid. National governments could reduce support to areas that receive decentralized foreign aid in order to maintain the status quo and reallocate the resources made available to other regions or issues, perpetuating inequalities. As such, for the least-developed countries, decentralization may not be desirable since it could fragment further the fragile country's unity, especially in multiethnic states.

CONCLUSION

Combining the ethical and efficacy aspects of aid, a modification of aid allocation criteria through the decentralization of aid is necessary and desirable. Low-income and fragile states should not be excluded from this system; nonetheless, extremely poor areas within middle-income countries should not have lower priority or disproportionately more restrictive conditions attached to aid than those low-income countries.

The decentralization of aid is compatible with the idea that the majority of the poor population is not poor by choice but condemned to be poor by their environment. Targeting local areas with high rates of poverty will ensure that for equal levels of poverty, poor individuals in low and middle-income countries will be given the same priority. It will increase the global efficacy of aid by benefiting more individuals, eventually getting the world closer to achieving the goal of global poverty alleviation. Furthermore, the inequality gap within middle-income countries and more broadly, within the world, will likely decrease since the incomes of those individuals from the lowest segment of the income distribution will rise.

Only a few modifications must be made to incorporate local indicators in the allocation criteria. These can include the Human Development Index, multidimensional poverty indicators, income inequalities indicators, or indicators that would reflect inequalities of opportunities. The post-2015 MDG discussions should focus on the way to target better the vulnerable populations rather than expanding the objectives.

NOTES

- ¹The classification of other forms of aid, particularly technical cooperation, debt relief, or preferential tariffs, is the subject of current international discussions and is therefore not addressed here since it does not fundamentally change the argument.
- ²The DAC is the structure that gathered the main donor countries and provides guidance and establishes norms (although they are not mandatory) on several aspects of aid, including allocation or monitoring and evaluation.

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9

RISING UP AGAINST THE RACKET: PALERMITANI FACING THE SICILIAN MAFIA HEAD ON

Naomi Crowther

This essay investigates how Kuran's (1991) threshold model of collective action can explain how the NGO *Addiopizzo*, started in 2004 in the Sicilian city Palermo, persuaded 857 Italian businesses to stop paying the *pizzo*—an illicit racketeering tax levied by the *Cosa Nostra* on businesses in exchange for “protection.” The essay expands on Kuran's dynamic model by discussing the concept of critical mass and whether it is achieved in Palermo. The future of *Addiopizzo* is briefly discussed in terms of the mechanisms of social network interaction as geographical spread increases.

The essay argues that *Addiopizzo* overcame the collective action problem by strategic use of selective benefits, thus pushing itself into a self-augmenting state. The NGO created a strong brand that both communicated a committed level of participation in Palermo and provided selective benefits to business owners. Coupled with measures to sustain its ideology among the youth, *Addiopizzo* has gathered momentum toward critical mass. Critical mass, however, is a fragile state, vulnerable to strong external shocks that the mafia have a financial incentive to administer.

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INTRODUCTION

Historically, organized crime syndicates emerged during times of political and social change. In the absence of effective police in rural Sicily following the abolition of feudalism in the early 1800s, landowners had difficulty protecting their land, and banditry blossomed. The *Gabelloti* and the soldiers they hired to enforce the system of patronage were the progenitors of the modern Sicilian mafia, emerging as a social mobility facilitator and parallel legal system (J.Sandell 2009). The *Cosa Nostra* has been the ruling mafia organization based in Sicily since the mid-1900s.

In Palermo, a city of 650,000 in northwest Sicily, 80% of shopkeepers pay the *Cosa Nostra* €00 to €00 euros monthly to avoid smashed windows, mysterious fires, or a bomb under their car. This essay applies Kuran's (1991) threshold model of collective action to shed light upon the mechanisms the Sicilian based non-governmental organization (NGO) *Addiopizzo* employed to persuade an ever increasing number of Italian businesses to stop paying the *pizzo*—an illicit racketeering tax levied by the *Cosa Nostra* on businesses in exchange for “protection.” The essay expands on Kuran's dynamic model by discussing the concept of critical mass and whether it is achieved in Palermo. The essay briefly discusses the future of *Addiopizzo* in terms of the mechanisms of social network interaction as geographical spread increases.

This paper argues that *Addiopizzo* overcame the collective action problem by strategic use of selective benefits, which, coupled with measures taken to sustain its ideology among the youth, have enabled it to gather momentum toward critical mass. Critical mass, however, is a fragile state, vulnerable to external shocks that the mafia have a financial incentive to administer.

ADDIPIZZO: AN APPLICATION OF KURAN'S THRESHOLD MODEL

In its attempt to identify the conditions necessary for a popular uprising against the status quo, Kuran's model departs from the assumption that individuals are rational agents. He distinguishes between an individual's *private preference* and their *public preference*. If the two differ, individuals are prone to *preference falsification*, which is termed an “internal cost” due to the psychological cost of not being true to one's principles. This paper explores how, through a series of events in Palermo, this internal cost increased enough to spark a chain of revolutionary actions.

In the case of *Addiopizzo*, the external payoff of publicly opposing the mafia is a function of personal rewards and punishments. This payoff

increases as more people join the opposition, as individuals face lower risk of persecution and can derive greater personal benefit. Kuran stipulates that participation in revolutionary action balances between the external and internal payoffs. The *revolutionary threshold* is the point at which the external cost of joining the opposition falls below the internal cost of preference falsification.

In this model if an individual's cost of preference falsification rises then the level of participation in society required before they join the opposition falls. The same applies if anything alters the individual's external payoff for supporting the opposition, like the opposition becoming better at rewarding its supporters or punishing its rivals.

This theory will be used to explain how *Addiopizzo* mobilized businesses to overcome the Collective Action Problem (CAP). A CAP arises when a particular action will be beneficial to all members of a particular group regardless of their participation. The "problem" of a *pizzo*-free Palermo arises because businesses that do not oppose the mafia will still reap the benefit. As such, everyone prefers that others shoulder the costs, which can be substantial.

Indicative of those potential costs, a number of high profile murders occurred in Palermo in the 1990s and early 2000s. In 1991, Libero Grassi, a local clothing manufacturer, refused to succumb to the racket and violated the taboo of speaking out by writing an open letter in the local newspaper entitled "Dear Extortionist" (Hammer 2010). Grassi became the focus of much media attention, but when he tried to persuade other businesses to join him, the *Cosa Nostra* assassinated him in broad daylight in front of his apartment. This high profile murder was an act of signaling by the mafia to other potential dissidents, and for another fifteen years, businesses remained silent. Throughout those years however, other high profile murders turned public opinion against the mafia, including the assassination of lead mafia prosecutors Paolo Borsellino and Giovanni Falcone in 1992. The internal cost of silence was rising for the Palermitani.

In this climate, five young friends sought to open a bar in Palermo in 2004. The individual drawing up the business plan factored the *pizzo* into the operating costs. According to the young entrepreneurs this constituted a tipping point, and they decided to speak out.

The next day, the city awoke to stickers pasted around town designed to mimic Sicilian obituary notices, reading: "*An entire people who pay the pizzo is a people without dignity*" (Humphreys 2013). Their aim was to bring the previously taboo topic into the public debate. Later that week, they unfurled a banner at a local football match reading "*United Against*

the Pizzo,” which included their website address. They aimed to build a “coalition of mafia-free businesses” in Palermo because they believed the mafia was keeping their region underdeveloped, stifling their local economy, and undermining the economic prospects of their generation. The media coverage of the event brought their bar its first business the same day (Frontline World 2009).

Overcoming CAPs is a sequential process because most individuals will only participate once a certain number of others have joined. The main issue faced by both the status quo power and the opposition is that neither private preferences nor the level of public action required for an individual to join the opposition are common knowledge. *Addiopizzo*, however, took action, through making signals and commitments which communicated the level of participation in Palermo.

A *commitment device* is an action that makes a promise credible by changing payoffs. A *signal* makes a threat credible by changing your counterpart’s beliefs of your payoffs. Below are three actions (both commitments and signals) adopted by *Addiopizzo*: putting the initial stickers up around Palermo, rolling out a banner at a football match, and creating “Critical Consumption” stickers for shop owners to display.

Signal: Anonymous stickers around Palermo reading: “*An entire people who pay the pizzo is a people without dignity.*”

- To the mafia, these stickers send the message: “We have broken the taboo silence. We are seeking a revolt.”
- To the citizens, they send a different message: “You need not accept this injustice silently. We can take back our city.”

Signal: Banner at the match reading: “*United Against the Pizzo.*”

- To the mafia this said: “This is a mark of public opposition and we are openly identifying ourselves. We are not afraid of you because we believe we can defeat you.”
- To the citizens this said: “We don’t fear, nor should you. Join the cause—you are neither alone nor the first.”

Commitment: “Critical Consumption” stickers. The stickers displayed the *Addiopizzo* logo (a broken circle with an X in the middle) and the words “Consumo Critico” (critical consumption) on shop fronts in Palermo as a message from adhering businesses.

- To the mafia this commitment meant: “I am not afraid to speak out and openly oppose you. Even if you attack me, others will fill the space as it benefits us all. We are numerous.”
- To other business the commitment meant: “Join us—a community is already established.”
- To consumers the commitment meant: “If you buy from this shop you will be supporting an anti-mafia movement in your local community, you will benefit from the corresponding social capital.”

By placing stickers in shop windows, *Addiopizzo* set a minimal bar of engagement visible to others in society, making defection costly. These actions assailed the CAP from numerous angles. By creating the brand “Critical Consumption,” *Addiopizzo* created a pool of consumers willing to support the anti-mafia movement by patronizing member businesses. *Addiopizzo* also honed in on the potential to create and channel social prestige associated with opposing the mafia in a city that had been a mafia stronghold for over a century. Businesses reaped the benefits of more trade, while also directly lowering operating costs by declining to pay the *pizzo*.

The murder of Liberto Grassi, undertaken by the mafia as a signal of their power, has been reclaimed and transformed into a cautionary tale of what is lost if the community does not stand together against the mafia. In 2007, the mafia attacked Rodolfo Guajana, owner of a hardware wholesale company and an early member of *Addiopizzo*. They carved a hole in the roof of his warehouse, poured gasoline inside, and set fire to it. This time, however, with *Addiopizzo*’s leadership, Palermo responded:

“Collections were taken to help Mr. Guajana, crowds came to show he wasn’t alone, and trade associations stood by him. And, significantly, Lo Piccolo [one of the most powerful mafia bosses in Palermo] and his henchmen were arrested and imprisoned.”
(Humphreys 2013)

Following the incident, local government funded the construction of a new warehouse and *Addiopizzo* emerged from the incident stronger and more unified.

ACHIEVING CRITICAL MASS: A DISCUSSION

“Critical mass” is achieved at the point a movement reaches the threshold of participation necessary to become self-sustaining. By creating the “Critical Consumption” brand, *Addiopizzo* created selective benefits for

participating businesses; a niche market of consumers and an inter-business network that benefits from the social capital of opposing the mafia. These financial benefits appeal to business owners and are self-augmenting; the more businesses that join, the stronger the brand and greater the attraction of belonging to the community.

As of March 8, 2014, the *Addiopizzo* website identifies: 10,601 consumers who have pledged their support; 32 producers belonging to the *Addiopizzo* “Critical Consumption” brand; 184 schools involved in anti-racket awareness; 2,666 messages of solidarity from around the world; and 857 member shops and businesses. *Addiopizzo* have also secured agreements that are pivotal to sustaining self-augmenting thresholds. In 2005 Guido Di Stefano, Director of the Scholastic Regional Office, announced that every company supplying Sicilian schools must certify that they do not pay the *pizzo*. In 2008, in a climate of growing opposition, *Confindustria*, the Sicilian employer’s federation, announced that any members paying the *Cosa Nostra* an extortion payment would be expelled (Krause-Jackson 2009).

Addiopizzo is taking steps to ensure the sustainability of their ideology through initiatives in schools to sensitize Italian and international youth to the movement. They aim to increase the younger generation’s cost of preference falsification when paying the *pizzo* by increasing their private preference not to pay. In 2006, the NGO organized the first ever “*pizzo*-free festival” in Palermo, which attracted thousands of participants. “*Addiopizzo* Travel” offers holiday-makers the chance to visit Sicily *pizzo*-free by providing bookings and a list of hotels, restaurants and shops (TimesOnline 2010). In 2008, 29 year-old Fabio Messina opened the first “*pizzo*-free” supermarket in Palermo. This was a landmark moment as all products & goods are supplied by shops and producers which have stood up to Sicily’s *Cosa Nostra* by refusing to pay protection money (The Observer 2008).

PROPAGATION TO THE REST OF ITALY: A THEORETICAL OUTLOOK

Addiopizzo’s wider success in Italy is less certain due to the non-monotonic effect on the participation rate as the “Critical Consumption” brand spreads. As we have seen, a major factor in increasing the numbers of adherents to *Addiopizzo* was the reassurance of shop owners and consumers provided by a pre-existing support base in Palermo. As the movement spreads, the visibility of the support base weakens, forcing potential adherents to speculate on the breadth of support. Siegel (2009) finds that in a widely dispersed society, a given threshold sequence leads to a revolt only half as often as it

would in a small community. Nonetheless, many new organizations have modeled themselves on *Addiopizzo*. “*Addiopizzo Catania*” started in Italy in 2006 with the same aims as the original *Addiopizzo*.

Moreover, critical mass is a fragile state that can be overturned by violent disruption to the opposition. It is prone to external shocks throughout time and the shift in one person’s threshold can halt a revolution as easily as trigger it. Hypothetically, if the *Cosa Nostra* were to murder the figure-head of the opposition, the perceived cost of participation may increase significantly.

There are three main Mafioso families in Italy, the *Camorra*, the *N’draghatan* and the *Cosa Nostra*. A recent report estimates the mafia generate over 40 billion euro annually from illegal activity (Superti 2008). The stakes are high, and if movements like *Addiopizzo* challenge their authority, these families have strong incentives to alter costs of defection in their favor. Given the combination of these incentives, the complications of expanding a network over a large geographic area, and the extant strength of the mafia, there is a possibility that critical mass—which seems set in Palermo—may not hold up more broadly in Italy.

CONCLUSION

Addiopizzo succeeded in coordinating collective action because it was started by a homogenous group of individuals with a common interest. As a relatively small-scale operation, commitments are more credible due to the tighter social networks. The NGO created a strong brand that both communicates a committed level of participation in Palermo and provides selective benefits to business owners by lower operating costs and providing a niche market of consumers. This paper argues that critical mass is a complex and fluid state, and the selective benefits that the NGO has created have pushed it into a self-augmenting state. However, just as strong actions can “get the ball rolling,” antipodal actions can reverse critical mass by increasing the cost of opposition. *Addiopizzo* is taking measures to transmit knowledge of the on-going battle against the mafia to future generations in the hope that this will alter the perceived payoffs of paying the *pizzo*, thereby sustaining the opposition movement. It is difficult to predict how the *Addiopizzo* movement will fare when expanded to other cities in Italy because an increased geographical area alters the ability of individuals to be certain of the true level of participation and support available. The Italian mafia is a highly lucrative and complex network of organized crime, where strong incentives exist to maintain the status quo. However, history has repeatedly shown that there will be those who

are willing to take the first step against all odds. *Addiopizzo* provides us with an inspirational story of micro-level resilience making macro-level waves in society.

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