

OVERTURE

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A Note from the Editors

In founding *Overture*, we wanted to provide an opportunity for students to showcase their work on foreign affairs and provide commentary on the state of the international order. The COVID-19 pandemic highlighted the importance of multilateralism; we are all neighbors, no matter the distance. Global engagement is a critical component of the Colby experience, and we are delighted to present this diverse collection of student and faculty work.

In this edition, you'll find a fascinating interview on the state of international law with Ken Rodman. You'll also see a piece on private military security contracting where James Greer explores the deep integration of these forces into American foreign policy. We were quite impressed by the content from all authors, and we hope you enjoy the unique perspectives they offer.

We would like to thank the Goldfarb Center for sponsoring this project; their support and trust is greatly appreciated. Josh would like to thank his advisor, professor, and mentor Walter Hatch. While Professor Hatch is leaving Colby this year, his wisdom and kindness will be greatly missed. Tom would like to thank Professor Guilain Denoeux for his thought-provoking and insightful courses on the MENA region and beyond. Finally, we would like to thank our editorial board; this project was an entirely student-run effort and would not have been possible without their hard work.

Thank you,

Josh Brause '23 and Tom Cummins '21, *Overture* Editors-In-Chief

May 2021

Outsourcing Power: International Legal Loopholes and the Integration of Private Military Security Contractors in U.S. Foreign Policy

James Greer '21

Introduction

Private military security contractors (PMSC) have been increasingly integrated into America's foreign policy. While many supporters of PMSCs in Washington and in academia point to their supposed efficiency in both cost and effectiveness, their ability to replace U.S. troops in the field of combat, and a plethora of other justifications, little debate has focused on how PMSCs provide a way for U.S. foreign policy makers to avoid international legal obligations and precedents. The first section of this paper will lay out the three intertwining components of, and gaps in, international law, as well as how the nature of PMSCs provide such options. These include the jurisdictional 'grey zone' that PMSCs fall into, these firms' existence as private entities on a global market, weak international contract law and standards, and the lack of effective international monitoring institutions. The usefulness of these attributes are weighted differently depending on the contract as well as their effectiveness in helping the U.S. achieve its goals. Consequently, the normative, strategic, and diplomatic costs that the U.S. has avoided through the use of contractors to evade international law varies based on that effectiveness. To present a wide-ranging analysis of PMSC's usefulness for evading international law, four cases will be subsequently compared: Military Professional Resources Inc.'s (MPRI) contracts with Croatia and Bosnia-Herzegovina, DynCorp's role in 'Plan Colombia, CACI International and Titan Corporation interrogators at Abu Ghraib, and Blackwater's involvement in the Nisour Square massacre. These cases involve a mixture of asymmetric and conventional conflicts and a range of international laws and precedents that were skirted for the purpose of advancing American objectives.

The PMSC 'Grey Zone'

PMSCs exist in a highly ambiguous 'grey zone' within both international and domestic U.S. law that makes it incredibly difficult to hold them accountable. U.S. foreign policy officials have used this 'grey zone' to skirt interna-

tional and domestic law by intentionally obscuring the jurisdiction that PMSCs fall into, which undermines the ability of a potential prosecutor to file charges and convict a contractor who breaks international law. By doing so, it then weakens any case that could be brought against the U.S. government, or individuals acting under its authority, for abuses that its contractors have carried out, either under orders from the Executive or unintentionally.

The effectiveness of this 'grey zone' is further amplified by the status of these firms as private corporations, rather than arms of the government. Accordingly, the U.S. government can use the exporting of these firms as a form of soft-power influence and, in certain cases, bypass international laws that only limit the actions of states rather than corporations. The obscurity granted by the use of PMSC firms is again exacerbated by the lack of international monitoring institutions with power to observe their actions and publicize crimes in the interest of accountability and transparency, both of which have been further undermined by the actions of firms and the U.S. government.

The Position of Contractors within the Geneva Conventions

Under the Geneva Conventions, which are codified in U.S. criminal and military law, PMSCs are civilians who are protected by qualified immunity if they do not take part in 'direct hostilities.'¹ Under DoD guidelines, the line between what roles can and cannot be outsourced depends on what is 'inherently governmental,' and as such 'direct hostilities' falls within that definition.² Only U.S. military personnel are legally allowed to take part in purely 'direct hostilities' under both U.S. and international law. The line between what is and what is not 'inherently governmental' has now become increasingly blurred as PMSCs are contracted specifically to operate in high-risk scenarios where the threat of attack is likely if not assumed.

Furthermore, in conventional conflicts, if civilians engage in hostilities they lose the immunities granted to them through the Geneva Conventions, and can be prosecuted by the enemy for taking up arms in accordance with the laws of war. However, in asymmetric conflicts that involve ‘unrecognized’ armed non-state actors who do not follow international law, civilians (i.e. contractors) have the right to defend themselves from attack even when the possibility of harming civilians, and therefore violating International Humanitarian Law (IHL), is high.³ PMSCs are also not subject to proportionality analysis tests that Judge Advocate Generals apply to regular U.S. personnel, further freeing PMSCs from regulations that would constrain their actions. Moreover, IHL permits the use of civilian contractors in ‘a civil police role in an occupied territory,’ a role in which they are ‘authorized to use force when absolutely necessary to defend persons or property’ that are unrelated to the military or the war effort.⁴ Yet many sites are considered dual-use sites, such as telecoms, oil, and power infrastructure that benefits both the civilian populace and the occupying force.⁵ Subsequently, a legal loophole develops; PMSCs are employed to protect assets of high strategic value during which the accidental harming of civilians could occur, and where U.S. foreign policy makers are willing to sacrifice civilians for the defense of such an asset, but because PMSCs are also classified as civilians themselves acting in self-defense from supposed attack they are technically immune from prosecution.

The U.S. as a Non-signatory on relevant U.N treaties

Combining the Geneva Conventions loophole with the U.S.’ position as a non-signatory to many relevant U.N. treaties further amplifies the ‘grey zone.’ While U.S. troops are also protected by the United States’ non-signatory position, the use of contractors who are deliberately placed in situations where the likelihood of international law violations are high, and even incentivised for the sake of achieving U.S. objectives, is still strategically more effective than the deployment of U.S. troops who are bound by tighter rules both domestically and internationally.

The United Nations Mercenary Convention, which prohibits the employment of mercenaries, has so many loopholes that the U.S. has been able to exploit it even without being a signatory. The treaty, which was originally written to combat rampant mercenarism in Africa, defines a mercenary as someone who is ‘motivated to take

part in the hostilities essentially by the desire for private gain.’ Opponents of the treaty argue that it is ‘difficult to determine exact motivation in the legal realm,’ which they claim makes the definition unworkable.⁶ Moreover, the issue of ‘hostilities’ returns as PMSCs, the U.S. claims, do not take part in direct hostilities but instead are forced to defend themselves from unlawful attack as they are civilians fulfilling contracts that do not require them to use violence. These failures to define what a mercenary is gives the U.S. a legal justification to not sign onto the treaty, undermining the ability of international law to hold U.S. PMSCs accountable.

Furthermore, the U.S. has not ratified the Rome Statute, which would give the International Criminal Court (ICC) the right to charge U.S. contractors for violations of human rights law and war crimes. Even if a U.S. PMSC broke international law in the territory of a party-state and the ICC charged them for doing so; those PMSCs would be protected from arrest through the bilateral Article 98 agreements that most states where U.S. PMSCs deployed have signed, including every state that will be analyzed in this paper.

Failures in Domestic Accountability

Due to these intertwining gaps in international law, there is no clear international forum for charging ‘an individual private contractor, the private contracting firm, or a government actor employing the firm.’⁷ In most cases the result is that either, no charges are filed, or a case will be conducted under U.S. jurisdiction. One core reason behind why the U.S. has not ratified the Rome Statute is that the ICC is supposedly ‘superfluous because all U.S. personnel must act within the confines of the U.S. legal system.’⁸ There are two main ways that a U.S. PMSC can be prosecuted either criminally or through civil courts: Alien Tort Claims (ATC) and the Military Extraterritorial Jurisdiction Act (MEJA). ATCs have been used in the past for filing claims against PMSCs but are very rarely successful, which will be demonstrated in the cases below. When an ATC is used, the U.S. government will try to dodge responsibility by claiming that PMSCs are not embedded within the military chain of command and therefore cannot be held liable for the contractor’s actions as they did in the case of the Abu Ghraib contractors.⁹ However, as the contractors are fulfilling a mission for the U.S. government, by suing the PMSC the claimant is, in-effect, suing a state entity and is violating sovereign immunity, therefore protecting the U.S. government from

violating the law of nations.

There have been developments in the application of ATCs in regard to PMSCs. In *Kiobel v. Shell*, the Supreme Court 'held that the presumption against extraterritoriality appl[ying] to the Alien Tort Statute,' which weakened ATC claims against private corporations who break international law outside of U.S. territory.¹⁰ However, the Supreme Court also ruled that the presumption against extraterritoriality could be overcome when the corporation makes a decision in the United States that leads to them breaking international law abroad, which can be applied to PMSCs that contract with the U.S. government. Consequently, the ATC avoidance justification for using PMSCs has been weakened by the *Kiobel* ruling.

MEJA has been used to successfully prosecute some contractors, though it has many weaknesses that have been exploited by PMSCs. MEJA allows for contractors working overseas in U.S. operations to be charged under the Uniform Code of Military Justice (UCMJ). Previously MEJA only applied to contractors working for the DoD and when Congress tried to expand it to all branches of the military President Bush intervened and successfully killed the bill.¹¹ It was only through the 2013 National Defense Authorization Act that its jurisdiction was expanded to include all U.S. 'contingency operations.'¹² Though it only applies to armed contractors and not those in other roles, which still have the propensity to commit crimes.

There is also a question of political will and means to conduct an investigation into PMSCs, especially when a crime occurs in a high-risk environment and in a country where domestic rule of law is weak and corrupt. For a MEJA prosecution to take place, there must be a U.S. Attorney willing to accept a case that is unlikely to result in a conviction, and the cooperation of an overseas military command that is also unlikely to want to take on the burden of facilitating an investigation and prosecution.¹³ This is due not only to the difficulties in evidence collection in a conflict zone but also to the challenge of prosecuting defendants that will likely have the backing of the Executive Branch as well as that of the large PMSC firms that employed the contractors and the corporate officers. Consequently, incentives for public and private prosecutors to take on a case against a PMSC without the backing of a significant entity is low, which bolsters the benefits PMSCs provide to the government as their public presence is further obscured.

The 'grey zone' has been purposefully shaped by the Executive branch to protect PMSCs and the government from both international and domestic accountability. If necessary, however, the 'grey zone' can be cleared when it suits the needs of the U.S. government so as to deflect attention away from similar crimes committed by U.S. troops, or for a range of other reasons. Carmola supports this point, stating that PMSCs offer the military a "limited liability option... they look able to accept certain risks - and blame - that the military cannot, precisely because it is so difficult to prosecute them for the crimes they do commit."¹⁴ Subsequently less than 30 contractors have been prosecuted using MEJA, which highlights the success that supporters of PMSCs have had at protecting the 'grey zone.'¹⁵

Contractors as Private Companies on a Global Market

Another key aspect of PMSCs that grants the U.S. government the ability to avoid international legal obligations and precedents is that contractors are private corporations on a global market. PMSCs are not bound to the U.S. government in the same way that the military is, instead following the market demand from states around the world who seek their services as well as the global supply of individual contractors who work for the firms. By using the excuse of market demand and supply, the U.S. can use PMSCs as proxies because international laws that prohibit the deployment of military personnel only apply to state parties and not private companies.

The horizontal nature of contracts further bolsters the ability of the U.S. to exert pressure on the contracted state through PMSCs.¹⁶ PMSCs are equal partners in contracts and can therefore refuse to follow its obligations if the contracted state does the same, or goes against U.S. interests. The U.S. can cancel a contract at will as the contracts are Foreign Military Sales (FMS) that require the approval of the government.¹⁷ The U.S. can then discreetly use that leverage as a way to influence and bring the contracted state back in line.

Weak International Contract Laws and Standards

When contracting PMSCs, the United States exploits the severe lack of international contract regulations. Contracts are kept secret, and are very rarely made public. What then occurs is that the international community has no knowledge of whether these contracts ensure that

the PMSCs abide by international human rights and humanitarian law. Moreover, contractors usually report to a private overseer that is separate from the military chain of command, further distancing the U.S. from responsibility if the contractor commits a crime.

The contractual Doctrine of Privity further empowers PMSCs as a way for states to avoid accountability from international law.¹⁸ The doctrine states that no third party can sue the beneficiary parties in a contract if they fail to fulfill the contract's requirements. Human rights provision is not a benefit unlike contract law, but are rather 'remedies for injury or injustice.' Therefore, violations of human rights are not a violation of a party's intended benefits. This is also codified in U.S. law through Section 313 of the Restatement (2nd) on Contract Law that states that a government contractor "is not subject to contractual liability to a member of the public for consequential damages resulting from performance or failure."¹⁹ This doctrine is rigorously applied because if the U.S. or a PMSC allowed even one third party to sue it would set the precedent for thousands of others to likely do the same.

Lack of Monitoring Institutions

A lack of effective international monitoring watchdogs for PMSCs further contributes to their obscurity, which is then exploited by both the U.S. and the firms. It would be costly to create an international organization that could effectively monitor PMSC activities around the world, and even more difficult for the main state exporters of PMSCs to sign onto such an organization, let alone the U.S. that has an aversion to international institutions it sees as violating its sovereignty. In an effort to distinguish themselves from more nefarious firms, various PMSCs from around the world, along with the International Red Cross, formed the International Stability Operations Association (ISOA). Some of their more prominent members include DynCorp, Titan Corporation, Aegis Corporation, and Frontier Services Group that was founded by Erik Prince after he sold Blackwater.²⁰ The ISOA developed the International Code of Conduct Association (ICOCA) and the Montreux Document that sets out a variety of regulations that members must abide by. The group is, however, merely a fig-leaf for these firms as it has no enforcement capabilities that could block contracts to PMSCs that violate the codes, therefore not infringing on the U.S.' contracting options and instead provides a veneer of corporate social responsibility compliance for

the PMSCs that it does contract with.

Brief History of PMSCs in U.S. Foreign Policy

The integration of PMSCs into U.S. foreign policy began under President Reagan, who utilized the privatization of government roles in an effort to decrease public spending. Reagan, however, had recognized how PMSCs could be employed to covertly avoid international law and minimize American involvement through the employment of Eagle Aviation Service and Technology Inc, who helped Oliver North supply guns to the Nicaraguan Contras. Though the Iran-Contra scandal shocked the American public and the world, the complicated nature of the scheme meant that none of the PMSCs were charged for the crimes they committed. This demonstrated to Reagan, and future U.S. foreign policy officials, how the confusing and ambiguous existence of PMSCs can be used to further U.S. interests abroad while avoiding domestic accountability in the form of the Boland Amendment, and again with the International Court of Justice's (ICJ) inability to prosecute the firm during *Nicaragua v. United States*.

After The Cold War ended, there was increased public demand to profit from the 'peace dividend' by diverting military spending towards social services, as well as decreasing America's global military footprint.²¹ The latter of these two trends became crucial during President Clinton's Administration, especially after his disastrous intervention in Somalia, when the U.S. and the U.K. almost employed the South African mercenary group Executive Outcomes to intervene in Rwanda once the genocide began.²² Clinton's failure to utilize Executive Outcomes to stop the genocide can be linked to his decision to use MPRI to restore peace in Yugoslavia and prevent further genocide. President Bush took the integration of PMSCs to an unprecedented level with his wars in Iraq and Afghanistan, and less so in Colombia. The official justification behind PMSCs was that they bolstered U.S. personnel numbers and could provide specific skills that the military did not have, or would be too expensive to develop, which in-turn would allow more military spending to go towards troops taking part in direct combat. The roles of PMSCs varied broadly from construction, logistics, engineers, and catering, to those closer to combat such as intelligence gathering and security details. Hundreds of billions of dollars were spent on the contracts offered during the Iraq and Afghanistan Wars, and in Colombia. Currently, at least half of the military budget is now

allocated for the payment of contractors, or \$370 billion out of the Department of Defense's (DoD) \$676 billion budget for 2019.²³

MPRI's Contracts with Croatia and Bosnia-Herzegovina

MPRI's contracts with Croatia and Bosnia-Herzegovina exemplify a near-perfect use of the advantages that PMSCs provide to the U.S. in regard to avoiding international legal obligations and accountability. At the time of the wars in Yugoslavia, the United Nations instituted an Arms Embargo on the region that prevented any state from providing direct military assistance to any of the involved parties, including the use of PMSCs for "direct military planning and intelligence services."²⁴ The Dayton Peace Accords further blocked direct U.S. assistance because Clinton had committed troops to the impartial multilateral stabilization force.

The U.S. was also committed to the impartial NATO-led Implementation Force established by the Accords, and so could not help the Bosnians directly.²⁵ The justification behind the Embargo was that Serbian forces, under the command of President Slobodan Milošević, had committed ethnic cleansing and genocide. The fear was that the other actors in the conflict would use foreign military assistance to commit similar atrocities out of revenge for those committed by the Serbians, or that if Milošević received aid he would use it to retake control of the entire region and commit further violence on innocents. Clinton, however, was more concerned about strengthening the Bosnian and Croat forces to counterbalance the Serbians, with the short-term goal of preventing further Serbian atrocities, and the long-term goal of democratizing the two states. To get around these specific international laws that the U.S. was a party to, Clinton incentivised both states to contract with MPRI to completely restructure their defense departments and militaries, as well as train their forces. These types of programs were not specifically prohibited under either treaty, which gave the party states the legal cover they needed to utilize MPRI.

A multitude of evidence based on the dramatic success of Croatia's Operation Storm that saw the swift defeat of Serbian forces in the Krajina region in 1995 points to MPRI breaking the laws laid out in the Arms Embargo. Croat forces employed highly advanced military tactics that emulated those used by the U.S. military - reflective of the small but highly experienced 15-man team of for-

mer U.S. military personnel that MPRI sent to Croatia - tactics that could not have been effectively taught to Croat forces in the mere eight months since the contractors had arrived in the country.²⁶ The informal connections between the MPRI contractors, who were led by former general John Sewell, and the U.S. government likely allowed for intelligence to covertly flow from the U.S. to the Croats, further aiding the Operation. These allegations were consistently rejected by both the Pentagon and MPRI, solely because if they confirmed the allegations the U.S. could be held liable for war crimes committed by Croat soldiers trained by MPRI, as the Pentagon would have had to approve the contract as it was a FMS. The firm was even able to reverse the narrative that it had trained war criminals by arguing that the Croat atrocities provided further justification for the democratization of the Croat military and thus MPRI's contract.²⁷ MPRI therefore, provided a means for the U.S. to influence actions on the ground, while staying publicly neutral.

While the contracts were largely effective, there were still issues that could have minimized Croat atrocities and other violations of international law. Though the U.S. and MPRI used the horizontality of the contract and the threat of FMS cancellations to exert their demands over the Bosnians whenever they acted inappropriately or were incompetent in fulfilling their obligations, the opposite happened with the Croats.²⁸ Franko Tudjman, the President of Croatia, made the purging of communists from the military a priority of MPRI, many of whom were the forces' most experienced officers. This purging also compounded with ideas of an ethnically pure military as most communists tended to not be ethnic Croats. These officers could have stopped the atrocities committed during Operation Storm and would have contributed to the U.S.' goal of building an ethnically diverse Croat military.²⁹ The MPRI-Croatia contract highlights how, though the firm was working as a proxy for the U.S., it still had to acquiesce to the contracted state's demands, even if they undermined American interests.

Despite these failures, what led to the contract's overall successes was that it bolstered multilateralism in the long-term, even though it was technically a unilateral strategy. Originally, most European states saw through Clinton's scheme and tried in vain to undermine it whenever they could, comparing it to 'pouring gasoline on the fire.' The British 'made a practice of thwarting' and harassing MPRI: they would restrict the contractor's ability to set up, disrupted meetings with Bosnian leaders, and would

use the press to delegitimize the program. Though the atrocities committed by the Croats during Operation Storm confirmed European concerns, it did pressure Slobodan Milošević to the negotiating table which led to the signing of the Peace Accords. Moreover, the contracts brought Croatia and Bosnia in line with the North Atlantic Treaty Organization's (NATO) Partnership for Peace (PfP) initiative that allowed for greater cooperation between Bosnia and Croatia and the alliance. Though it is questionable whether MPRI abided by the laws laid out in the Arms Embargo, they did carefully adhere to those laid out in the Dayton Accords. The contracts also pressured the international community to recognize the two states as both the Bosnian and Croat Presidents publicly claimed that the contracts symbolized U.S. support for their nations which had yet to receive widespread international legitimacy.

Unlike the Croatian scenario, the Bosnia contract also played a key role in undermining Iranian influence in the country by prioritizing that the new military apparatus included Bosnian Muslims who had previously received weapons as well as assistance from 1,500 military advisors from the Islamic Republic in 1991.³⁰ The multilateral payment scheme that received funds from Saudi Arabia, the UAE, Kuwait, Turkey, Malaysia, and Brunei, created the perception that the contract was a multilateral peacebuilding initiative rather than one solely intended to counter Iranian soft-power. In reality, however, the fund was administered and controlled by the United States, leverage that it then used to exert influence over the Bosnians by threatening to cancel payments to MPRI, which also gave the firm an incentive to pressure the contracted state. The states that did contribute funds, as well as a number of others who did not see Iran as much of a threat, also trained some Bosnian troops but most of the training and restructuring was conducted by MPRI. If it were not for MPRI's effectiveness, it is likely that Milosevic would have reclaimed control of both states and still have committed mass atrocities similar to, or worse than, that of the Croats, with little international repercussions. The firm provided Clinton the means to bypass international law for the overall benefit of multilateral peace.

DynCorp in 'Plan Colombia'

DynCorp played a core role in 'Plan Colombia,' an American-Colombian initiative that began in 2000 in which America provided foreign and military aid to the Colombian government as a way to counter cocaine production

and militias. Though its contract was mainly for aerial fumigation operations, the spraying of chemical herbicides from aircraft on farmland producing coca plants, it repeatedly engaged in direct hostilities. Moreover, through the terms laid out in the bilateral agreements signed between Colombia and the United States, DynCorp was virtually immune from prosecution. As a result, besides engaging in combat, they violated a multitude of international laws. The firm became the spearhead for U.S. interests in the country and conducted many operations that official U.S. personnel were unable to undertake.

DynCorp's primary mission of conducting aerial fumigation operations frequently brought them into conflict with the various non-state armed groups in the country, even though the contract designated them as civilians who would not engage in direct hostilities. Armed non-state groups would frequently shoot at contractor-piloted helicopters conducting aerial fumigations, which would then force the contractors to defend themselves.³¹ As the DynCorp contractors were classified as civilians, they had the right to defend themselves from attacks by the militias who were seen as 'unrecognised actors.' However, armed DynCorp personnel also conducted at least 15 missions to rescue downed helicopter crews, many of whom were shot down by the militias.³² These activities are in stark contrast to statements made by both the U.S. government and DynCorp executives; William B. Wood, the U.S. Ambassador to Colombia, even directly stated that "U.S. contractors... [do not] engage in activities that might place them in a combat situation."³³ Such operations are violations of the U.N. Mercenary Convention, which Colombia signed, as the contractors would potentially engage in 'direct hostilities' with the militias for profit-motivation. U.S. military advisors in Colombia were also explicitly forbidden from undertaking such operations themselves. A U.S. State Department spokesman asserted that DynCorp employees were not mercenaries because they were employed in counter-narcotics rather than war.³⁴ The freedoms granted to DynCorp personnel by the U.S. that allowed the contractors to undertake such missions were also hidden from the public eye as the contracts were classified, further obscuring U.S. and Colombian responsibilities.

DynCorp has also been accused of violating IHL, human rights law, environmental law and state sovereignty through their aerial fumigation operations, crimes that the U.S. did not want pinned on their military and so used DynCorp to do the 'dirty work' instead. The chemi-

cal they used not only affected the drug crops, but also the nutrients in the soil in which they were planted, making the farmland unusable for growing legal crops as well. The chemical was also known to cause a plethora of debilitating and even fatal health problems, which in one incident was linked to the deaths of 21 people, including children.³⁵ As a result, thousands of Colombia's poorest citizens were displaced, and thousands of hectares of farmable and environmentally protected land was destroyed. The chemicals also would frequently drift into neighbouring Ecuador, and affect land and communities there, a violation of its sovereignty, which Colombia, not the U.S. or DynCorp, was held liable for in the International Court of Justice (ICJ).³⁶ Through the harmful displacement of the coca farmers, DynCorp attacked the civilian population in an effort to disrupt the financing methods of the militias and other non-state armed groups, which was also another violation of the U.N. Mercenary Convention through the deliberate harming of civilians - the unarmed farmers - for motivations of profit.³⁷

Through the bilateral agreements signed between Colombia and the United States, DynCorp has not been held accountable for any of these crimes under Colombian, international, or U.S. law. The first treaty that led to 'Plan Colombia' instituted a 'Letter of Offer and Acceptance' between the U.S. and Colombia that made the firm immune from Colombian law. The U.S. used the leverage granted to it through the required FMS approval to ensure that the contractors would have such immunity, and that the Colombian Executive would enforce it. DynCorp contractors did not report to any Colombian authorities when conducting their missions, nor did the firm provide them consistent information on their operations, instead DynCorp reported directly to the U.S. Embassy in Bogotá.³⁸ These factors severely limited the ability of the independent Colombian Judiciary to even monitor the firm's actions, undermining domestic accountability. The Article 98 bilateral agreement further protected DynCorp, which was signed in direct response to the initiation of ICC's preliminary investigations into the conflict in Colombia. DynCorp was also protected from any claims that could have been made through U.S. law. While the other U.S. PMSCs operating in Colombia who had less important roles were contracted to the DoD, DynCorp was the only one who worked for the State Department.³⁹ This choice of department was likely deliberate as it meant that MEJA did not apply to the firm. There were also multiple ATCs filed against DynCorp, most of which were denied on the basis of a lack of sufficient evidence, a factor that

was likely undermined by the Colombian government's unwillingness to help those affected file complaints, although one filed by Ecuadorian farmers rather than Colombian citizens is still held up in federal court.⁴⁰

The United States' utilization of DynCorp further demonstrates the self-imposition of the 'grey zone.' Due to the repeated engagements between DynCorp and militia groups, the Revolutionary Armed Forces of Colombia (FARC) publicly declared that U.S. contractors were valid military targets, violating the technical immunity provided to civilians under the Geneva Conventions. Such decisions to declare contractors valid military targets to strip them of their protections is a problem that was hypothetically predicted by many scholars. The U.S. response to the kidnapping of three DynCorp contractors by FARC revealed how the 'grey zone' can be cleared by the Executive. Though FARC classified the contractors as Prisoners of War (PoW), the U.S. did not do the same and instead referred to them as 'kidnappers.'⁴¹ When the U.S. refused to negotiate, FARC executed one of the contractors, and eventually released the other two. By denying the contractors PoW status, the U.S. had no responsibility for their rescue, nor for the potential deaths.

Though DynCorp has been able to escape prosecution while breaking various laws for the sake of achieving U.S. objectives, which was the main benefit that the U.S. received from using the firm instead of U.S. troops, the overall success of 'Plan Colombia' is very much in dispute. The displacement of Colombia's poorest citizens pushed them further into the country's mountainous regions where they continued to deforest and grow coca plants, which in-turn undermined the effectiveness of infrastructure projects in localities depopulated by the aerial fumigation. It worsened popular indignation toward the Colombian government, whose forces had already committed mass human rights atrocities, increasing militia recruitment and pushing farmers away from formal society. Consequently, a cycle of displacement, violence, and aerial fumigation materialized that benefitted only one actor - DynCorp. When President Clinton first negotiated 'Plan Colombia,' DynCorp was one of the principal lobbyists that supported the initiative and even lobbied successfully 'to block a bill that would have forced federal agencies to justify private contracts on cost-saving grounds.'⁴² DynCorp was paid based on how many hectares of land it sprayed with herbicides, so the more land that was converted to coca, the more funding the militias received that could be used to conduct violence, which then justified

DynCorp's aerial fumigation operations. By the time the aerial fumigation policies stopped in 2015, DynCorp had been paid over \$1.1 billion.⁴³ This was the main crucial difference between the formerly discussed MPRI contracts and the DynCorp contract; while the former had a realistic end-point that justified the short-term skirting of international law, the latter did not. It instead incentivised the repeated violation of international law to satisfy U.S. objectives that could never be fulfilled.

During the period of 'Plan Colombia,' coca production simply moved into other countries in Latin America and coca production in the continent is now at an all-time high. FARC and other militias are still very much active as well. Both of these two outcomes demonstrate how the usage of DynCorp to avoid international law and conduct aerial fumigation in an effort to counter both coca-production and militia violence has been a failure.

Contractors at Abu Ghraib Prison

During the U.S. occupation of Iraq, the American military was considerably overstretched in both Iraq, Afghanistan, and other supporting roles such as in 'Plan Colombia.' Due to the U.N. Security Council's veto of the invasion of Iraq, the U.S. conducted the invasion unilaterally without the support of a large foreign force as they did with Operation Desert Storm. To compensate for the lack of an official legitimate force multiplier, the Bush Administration turned to PMSCs so more U.S. personnel could be diverted to purely combatant roles, which was known as 'Employee Augmentation.'⁴⁴ CACI and Titan's role in Abu Ghraib is one such example, and was made possible through the legal contractor 'grey zone,' the Bush Administration's interpretation of PoW status, and the lack of oversight procedures that kept the conduct of the contractors secret until the scandal broke.

Prior to Operation Iraqi Freedom, the U.S. contracted with CACI International and Titan International for interrogators and translators. After the U.S. took Iraq, the contracted individuals were then transferred to Abu Ghraib prison where suspected members of Al Qaeda, most of whom were innocent civilians, were tortured by U.S. personnel. The Bush Administration's legal interpretation that the Geneva Conventions and the U.N. Torture Convention did not apply to members of an 'unrecognised' armed non-state actor because they technically were not, and could not be, signatories and could be denied PoW status and immunity from torture. Though

under international law, civilians cannot guard PoWs, the removal of PoW status from the Abu Ghraib prisoners granted Titan and CACI contractors the legal ability to fulfill such a role.⁴⁵ Over one-third of reported crimes were attributed to three accused contractors hired by the firms, proving their greater propensity to commit violations of international law compared to the official U.S. troops who were also accused.⁴⁶

While the convictions against certain U.S. troops indicated that it was against official orders provided to the personnel, even though the legal interpretation used by the Bush Administration allowed for torture, the details of these contracts reaffirm that the government incentivised such crimes. When the contracts were made public, it was shown that they did not include any specific requirements regarding compliance with international human rights or humanitarian law, meaning that the contractors were not explicitly violating their contract by conducting torture.⁴⁷

Their willingness to commit torture and degrading acts was likely also incentivised by the multitude of protections the contractors had from prosecution. Firstly, under the Coalition Provisional Authority's (CPA) Status of Forces Agreement with Iraq, all U.S. personnel were immune from Iraqi law. Secondly, the contractors were technically working for the Department of Interior instead of the DoD, protecting them from MEJA prosecution.⁴⁸ Thirdly, the U.S. had pressured the Iraqi government to not ratify the Rome Statute and to also sign an Article 98 Agreement, so the contractors were thereby protected from ICC prosecution. Finally, both firms have been able to deflect most of the ATCs filed against them by claiming that they were acting on behalf of the government, thereby blocking suits by utilizing indirect sovereign immunity. Furthermore, these claimants cannot bypass the Doctrine of Privity as to do so, they would need to claim that they were the beneficiaries of torture, which would then violate their argument as it would mean that they wanted to be tortured.⁴⁹ However, the *Kiobel* case did provide legitimacy to one of the cases as it satisfied the prerequisites laid out in the Supreme Court decision. Nonetheless, all of the contractors who worked at the prison have evaded criminal prosecution, and the firms still receive large contracts from the government.

The U.S. was also able to deflect responsibility for the atrocities through the structure of the contract. Though Titan and CACI claimed that they were acting on behalf of the U.S. government, the U.S. claimed that because

the PMSCs were not integrated into the military chain of command and instead reported to a private overseer, that they did not have any responsibility for their actions. When this is considered alongside the definition of torture laid out in the U.N. Convention Against Torture, which defines it as 'consisting of certain acts committed at the 'instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'; the absence of 'explicit contractual terms' ordering the use of torture removes any potential accusation of state responsibility for actions undertaken by the contracted firms. This was further supported by a 2004 Supreme Court case that concluded that an ATC claim could only be filed if it applied to "official torture."⁵⁰ The contracts never include such language and the practice of contractor-military command structure separation further undermines state culpability.

Though the scandal went public, and the U.S. had to close down their operations at Abu Ghraib, the contracts were successful for U.S. foreign policy officials in regard to legally empowering the augmentation of official U.S. personnel with contractors to conduct torture. While the *Kiobel* case undermined its success, it was an unforeseeable development that occurred almost a decade after the scandal. Unlike the MPRI and DynCorp contracts, whose success was based primarily on fulfilling the contracted objectives that could not be conducted by U.S. troops, Titan and CACI undertook roles that official U.S. personnel could have and did also take. While the conviction of a few of the U.S. soldiers working at Abu Ghraib may indicate that the U.S.'s intentions were to use the legal ambiguity of contractors to conduct torture with impunity, the conviction was more the result of public pressure after the scandal was revealed as there were multiple other cases of torture and 'enhanced interrogation' conducted by U.S. troops that did not lead to prosecution.

Blackwater and the Nisour Square Massacre

The fallout from the 2007 Nisour Square Massacre demonstrates that the excessive usage of PMSCs to supplement U.S. troops, which involved the blurring of 'direct hostilities,' can significantly backfire on U.S. foreign policy officials. It also highlights the difficulties of prosecuting contractors for egregious crimes when the government does not support it, as well as the relative success of methods taken by both firms and officials to undermine their culpability.

The four contractors were hired to escort a U.S. Embassy convoy, and ended up shooting and killing 17 Iraqi civilians due to miscommunication with Iraqi forces who operated a checkpoint at the scene. The excessive force used by the contractors can be linked to three factors. Firstly, the Geneva Conventions loophole that allowed the contractors to use force to defend themselves. Contractors in Iraq had already been known to use force more often than U.S. troops, but little had been done to combat it. For example, when contractors working for Triple Canopy killed some Iraqi civilians, no charges were brought forward as neither the Department of Justice nor the DoD knew what jurisdiction they fell under.⁵¹ Even when U.S. troops had massacred innocent Iraqi civilians, the government never pursued criminal charges, such as the 2005 Hadith massacre only led to one court martial.⁵² Secondly, as noted, JAGs had no oversight over the proportionality of force that contractors could use. Thirdly, the memory of when four Blackwater contractors were killed, mutilated, and hung from a bridge in Fallujah by a mob of angry Iraqis, a position that they realistically should not have been contracted for as the city was one of the least secured in Iraq, heightened the perceived sense of danger that contractors felt from even the civilian populace.⁵³ These three factors normalized the excessive use of force, not just in regard to Nisour Square, but by all armed contractors in Iraq.

When the Nisour Square incident became public, steps were taken by both the government and Blackwater to protect themselves. Initially, the government claimed that the contractors could not be charged under MEJA because they worked for the State Department and not the DoD, but that was disregarded through the expansion of MEJA to cover all armed contractors regardless of department. However, when the scandal would not go away after a year, the Bush administration cleared up the 'grey zone' and decided to file charges against the individual contractors, and temporarily prohibited the firm from receiving any contracts. The case took almost a decade to conclude, and at many times was almost dismissed entirely.

The firm too took a number of steps to isolate itself from responsibility and undermine the investigation. Howard Krongard, the Inspector General for the State Department, was forced to resign when it was revealed that he had attempted to undermine investigations into Blackwater's conduct, including the Nisour Square massacre, after he had been offered a seat on the firm's Board of Advisors

by its founder, Erik Prince. Blackwater then left the ISOA after the group determined that it had violated its codes of conduct. Shortly after the trials began in 2008, Blackwater also changed its name to Xe Services and claimed it did not have one failed operation under its belt as it had lost not a single individual that it had been contracted to protect. These efforts effectively isolated the firm's corporate officers from prosecution and it was not forced to dissolve either.⁵⁴

Just as with Abu Ghraib, prosecutions were the result of mass public pressure, and even then there were still concerted efforts that undermined the course of justice, which explains why monitoring practices and international watchdogs are purposefully thwarted as it would lead to further scandals. The Nisour Square incident can be considered a failure as the utilization of the legal ambiguities of contractors to replace U.S. troops led to the further delegitimization of the overall mission and deepened popular hatred for all U.S. personnel in Iraq, placing them in greater danger. However, in another aspect it was a successful usage of the legal ambiguities and tools that can protect firms that are favored by the government, as Blackwater continued to receive billions in contracts after the ban on them was lifted.

Conclusion

PMSCs now play an integral role in U.S. foreign policy, indeed many assert that the U.S. military cannot function without them. These cases demonstrate that PMSCs are increasingly used by the U.S. for the sole purpose of avoiding the United States' international legal obligations. The jurisdictional 'grey zone' has been purposefully created by the government to empower contractors to bypass even the most fundamental international laws, while also protecting those who have direct oversight of the perpetrators of such crimes. PMSC's existence as independent, and highly profitable, businesses permits U.S. foreign policy makers to use them as proxy forces in a very similar manner to how mercenary groups today are used by Russia in Syria as well as other states, while also considerably minimizing the U.S. footprint, therefore diluting responsibility when their reckless actions cause additional conflict and civilian casualties. These two central characteristics of PMSCs are even further strengthened by the lack of both international contract regulations and monitoring institutions that would undermine the ability of these firms to act with impunity without implicating the U.S. government. Consequently, the relationship between

the government and the PMSC industry has transformed from one of perceived patriotic cooperation to that of dependency, manipulation, exploitation, and arguably corruption that has, in most cases, worsened conflicts and international security.

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Conspiracy and Power in Modern Turkey

Caleb Webb '21

Conspiracy theories are often characterized as a preserve of the powerless and the alienated, but they can also be a tool of the powerful to discredit opposition and dissent. This paper seeks to study the ways in which the ruling party of Turkey, the Justice and Development Party (AKP), uses conspiracy theories to their advantage. To understand this phenomenon, it is important to account for developments in Turkish history since the late years of the Ottoman Empire, as well as the historical use of conspiracy theories in the nation as a whole. Many of the theories posited by the government as well as opposition forces have their roots in specific historic events such as the Armenian Genocide and the Treaty of Sevres and reflect a deep historical insecurity. Furthermore, the theories put forth by the ruling AKP and its leader and current Turkish Prime Minister Recep Tayep Erdogan, reflect the long marginalization (real or imagined) of religious Muslims by the secularist Turkish state, and often pits rural Anatolians against an imagined urban elite. The conspiracy theories deployed by the AKP typically center on accusations of disloyalty, foreign influence, and lack of “Turkishness”. The common denominator among these conspiracies is to externalize problems, presenting Turkey as a unified country under assault by foreign enemies. Groups mentioned in these conspiracy theories include urbanites, high ranking members of the military, secularists, Jews, Armenians, and members of the minority Alevi Muslim group.

The AKP’s use of conspiracy theory language is rooted in a particular sense of marginalization and victimhood that has its roots in Turkey’s long secular period during the 20th century. From the foundation of the Republic of Turkey by Mustafa Kemal Ataturk in the mid-1920s until the AKP took power roughly 25 years ago, a set of governing principles known as Kemalism had governed Turkey; these principles were in many ways meant to be the antithesis of the ruling philosophy of the Ottoman Empire (Nas, 2018: 4). Where the Ottoman regime was sprawling, multiethnic, and at times loosely unified by Islam, Kemalism promoted an explicitly Turkish and secular Turkey, rooted in a strong state and an active role for the military in public life (Houston, 2006). In particular, the secular element was strongly promoted, with some especially contentious policies put in place such as

a ban on headscarves in public. During this period, the Republican People’s Party (CHP) dominated politics in what was functionally a one-party state. The army intervened several times in politics, most notably in 1980 when they enacted a program of economic modernization, connecting Turkey more closely to Europe. One of the justifications for this coup was to suppress elements of Islamism that were supposed to be rearing their head (Houston, 2006). Overall, the CHP promoted a vision of Turkishness that allowed no place for political Islam and enforced laicism, separating the state and public life from any religious influence.

In 2001, a new political party known as the Justice and Development Party, or AKP, was formed by far-right nationalists and politicians with a more explicitly Islamist orientation. This was a watershed moment, as they campaigned on explicitly Muslim issues like repealing the ban on the burqa at state universities and increasing Muslim participation in public life. Led by Recep Tayep Erdogan, the AKP employed the language of victimhood in describing themselves and their voter base, contrasting pious Anatolians with supposedly corrupt, secular Kemalists from Istanbul (Yilmaz, 2017). Once the movement gained initial power, they were able to roll back much of the enforced secularism of the Kemalist era, including winning a landmark court case that could have disbanded the AKP for violating church and state laws. This party specifically capitalized on the long alienation of the Anatolian peasantry and was further aided by the heavy urbanization which had occurred since the 1970s, a process that had brought many members of this demographic into the major cities like Istanbul and Ankara (Nas, 2018:4-5).

At the core of many successful conspiracy theories is the concept of an Other. This Other can be “globalists,” Jews, Armenians, bankers, or any group that the purveyors of the conspiracy may choose to target, but ideally it must have some characteristics that at least superficially separate it from the “people” (Yilmaz, 2017). This paper discusses two Others, as conceptualized in Turkish public discourse: the Anatolian peasantry, which was considered an unenlightened but “pure” group in the discourse of the Kemalist elites, and the “elites” who are constantly derided

and attacked by the AKP (Nas, 2018: 3-4). The way the relationship between these two groups is portrayed in the dominant cultural discourse is representative in part of who controls the government and media, as the power of the AKP has allowed it to propagate its simplistic version of a struggle between “true Turks” and unpatriotic, foreign influenced enemies.

The discourse of much of the nationalist era considered the Anatolian peasantry to be an unenlightened project, pious but foolish. Poetry from this time period extolled rural Turks as the emblem of some mythical Turkishness, savage but pure (Nas, 2018: 4). However, the Kemalist ruling class in the civil service and the army undoubtedly denied these groups power, in part due to the fear of their Islamist leanings. Under the enforced secularism of the period, the rural Anatolian population was perhaps rightly considered a threat to the laicist state. Conspiracy theories during this time period were focused mainly against non-Turkish groups like Greeks, Armenians, and to some extent Jews.

However, during the 1990s, Islam became more acceptable in public discourse; and radical Islamist sentiment took a more public stage. A turning point was the Sivas massacre, when a radical Islamic mob in central Turkey stormed a conference of Alevis, a sect of Islam considered to be heretical by radical Sunnis and murdered 35 people. What was notable about the discourse following the event was that some influential media figures and politicians described the attack as an example of persecution against Sunnis due to the response by the government. This event can be seen as a seminal point as Islamist (and ostensibly rural) forces were now able to make their presence felt both through violence and the media. Furthermore, the discourse began to take a divisive turn, as Alevis and Kemalists were accused of conspiring against Sunni Muslims. Furthermore, the imprisonment of the perpetrators by the nationalist government that followed the massacre bred further resentment among Islamist groups.

The use of conspiracy theories by the AKP following the Sivas Massacre can be divided into two major stages: the repression of supposed Gulenist elements following the Gezi protests in 2013 and the increasingly paranoid and anti-Western language that has been widely used during and since the 2016 coup attempt. In both cases, these conspiracy theories have been used by Erdogan and the ruling AKP as a way to suppress opponents and consolidate power, thus disproving the idea that conspiracy

theories are always the result of ignorance. Rather, these accusations and theories represent a concerted strategy on the part of the AKP to smear opponents and polarize public discourse, creating a “with us or against us” situation and delegitimizing opponents by questioning their Turkishness. This allows the AKP to claim that dissent does not represent the Turkish people and also justify violent repression of these dissenters (Yilmaz, 2017). Interestingly, many of these conspiracy theories lack the racial component of earlier nationalist-era conspiracies, as the AKP’s opponents include Turkish Kemalists and members of the Gulen movement, rather than just traditional minority targets like Kurds or Armenians, although minorities are still targeted as evidenced by the views of powerful Turkish figures on the Sivas massacre (Cayli 2017: 262).

This paper aims to assess the conspiracy theories surrounding three seminal incidents: the Sivas Massacre of 1993, the Gezi protests of 2013, and the purges following the 2016 coup attempt. In the latter two cases, the conspiracies that emerged were part of a governmental strategy designed to delegitimize opponents and polarize the country. In contrast, the discourse surrounding the Sivas Massacre is far more complicated and it is debatable whether or not the event sparked conspiracy theories or was rather a violent manifestation of already extant discourse. In all three cases, the repeated tropes of “Black Turk versus White Turk” appear, but in the aftermath of the latter two events there is an increasing emphasis on the role of Western intervention (Nas, 2018: 4-5). When viewed collectively, these three events show an evolution and refinement of the AKP’s strategy of conspiracy and repression as Turkish Islamists moved steadily from an opposition movement to the country’s ruling group. The elements in common with all three of these events are a violent or disorderly action perpetrated by non-AKP members (although in the case of the Sivas massacre they were likely fellow travelers and not opponents), a polarizing public discourse and authoritarian crackdown (perpetrated in the first case by the nationalist government and in the second and third cases by the AKP itself), a vehement identification of an Other by the Islamist side, and repeated and widespread references in media and communications to foreign involvement.

Because of their predominance in political and public discourse, conspiracy theories in Turkey have been extensively studied. While many scholars focus on the more high-profile conspiracies such as those related to the

Kurdish situation or the Armenian Genocide, the manufactured untruths used by those in power are also a field of study. Alparslan Nas, a professor of media studies at Marmara University, has written an extensive book that appeared in 2018 on representations of the cultural Other in Turkish media; while perhaps 20-30 years ago the media was hostile to the Islamists and to some extent still is, the recent takeovers of media outlets by AKP supporters with assistance from the government has changed this situation. Nas notes that the “Other” is often represented as impious and “Westernized” Turkish traitors, typically assisted by Kurdish, American, or Israeli agents. These groups are alleged to be attempting to suppress Islam in Turkey and keep power out of the hands of Anatolians. However, Nas also notes that there is a sense in the AKP that their political control does not necessarily extend to the media, so this is also potentially an area of resistance (2018: 9-10).

Julian de Medeiros has studied conspiracy theories in modern Turkey, with his book *Conspiracy Theories in Turkey*, appearing in 2018, just two years after the 2016 coup attempt. He posits that conspiracy theories in this particular situation are not the result of ignorance on the part of the general public. He focuses on the inherent insecurity of the AKP and their repeated use of “othering” to discredit opponents, constantly linking them to Western interference. While the government appropriates the language of the marginalized, criticizing supposedly all-powerful “Kemalists” and foreigners, they are in fact the ones in the dominant position. However, they have appropriated the language of grievance, with AKP figures like Erdogan constantly harping on the “cruelty” and “dominance” of the Kemalists, despite the fact that the nationalist regime is a thing of the past. He notes that each time there has been major public pushback against the regime, the proliferation of conspiracy theories has been part of the AKP’s response alongside more obviously violent tactics like imprisonment and torture.

Other scholars have focused on the process of “othering” used by the AKP to smear opponents as enemies of the “Turkish people” and link them to foreign influence, while also deflecting claims that Turkey is divided politically or religiously. Eray Cayli analyses the Sivas Massacre and the discourse surrounding it from a spatial perspective, focusing on the ways in which the discourse promoted by the government surrounding the massacre assigns blame “outward” to supposed foreign perpetrators while deflecting any attempt towards “inward” criticism of the

treatment of Alevi Muslims (Cayli, 2017: 262-3). This focus on the issue of a center and periphery in Turkish life is also explored by Bakiner Onur, while the culture of “imagined” or manufactured victimhood as justification for repression by the AKP is analyzed by Zafer Yilmaz. All of these analyses note that the AKP consistently ascribes to its opponents “foreign” characteristics, regardless of who that enemy may be. Furthermore, these authors argue that Erdogan and other AKP leaders use the language of victimhood to describe their own power base, characterizing themselves as marginalized despite their actual political potency.

The Sivas Massacre: A Watershed of Violence

The Sivas Massacre of 1993 marked the first appearance in decades of an Islamist right that could shake the secularist establishment. A conference of Alevi, a Muslim sect despised by radical Sunni forces, met at a hotel in the Anatolian city of Sivas and was soon surrounded by Islamist protesters. It has been hypothesized that this was partly due to the general hatred of Alevi by conservative Turkish Sunnis and partially a result of the presence of Aziz Nesin, a left-wing poet who had drawn great ire for his role in the translation of Salman Rushdie’s *The Satanic Verses*. Alevi are representative of many of the things the AKP denounce, as they are not orthodox Sunnis and as a community have many members who live in and are connected to the West (Cayli 2017: 263). A mob quickly surrounded the hotel and pushed through a police barricade; witnesses reported the police did nothing to prevent the assault. Although Nesin and others escaped, the ensuing fire started by the rioters killed 35 people. In the aftermath, the government ultimately imprisoned 31 of the perpetrators for life while refusing to punish the police who had stood by during the attack.

While the violence of the Sivas massacre was itself shocking and represented a thus far unseen level of aggression and brazenness on the part of Islamist forces, the discourse that followed the attack and particularly the trials of the perpetrators was what truly distinguished it. The memory of the event has been corrupted to such an extent by the language of Islamist resentment that many regime-supported news sources describe it as an attack on Islam itself rather than a sectarian massacre. There is a widespread view, appearing in public forums like national media outlets, that the real victims of the attack were the perpetrators who were imprisoned rather than the victims who were killed. (Yilmaz 2017). This revisionism can be

viewed as an example of a conspiracy of the powerful as Alevis remain marginalized while Islamists now control the Turkish government.

A more disturbing phenomenon was the tendency in the aftermath of Sivas to attribute the murders to foreign involvement. While the attack was clearly perpetrated by Islamists, 31 of whom were even imprisoned for it, many powerful members of society attribute it to disparate foreign or minority groups. Notables in Sivas attribute it to the Armenian ASALA, a radical terrorist group composed mostly of diaspora Armenians, while others in government blame the Kurdish PKK (Cayli, 2017: 262). The irony of this choice of blame is that both groups mentioned represent minorities that have themselves suffered at the hands of the Turkish state and are both relatively secular and left wing. This blame towards non-Turkish groups serves the dual purposes of exonerating the archetypal pious Anatolian Muslims idealized by the AKP and shifting the blame to "Other" elements of Turkish society with whom the state already has conflict. This has the effect of making Turkish society appear clean and conflict-free, threatened only by foreign troublemakers (Cayli 262).

The irony is that while the Sivas massacre is often described as a national tragedy, the actual victims of the massacre continue to face suspicion and persecution. One fact that fuels conspiracy theories about foreign influence is the fact that many Alevis reside outside of Turkey, particularly in liberal Western European countries like Germany. Furthermore, the fact that Alevi organizations in the West have contributed to the cause of the Sivas victims and in particular their memorialization has led to the popular perception that they are part of an international conspiracy (Cayli 2017, 263). If one considers who benefits from such a conspiracy, it is easy to see why the AKP supports this idea as it removes the appearance of internal division and blames an unpopular victim group. Eray Cayli argues that this is in part due to the festival "reclaiming" parts of Sivas that had been off limits to Alevis for a generation, giving them a space for public expression (Cayli 2017, 263). As Alevis are despised by Turkish Islamists for being both allegedly apostate and staunch supporters of the Kemalist CHP, this "othering" allows the AKP to weaken the power base of a political opponent while also drawing attention away from the negative actions of their own supporters.

Gezi Park

The Gezi Park protests of 2013 are a significant watershed in the progression of the AKP's power, as they marked the beginning of a widespread campaign of disinformation coupled with violent repression on the part of Erdogan's government. The protests were a countrywide phenomenon, as demonstrators occupied Istanbul's Gezi Park and other public spaces in order to protest government repression of free speech and the right to assembly. These protests received international attention and were seen by the government as a serious threat to the continued dominance of the regime. Furthermore, the fact that the AKP's great rival, the nationalist CHP, was explicitly supportive of the protests meant that the phenomenon of political disobedience potentially had political teeth. As a result, a variety of conspiracy theories were put forward by the government in an attempt to discredit the protesters; these were generally variations on the foreign influence and "Kemalist elite conspiracy" theories, with the latter having particular impact given that the CHP is in fact a Kemalist party.

Although the issues at stake in the Gezi protests were generally a combination of mainstream human rights issues (right to assembly and free speech, etc.) and local ones such as opposition to the construction of a new airport, the AKP response was largely unrelated to these questions. Julian de Medeiros and others argue that while the protesters were largely demonstrating against the AKP's methods, the government regarded the protests as an existential threat to their rule as a whole and responded accordingly. The response to the Gezi protests can therefore be seen as a form of manufactured conspiracy, although the variety of theories espoused by government officials seems to indicate that it was not as coordinated as the campaign following the 2016 coup attempt. Erdogan blamed the "interest rate lobby", a favorite target of his, as he claims that a secret group has been attempting to keep Turkish interest rates high. He also dismissed the protesters as "looters", perhaps playing off conservative voters' fear of civil disorder. However, his involvement in the denunciation of the protests lacked the ideological coordination of his response to the events of 2016.

While Erdogan was not as consistent with his accusations as he would be in 2016, he did take the protests as an opportunity to attack the opposition CHP (Ete 2013, 20). In some ways, the Gezi events actually played into his hands, as CHP leaders did take advantage of Gezi to promote their message and did publicly align themselves with

the protesters. Because of the CHP's history of laicism and Kemalism, this gave Erdogan the opportunity to tie these largely unrelated issues to the protests. While the protesters were focused mostly on human rights and urban development issues, Erdogan charged the CHP with planning the protests, with the implication that they were a tool of the secularist elite ("Turkish Prime Minister Vows", 2013). While it seems likely that Erdogan did not anticipate the scope of the protests, he was able to take advantage of them in an opportunistic manner, using the connections between the protesters and the CHP as supposed "proof" of a conspiracy of elites aimed at fomenting civil strife. This would seem to be an example of Medeiros' assertion that the AKP manufactures conspiracy theories in a manner that explicitly discredits political opponents; furthermore, the kneejerk aggression and claims of a conspiracy by deracinated elites against the "Turkish nation" reflects Yilmaz's description of the AKP's victimhood complex (Yilmaz, 2017).

Other governmental officials also proposed various conspiracy interpretations of the protests; it is hard to say whether these represented official policies or merely a widespread culture of dishonesty in the government. A variety of countries were among those linked to conspiratorial involvement by officials, but they were all Western countries, a trend that likely reflects AKP anxieties about Western democratic and liberal norms ("Germany Behind Gezi Protests", 2013). Israel was also mentioned by several, likely a reflection of the worsening relations between the Erdogan government and that country as well as the overall rise in antisemitism in Turkey.

What is undoubtedly true about the government response to the Gezi park protest was its attempt to delegitimize the protesters. This was achieved in a variety of ways, whether it was denying their political legitimacy by characterizing them as looters, Kemalists (although there is a small amount of truth to this) by considering them CHP pawns, or simply denying their Turkishness by claiming they were agents of foreign powers. In the example of the CHP, this can be seen as an example of the center-periphery concept in Turkey, as coined by Mardin and in particular applied by Nas, as the characterization of protesters as Kemalist agents reinforces AKP propaganda about their opponents' supposed elitism (Nas, 2018: 6). By connecting the protesters to a Kemalist party, Erdogan and others not only questioned the protesters' agency but denied them the standard of populism, characterizing them instead as servants of elites. This was critical for

Erdogan as he and his party rose to power largely by identifying themselves with populism and as being anti-establishment, so any popular protests are a threat to their continued ownership of this distinction.

Likewise, the pervasive accusations of foreign influence on the protests had the effect of externalizing the conflict. Medeiros, in particular, argues that by pinning the blame for the protests on foreign influence, the AKP was desperately attempting to deny the existence of internal discord. By claiming that the protests were the work of foreign agitators, they essentially focus the issue of conflict outward; this recalls Cayli's spatial analysis of the Sivas massacre, where foreign assassins were blamed for an attack committed by native Turks in order to hide any perceptions of internal discord (Cayli 2017, 262). Likewise, the accusations of foreign influence make Turkey appear a united victim of international oppression rather than a deeply divided country. Furthermore, fear of a foreign conspiracy plays off an age-old insecurity that dates back to the dismemberment of the Ottoman Empire by the Treaty of Sevres and focuses the anger of the Turkish citizenry outward rather than inward at the government (Cayli 2017, 258).

The 2016 Coup Attempt

The 2016 Turkish coup attempt is perhaps the best case-study of AKP conspiracy theories in action and their ability to bolster the state and substantively affect democracy. In the example of the 2013 Gezi Park protests, the state actively spread disinformation in order to undermine protesters by questioning their agency and accusing them of being foreign agents or political pawns of the Kemalists; however, any actual repression was done under the pretext of unlawful assembly or disturbing the peace. The events of 2016 changed the rules of engagement as mass arrests and employment purges were conducted largely as the result of a conspiracy theory. 2016 can therefore be considered a watershed moment in the history of the AKP, as it was the first time that conspiracy theories became a concerted and effective tool of political repression as they were used to justify widespread purges and arrests. This event proved that conspiracy theories as a weapon of the AKP were now capable not only of weakening opponents' arguments, but actually justifying their imprisonment or murder, thus reshaping the entire Turkish legal and political landscape.

The 2016 coup d'état was at least in theory fomented by

the Fethullah Gulen organization, a former ally of the Erdogan government. This movement, led by the now-exiled cleric Fethullah Gulen, is an ostensibly moderate Islamist organization that up until 2016 had a widespread presence in the military, police, and professional sectors. Following a corruption scandal in 2013 that saw the indictment of many AKP loyalists, Erdogan began targeting the movement, using the language of a “parallel state” to describe its influence. Since then, Gulen has gone into exile and the AKP has been increasingly aggressive in pursuing his supposed supporters. This conflict between the two came to a head in 2016 when supporters of Gulen unsuccessfully attempted a violent coup to overthrow Erdogan. Their failure sparked the AKP’s most comprehensive use of repression yet.

While it is likely that the Gulen movement did have a significant presence in the police and the military, the Erdogan government’s response has been repression on an industrial scale. The AKP conspiracy theory of the “parallel state”, meaning civil service and military cadres loyal to the Gulen movement, has been used as justification for mass arrests and purges (De Medeiros, 2018: 96-98). This is an example of a situation where the conspiracy theory directly serves the interests of the state, as the fiction of “Gulenists in the closet” has allowed the AKP to arrest all sorts of other regime opponents, including human rights activists (Bahceci, 2018: 4). Julian De Medeiros writes that the nature of a perpetual “state of emergency” as now exists in Turkey is that institutions must constantly be purged of enemies, real or imagined (De Medeiros 97). The fact that the founder of the Gulen organization is now based in Pennsylvania can be viewed through an expansion of Cayli’s spatial analysis, as the same suspicions applied to diaspora Alevis can now be applied to other foreign domiciled Turks as well (Cayli, 2017: 263).

Furthermore, the depth of suspicion and repression following the coup has forced even organizations that oppose the AKP to come out in support of Erdogan’s actions lest they be punished as co-conspirators (De Medeiros, 2018: 97). The fact that many Gulen supporters were well placed in the military and civil service has allowed Erdogan to continue his denunciations of an elite conspiracy, despite the fact that ideologically Gulenists are opposed to Kemalism. The coup can be seen as a windfall for Erdogan as it allowed him to not only destroy his mostly deeply rooted opponents but also crush all opposition in the name of national security, an opportunity

not afforded him by the Gezi protests.

Conclusion

It is important to view the use of conspiracy theories by the AKP to enable systematic repression within both the context of the AKP’s rise and continued consolidation of power, as well as the conditions of Turkish society. The center-periphery divide that has been described since Ottoman times has been distorted and almost caricatured by the AKP as a way of directing populist anger at its opponents, playing off historical insecurities and religious and economic resentment in order to consolidate power. Because much of Republican Turkey’s history has been characterized by periods of relative democracy interspersed with violent transitions of power, it is likely that a paranoid mindset by any ruling government is a product of the real threats to power that do exist. However, Erdogan and the AKP have managed to leverage this culture of paranoia, as well as widespread resentment among conservative Anatolian Sunnis against urbanized, secular “elites” as a way to attack all dissent.

The constant response of the AKP to all challenges to their power has been to blame foreign agents or a conspiracy of elites, a method that externalizes problems and makes the opposition’s motives seem nefarious or self-interested. Furthermore, it allows Erdogan to exploit the very real religious and social distinctions extant in Turkey in order to maintain an electoral advantage. The irony of the situation is that while these conspiracies began in a time when the AKP’s rural, devout base was really the periphery in the center-periphery paradigm, at the very least the party’s leadership class has risen to become the country’s “center” of power.

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My Way or the Highway: Donald Trump's Unilateral Israel Policy

Jake Nash '21

From the beginning of his presidency, Donald Trump broke with the multilateral consensus vis-à-vis the Israeli-Palestinian conflict. Despite often drawing criticism from abroad, including predictions that his actions would spark conflict, his strategy succeeded at times in achieving his goals where operating within the existing multilateral framework would not have. Trump's "outside-in" approach to the Israeli-Palestinian conflict through engagement of Arab states and his distinctly pro-Israel policy decisions fit within his broader pattern of breaking with the multilateral consensus on the conflict. The multilateral consensus, however, includes some assumptions that Aaron David Miller notes have proven false, but that Trump's policy changes have acknowledged. First, the existing consensus assumes that the status quo of the Israeli-Palestinian conflict is unsustainable. Second, it assumes that Israel will become a pariah state in the mold of North Korea if it fails to come to a resolution with the Palestinians. Third, it assumes that the normalization of relations with Arab states must come after significant progress is made in resolving the conflict.¹ None of these assumptions has proven true.

With Trump's term behind us, now is an opportune time to examine some of those policies, how they have affected American interests in the region, and whether the Biden Administration would be well-served to return to the constraints of the previous multilateral framework. To do so, we must evaluate the extent to which they have been successful in pursuing American interests in the region versus harmed them. That first requires a summary of longstanding American interests in the Middle East.

The United States has five primary longstanding interests in the Middle East. First, the minimization of Soviet, now Russian, and Iranian influence. Second, the security of Israel and Arab allies of the United States. The US has also viewed resolution of the Israeli-Palestinian conflict to be in its interests to preserve Israeli security and increase stability in the region. Third, the pursuit of counter-terrorism activity. Fourth, the promotion of democracy. Fifth, the minimization of refugee flows.

To evaluate the extent to which Trump's policies, in

breaking with the multilateral consensus, have provided dividends versus harmed American interests in the region, I will examine the effects of four policy changes by the Trump Administration. These policy changes are the recognition of Jerusalem as Israel's capital and the accompanying relocation of the American embassy, the recognition of Israeli sovereignty over the Golan Heights and the reversal of the American legal position regarding Israeli settlements in the West Bank, which will be considered together, and the negotiation of the Abraham Accords establishing normalized relations between Israel and the UAE. I argue that the early evidence for how these policies have turned out indicates that they had mixed results, but a small overall effect on American interests.

Recognition of Jerusalem

One of President Trump's first significant breaks with the multilateral consensus was his decision to recognize Jerusalem as the capital of Israel and move the American embassy there from Tel Aviv. This decision, made in December of 2017, was also a shift from longstanding US policy. The United States, among many other countries, kept its embassy in Tel Aviv after Israel declared Jerusalem its capital in 1950, captured East Jerusalem in 1967 and even after the Israeli government declared the full city to be its capital in 1980.² The United States kept its embassy in Tel Aviv so as to maintain its neutrality and status as a mediator in ongoing peace talks between Israel and the Palestinians, who, as part of the Oslo Accords in 1993, agreed that the status of Jerusalem would be decided in negotiations of the final status of the conflict.³

President Trump's decision to move the embassy to Jerusalem was not without bipartisan support, with Senate Minority Leader Chuck Schumer applauding the move.⁴ In fact, the Jerusalem Embassy Act of 1995 required the United States to relocate the embassy from Tel Aviv to Jerusalem. Why, then, did it take twenty-three years for the embassy to actually be moved? The Jerusalem Embassy Act allowed for the president to waive the requirement for six months in order to "protect the national security interests of the United States"⁵ and, every subsequent six months, the president exercised that right, including Pres-

ident Trump. Trump issued the waiver twice, although the second time he announced it would be the last,⁶ arguing that there was no longer a national security objective to keeping the embassy in Tel Aviv.⁷

Moving the embassy and recognizing Jerusalem as the capital of Israel was a deliberate move by the Trump Administration, billed as a strategy intended to force Palestinian leadership to come to the negotiating table. Trump himself argued that he was taking Jerusalem “off the table” for negotiations, further implying to Israeli Prime Minister Netanyahu that the Israelis would have to make concessions in the future.⁸ President Trump favored a tough approach, one meant to remove the Palestinian leadership of any delusions it might have about maintaining unrealistic positions and force them to make concessions in negotiations.⁹ Some analysts, like James Phillips of the Heritage Foundation, argued much along the same lines. Phillips argued that the recognition of Jerusalem could also be good for the peace process if it sent the message to Palestinian and other Arab leadership that postponing a peace deal with Israel meant that the deal was only going to get worse.¹⁰ Moreover, Phillips argued, the Trump Administration was betting that those leaders were more interested in a peace deal than a confrontation, though he acknowledged that there could be short-run harm to the peace process and riots opposing the move.¹¹ Democratic former ambassadors to Israel Martin Indyk and Daniel Shapiro presented a not-contradictory claim, that Trump’s move could actually boost the peace process if the United States also acknowledged Palestinians’ claims to East Jerusalem while acknowledging Israel’s to West Jerusalem.¹² Others were critical of the policy. Philip Gordon, of the Council on Foreign Relations, argued that Trump’s coercive strategy and use of punishment to induce Palestinian cooperation is doomed to backfire.¹³ In the wake of these differing predictions of how Trump’s relocation of the US embassy to Jerusalem would play out, how are we to evaluate the results of the policy? To assess the outcome of this policy almost three years later, we can evaluate whether the principal aim of the policy, to bring Palestinians to the negotiating table, was achieved as well as what the other results of the move were. Both short- and long-term effects were predicted following Trump’s announcement. To evaluate the move, both need to be examined, as well as their effects on longstanding US interests in the region.

In the immediate term, the results were negative. There was no acknowledgement of Palestinian claims to East Jerusalem, as Indyk and Shapiro had hoped. Israelis hailed the move, as expected, with support from Prime Minister

Benjamin Netanyahu. Israeli President Reuven Rivlin expressed hope that it would aid the peace process and that the Joint Comprehensive Plan of Action would be revisited next, although this was hardly a departure from the Israeli consensus of opposing the deal.¹⁴ Palestinians, on the other hand, swiftly condemned the move. Palestinian President Mahmoud Abbas said that taking Jerusalem off the negotiating table forfeited the United States’ role as peace broker.¹⁵ Palestinian leadership took action backing up that rhetoric, as well. Palestinian leadership refused to meet with Vice President Pence, cut off communication with the United States, and has not reopened talks since, even following the release of the Trump peace plan.¹⁶ The Palestinian response essentially boils down to the idea that the United States, in making this move, has explicitly taken sides and thus shown itself to be unable to effectively broker peace.¹⁷ For their part, Palestinian civilians protested for at least seven weeks in Gaza, with tens of thousands of people rioting at the border to Israel. This set of protests resulted in over 2,500 injuries and more than 50 deaths of Palestinians.¹⁸ In addition, two-thirds of Palestinians oppose resumption of communication with the United States and eighty-eight percent say that the US is biased towards Israel.¹⁹

The effects of the move on American interests have likely not all played out yet, but so far there has not been much movement on those longstanding interests. One area that has seen movement is the Israeli relationship with Turkey. Both allies of the United States, Turkey expelled Israel’s ambassador in May of 2018 in response to the US embassy move, dealing another blow to Israeli-Turkish relations which have suffered due to numerous conflicts.²⁰ However, there is room for cooperation between the two, particularly in countering Iranian aggression in the region. The embassy move exacerbated the conflict between Israel and Turkey, making coordination to operate against Iranian proxies, particularly in Syria where both Israel and Turkey have been active in opposing the Iranian presence, more difficult.²¹ Any coordination would have been unlikely in any case, given Turkish support for Hamas over the past decade.²² As part of his campaign of maximum pressure on Iran, one might have expected President Trump to support Israeli-Turkish coordination in Syria, as both are allies supporting US interests in a place where the US does not want boots on the ground. The Israelis and Turks want to see the Iranian presence gone from Syria just like the United States does. While the frosty relationship between Israel and Turkey makes it difficult to suggest that Trump’s embassy move harmed US interests by discouraging that sort of cooperation, the resulting expulsion of the Israeli ambassador and closing

of official diplomatic channels that comes along with it surely indicates that the move did not help American interests on that front.

Aside from the Turkish and Palestinian responses, there were questions of whether the embassy change would spark Palestinian Authority leaders to suspend security cooperation with Israel in the West Bank.²³ These fears were founded, as PA leaders eventually did suspend such cooperation, but not as a result of the embassy move. Doing so would represent a fairly significant threat to Israeli security, which is a US interest to protect, but the embassy move was not responsible for that change.

Despite all the concern about backlash across the Muslim world, little changed as a result of the embassy move in terms of US national interests. The Israeli-Turkish relationship suffered, though it was already rocky. Palestinians cut off communication with the United States, representing a setback to the peace process, which was already broken. The Israelis got a major win without offering concessions in return, which future administrations may live to regret in potential negotiations. The major backlash that was feared across the Muslim world did not occur, and the riots in Gaza were a short-term threat rather than the beginning of another Intifada.

Golan Heights Recognition and Settlement Policy Change

In March 2019, the White House announced a change in Washington's legal position on the status of the Golan Heights, which Israel has occupied since 1967. In a related move, the Trump Administration changed long-standing American legal position on Israeli settlements eight months later. These moves make sense to examine in conjunction with one another, and so will be discussed in the same section. First, I will more briefly discuss the recognition of the Golan Heights. Then, I will move into the change in legal position regarding West Bank settlements and discuss the effects of both moves.

The announcement that the United States would recognize Israeli sovereignty over the Golan Heights was a reversal of US policy essentially since Israel conquered the territory. President Trump justified the change by citing Israeli security needs despite Israel's control over the Golan heights having not been seriously challenged in decades. The change was widely predicted to change little in the international arena, with few or no other states expected to similarly acknowledge Israeli sovereignty there.²⁴ Practically, there has been and will be no change

in activity in the Golan Heights. In fact, one of primary reasons for the change is the close relationship between President Trump and Prime Minister Netanyahu. The timing of the announcement coincides extraordinarily well with the upcoming Israeli election, coming less than two weeks before Israelis were set to head to the polls.²⁵ Zachary Laub of the Council on Foreign Relations calls it an attempt to aid Netanyahu in the upcoming election.²⁶

The recognition of Israeli sovereignty over the Golan Heights is nevertheless noteworthy. Martin Indyk of the Council on Foreign Relations and Diana Greenwald, political science professor at City College of New York, argued that the announcement is a precursor to US acknowledgement of a potential Israeli annexation of territory in the West Bank. David Makovsky was of the opinion that annexation discussion would have to wait until after a potential peace deal fell through.²⁷

Evaluating the extent to which the announcement was a precursor to Trump's openness to acknowledging Israeli annexation of territory in the West Bank requires analysis of the change in the American legal position regarding West Bank settlements, which reversed the legal position taken by the Carter Administration in 1978.²⁸ Most countries and the UN Security Council consider the settlements to be illegal under international law and American presidents for decades have vocally opposed them.²⁹ However, the United States has refused to take action strong enough to force Israel to stop their expansion, despite knowing how damaging the settlements are to prospects for a negotiated peace with the Palestinians.³⁰

Some observers dismiss the change as symbolic, but Aaron David Miller disagrees. He sees the change as another step in Trump's reframing of American Israel policy, following a refusal to commit support for a Palestinian state and his move of the embassy to Jerusalem, among other actions.³¹ Taking the argument a step further, Miller argues that this policy is a result of President Trump trying to boost the election chances of himself and Prime Minister Netanyahu and does not fit within a broader strategy.³² Other experts agree that the change was largely intended to constrain the centrist opposition to Netanyahu as his main political rival Benny Gantz attempted to form a coalition government and Netanyahu's indictment on corruption charges was imminent.³³ Philip Gordon of the Council on Foreign Relations described the change as "an election-year gift" for Trump's evangelical base.³⁴ In addition, Jake Waller of the Carnegie Middle East Center calls the greatest danger of the change in legal position with respect to the settlements is that it will embolden

the Israeli right wing and settler movement to pursue annexation of all or part of the West Bank. If backed by the United States, this would be essentially irreversible.³⁵

Evaluating this change a year later allows us to look at the short-term effects of the policy to see whether these fears have come to pass so far. The two main hypotheses to evaluate are that the announcement served to embolden the Israeli right and settler movement to pursue annexation and how the change affected American interests. To evaluate these claims, it is necessary to look at the immediate aftermath of the policy.

The implications of the policy change were immediately clearer. The day after the announcement was made, Netanyahu went to the West Bank to tout the change in policy and the “once-in-a-lifetime opportunity” to annex all or parts of the West Bank.³⁶ Netanyahu had already announced two months prior that if his Likud party were to win in the September election, he would annex all settlements in the Jordan Valley. Coming two days before that election, this promise was clearly intended to gin up support for Likud among the settler movement, which is a key constituency of the party.³⁷ Following that announcement, the Palestinian Authority suspended security and civil cooperation with Israel in the West Bank, citing the announcement of plans for annexation.³⁸

In terms of actual change resulting from the policy, very little changed aside from the emboldened Israeli right wing’s plans to proceed with annexation. Annexation as a policy, however, would be deeply destructive to the peace process, essentially ending the possibility of a two-state solution. Besides reducing the barriers to annexation, and more than that, encouraging Netanyahu to move forward with one of his least responsible policies as a leader, the change in policy removed any doubt that the United States under President Trump cannot be an honest broker of the peace process. This was made abundantly clear by the Trump Administration’s policies in the region and their strategy of working closely with the Israelis while alienating the Palestinians, but this policy change removed any semblance of doubt.

The Golan announcement paved the way for the settlement policy change. According to Sarah Yerkes of the Carnegie Middle East Program, the Golan recognition prompted a wave of backlash from the international community, but it was merely a verbal wave, and nothing really happened.³⁹ This informed the Trump decision to change the settlement policy, having seen that there would be no real response of consequence to Trump’s interests.

The policies were similar acknowledgements of the Israeli right to territory acquired in the Six-Day War; even as international law prohibits the acquisition of territory by force.

In terms of effects on American interests, there were two consequences of the policy change: making annexation more likely and making Trump’s yet-to-be-released peace plan more likely to be dismissed on arrival by everybody but the Israelis. The increased likelihood of annexation is detrimental to American interests because the consensus among the Israeli defense establishment, including Netanyahu’s political rival and former Chief of General Staff of the IDF, is that annexation would undermine the future security of the state of Israel.⁴⁰ Enabling such a dangerous policy is both unnecessary and acts against American interests. It damages American credibility abroad as a state respecting international law and as a mediator of conflicts, having clearly and explicitly sided with Israel on this issue among many others. That said, annexation was punted on by Netanyahu in February 2020, then postponed indefinitely following the Abraham Accords, in which Israel agreed not to annex territory in the West Bank in exchange for normalized relations with the UAE. Thus, while advancing the possibility of annexation, it has not come to pass. The resulting impact is that Israel got a major policy gift from the United States without having to make any major concessions, or concessions at all, and then the US turned around and helped Israel negotiate another major win in the form of normalized relations with the UAE, with the only concession being that they not engage in an activity that Israeli security experts believe would be dangerous for Israeli security. The results of this were two major wins for Netanyahu where the only changes for the United States were a loss of legitimacy in the international arena, a loss of credibility with the Trump peace plan, and an increased chance of long-term destabilization of Israel, the closest American ally in the Middle East.

Normalization of Relations

The announcement of the Abraham Accords, followed by the Israel-Sudan normalization agreement, has been heavily promoted by the Trump Administration as a massive diplomatic achievement, with Secretary of State Mike Pompeo calling the agreement “an enormous step forward.”⁴¹ Revealed on August 13, 2020 the Abraham Accords announced a normalization of relations between the United Arab Emirates and Israel. On September 11, the agreement was extended to Bahrain as well with the announcement of a separate agreement by a very similar name. On October 23, 2020 Sudan followed suit with the

announcement of the Israel-Sudan normalization agreement.

The accord with the UAE formally recognized the existing ties between the two states, as they have more closely cooperated over the past ten years or so. While much has been said to aggrandize the accord or diminish it, the agreement was largely a transactional one by which Israel was given the international recognition and legitimacy it desired in exchange for suspending plans for the annexation of territories in the West Bank. In addition, it has been reported that there is an expectation in Abu Dhabi that their request to buy some advanced military equipment, including the F-35 Lightning II fighter jet, will be approved.⁴² The agreement with Bahrain mostly reflects the countries' commitment to formalize relations as well, though with much less detail as a reflection of the negotiating round between Israel and the UAE but not between Israel and Bahrain.⁴³ Sudan agreed to normalize relations with Israel in exchange for being removed from the United States' list of state sponsors of terrorism, where it has been since 1993,⁴⁴ although it rebuffed Secretary of State Mike Pompeo's attempt to tie normalization of relations with Israel to its democratic transition.⁴⁵ The UAE-Israel-United States deal has received the most attention, as it is the first and by far the most strategically important of the three. As such, this agreement will be the primary focus of this section.

The agreement to normalize relations between the UAE and Israel, while in and of itself a minor accord in the sense that it accomplishes very little that is new, is a significant departure from the previous regional situation. For decades, the multilateral international consensus was that normalization of relations between Israel and Arab states besides its immediate neighbors, of whom it has relations with Jordan and Egypt, must necessarily wait until a final negotiated settlement between the Israelis and the Palestinians. That the accords occurred at all is a function of a shifting regional consensus among Arab nations that they follow the plan framework of the 2002 Arab Peace Initiative and refuse to normalize relations with Israel until such time as there was a resolution with the Palestinians and an end to the occupation.⁴⁶ The agreement signifies a change in regional attitudes articulated by Bandar bin Sultan, the former Saudi Arabian Ambassador to the United States. According to bin Sultan, Arab regimes no longer fear a Palestinian outcry mustering opposition to them among their own people under the charges of harming Palestinian national ambitions.⁴⁷ This idea is that the interests of Arab states, especially security and economic, should take precedence over solidarity with the Palestin-

ian cause.

The signing of the accords elicited opinions and predictions that broke down mainly into two camps: that the agreement will be good for Israel and the UAE, and that the agreement fails Palestinians and damages the prospects for a solution to the Israeli-Palestinian conflict. James Carafano of the Heritage Foundation argues that the accords are a sign that President Trump's Middle East policy has been a success because he took US support for Israel a step further, moving beyond the focus on peace talks.⁴⁸ This point goes back to the earlier assumption that was proven wrong, that normalization of relations between Israel and Arab countries necessarily had to come after an Israeli-Palestinian negotiated settlement. Aaron David Miller argues that the agreement is transactional and, if it does not fall apart, will make it harder to resolve the Israeli-Palestinian conflict.⁴⁹ In a similar vein, Ian Black argues that the agreement makes a two-state solution less likely because of the political message it sends that it is acceptable to abandon the Palestinian cause. To him, the agreement allows the status quo to continue with respect to the Israeli-Palestinian.⁵⁰ David Makovsky and Daniel Shapiro have a different view, arguing instead that there is potential for the Palestinian cause to be boosted as a result of closer relations between Israel and the UAE.⁵¹ While the treaty is not yet a year old, and we therefore cannot evaluate many of the effects of the accords in terms of how they have played out, we can examine the immediate effects of the treaty and how it has affected American interests thus far.

Despite the claims that the agreement was made in order to convince the Israelis not to annex parts of the West Bank, the accords also reflect a realpolitik response to regional geopolitical conditions. The United States has begun a withdrawal from the region, resulting in heightened fears of Iranian belligerence and other destabilizing factors.⁵² As two of the major powers in the region, the Israelis and Emiratis have much to gain by cooperating in this arena. Therefore, it makes sense that they work together to promote regional stability, considering their strongly aligned views on what the destabilizing threats are. In terms of American interests, the accord can thus be seen as a success- the Israelis and Emiratis are stepping up to fill a larger role in promoting regional stability, without relying solely on the US to counter rising instability. Regardless of American intentions to exit the region, this is a success when it comes to minimizing Iranian influence, as it brings Israel closer to the Sunni block of states that oppose Iran, setting the stage for them to balance Iranian power together in the future.

The accord will definitely have effects on the Israeli-Palestinian conflict, as it removes a key Israeli incentive to negotiate by granting Israel the international recognition it has long sought. In addition, there was a lack of major concessions on the Israeli side. In the immediate term, however, the Palestinian Authority resumed civil and security cooperation with the Israelis after a six-month suspension due to the threat of annexation.⁵³ The accord serving to put annexation on the backburner is a positive. As Bandar bin Sultan notes, the accord does create linkage, where Israel committed to not annex the parts of the West Bank, though he notes that this is a negative linkage. The argument bin Sultan makes, however, is a relevant one considering two things. First, as he argues, similar accords with other Arab states have the potential to create positive linkages.⁵⁴ Second, as Makovsky and Shapiro believe, the two states with existing peace treaties with Israel, Egypt and Jordan, have more influence in supporting Palestinian causes.⁵⁵ The implication is that by becoming more actively involved with Israel, there is a greater chance that these states who pursue normalized relations will be able to gain concessions out of Israel vis-à-vis the Palestinians in exchange for closer relations or reciprocal concessions. Considering that annexation would have upended relations with Jordan,⁵⁶ the accord allowed Netanyahu to both gain from not annexing territory in the West Bank and not lose out with an important neighbor in Jordan.

The major change, then, that the accords represent is a restructuring of the relevant sides in negotiating a solution to the Israeli-Palestinian conflict. This brings Arab nations off the sidelines and into the thick of negotiations, turning a mostly trilateral process between Israel, the Palestinians, and the United States into a multilateral one. The bet by the Trump Administration was that this would put more pressure on the Palestinians to negotiate, or at least shake up the peace process in a way that is conducive to making a deal. More likely, however, is that the involvement of other states in the region will not make it easier to make peace. Other states, especially states with security interests that either do not apply or run counter to Palestinian security interests, like the UAE with Iran, bring their own interests to the table. While they may be able to use linkage to put pressure on Israel to make concessions, many in Israel will likely feel as though the status quo is sustainable and not respond to that pressure.

The broader regional effects of the accord are still uncertain. Where Carafano argues that the accords set the foundation for a “Middle East Strategic Alliance” between Israel and Arab states,⁵⁷ that assessment goes too far.

First, the accords only make public cooperation that has already been going on behind the scenes. If anything, that cooperation is the foundation for such an alliance, not the accords. In terms of actual change for US interests in the region, very little changes.

President Trump’s policy changes regarding Israel represent a significant departure from previous administrations. His recognition of Jerusalem as Israel’s capital, recognition of Israeli sovereignty in the Golan followed by his reversal of the American legal position on Israeli settlements in the West Bank, and his role in negotiation of the Abraham Accords all challenged norms to a significant extent, as has his outside-in approach to the Israeli-Palestinian conflict. Trump challenged norms more than most presidents, upending the multilateral consensus in the Middle East, hoping to achieve foreign policy achievements that have long evaded the United States, to pursue American interests in the region, and, perhaps, to improve the electoral chances of his allies and himself. The question is simple: has it worked?

At the heart of longstanding US interests in the Middle East are five core aims: to minimize Soviet (now Russian) and Iranian influence, to ensure the survival and protect the security of Israel and Arab allies of the US in the region, to engage in counter-terrorism endeavors, to promote democracy, and to minimize refugee flows. The discussion of the extent to which those policy changes by President Trump have affected American interests has largely been limited to the first two interests: minimizing Russian and Iranian influence and the security of Israel and Arab states that are American allies. None of those policy changes significantly affected counter-terrorism efforts, the promotion of democracy, or addressing refugee flows. Thus, the more important question is the extent to which the policy changes have assisted or harmed the containment of Russian and Iranian influence as well as how they have bolstered or undermined the security of Israel and America’s Arab allies.

The containment of Iran has been a major policy priority during the Trump Administration as Trump pulled out of the Iran nuclear deal and pursued a policy of maximum pressure. The recognition of Jerusalem as Israel’s capital and the Abraham Accords both affected US interests vis-à-vis Iran. The recognition of Jerusalem as Israel’s capital tangentially affected Iranian containment as it further wedged apart Israeli-Turkish relations. Given how poor those relations have gotten in the past decade, there was little room for further deterioration. The expulsion of the Israeli ambassador will likely have no effect on secu-

rity cooperation between the two states when compared with, for example, Turkey's support of Hamas. Thus, the embassy move did not really affect US interests vis-à-vis Iran, except by placing another obstacle in the path of a future administration that may seek to induce cooperation between the two in Syria or elsewhere. The signing of the Abraham Accords had a more direct effect, as stronger ties between Israel and the UAE means closer cooperation when it comes to balancing Iranian power and containing Iranian influence. However, that security cooperation has been underway for over a decade, only becoming a public relationship with the Abraham Accords. Additionally, the relationship between Israel and the UAE is warming partially as a result of US disengagement in the region, which began under President Obama and is not new. Due to these two factors, it is difficult to say that the signing of the Abraham Accords itself affects US interests regarding Iran.

How the policies have affected Israeli and Arab security is a more complicated question. Each policy is an example of the United States siding with Israel, unilaterally granting it major concessions, with the exception of the Abraham Accords which was not unilateral but enabled and promoted by the US, without demanding any significant concessions in return. The resulting impact on US interests depends on the value placed on the peace process. Considering the centrality of the Israeli-Palestinian conflict to Israeli security past, present, and future, Trump's actions in this arena have had a significant impact on American interests. With each successive attempt to alienate the Palestinians and bully them into negotiations by unilaterally upending the multilateral consensus on issues such as the status of Jerusalem, the potential annexation of West Bank territory, and the outside-in approach of pursuing normalized relations with more Arab states before a peace deal, Trump has pushed peace further away. American acquiescence and even support for annexation did the most damage to peace prospects, as a two-state solution completely loses viability with that outcome and makes the eventual Israeli choice into being either a Jewish state or a democratic one. While the peace process was already dead and with both Israeli and Palestinian leadership unwilling to renew it, Trump's policies could not derail such a process. Rather, they served to reduce the likelihood of US involvement in any potential future negotiations. Instead of attempting to lay the foundation for a just negotiated settlement, the Trump Administration pushed to make a future agreement as pro-Israeli as possible. The most successful piece of this strategy, in my opinion, is the normalization of relations with other Arab states. With this achievement, the regional Arab consensus vis-à-vis

Palestine shifted, which could put pressure on Palestinian leadership to negotiate.

Conclusion

The Biden Administration faces many of the same problems in the Middle East. As it formulates its own Middle East strategy, should it continue Trump's approach of breaking the multilateral consensus to shake things up? The short answer is probably not. Trump's policies lacked a coherent end goal and often undermined his own peace plan. Should Biden wish to make progress toward resolution of the Israeli-Palestinian conflict, he will have to be much more judicious in his approach instead of one-sided. However, he should note that the multilateral consensus has failed for decades to resolve the conflict. Perhaps, then, Biden can capitalize on a 'return to normalcy' platform to lay the foundation for a real peace process. He should focus on restoring American credibility in the Middle East rather than worry about the multilateral consensus on the Israeli-Palestinian conflict constraining US policy.

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The Myanmar Coup and the Craft of Politics

Professor Walter F. Hatch

I probably owe an apology to Aung San Suu Kyi, who is languishing in prison after being removed from her position as leader of the government in Myanmar.

Obviously, I didn't put her there; the Tatmadaw (Burmese military) did. What I did was banal, maybe even benign: I blamed her for being a politician. I forgot that politics is the messy, complex contest for power, not a tidy or simple morality play. But this was a significant mistake for someone like me, an otherwise careful student of politics.

Here's my story: I once idolized the leader of Myanmar's pro-democracy movement. Youngest daughter of Gen. Aung San, the anti-colonial freedom fighter often viewed as the "Father of Myanmar," she had gone to college at Oxford and settled in the UK but returned to her homeland in 1988 to care for an ailing mother. Myanmar then was in the midst of a political revolt against the military government. Students, workers, and Buddhist monks filled the streets to demand free elections, and Aung San Suu Kyi joined them. She founded the National League for Democracy (NLD), the political arm of the movement. "I could not, as my father's daughter, remain indifferent to all that was going on," she explained that summer.

The military intervened to brutally suppress the protests, and it placed ASSK (my shorthand) under house arrest. Political pressure in Myanmar continued to mount until the military agreed in 1990 to hold elections. The NLD won a big majority in the Parliament, but the military refused to seat the winners. It clamped down even tighter. In fact, over the next two decades, the military government mostly kept ASSK under house arrest. Although permitted to leave the country, she declined – knowing that she would be refused re-entry. This meant that she was unable to see her British husband and two children for years.

Two decades later, the military, which had controlled Burma (or Myanmar) since 1962, finally agreed to loosen its grip on the country's political system. NDL did well in by-elections in 2012, winning all but a couple of the available seats. And then, in 2015, it won a supermajority in both houses of Parliament, ending military rule after more than a half century. ASSK became *de facto* leader of the new government, serving as state counsellor.

Like much of the rest of the world, I was giddy – and bloated with expectations. ASSK quickly dashed those by failing to stand up to the Tatmadaw as it brutalized the Rohingya, a Muslim minority group residing mostly in the western state of Rakhine. The government in Yangon had refused to acknowledge the citizenship of these people, frequently raiding villages, torching homes, and beating or killing anyone who protested. Tens of thousands of displaced Rohingya fled to Bangladesh. As leader of NLD, and then head of the new government, ASSK strongly denied charges of ethnic cleansing or genocide. She went so far as to ardently defend the military's actions at a 2019 hearing before the International Court of Justice in the Hague. This was more than a disappointment; it felt like a betrayal.

For many years, I had served as director of the Oak Institute for Human Rights – a Colby organization that, one fall, hosted a Rohingya couple, Nandar and Tony, who had worked for the UN High Commission on Refugees in Myanmar. Nandar's father, a local leader who had tried to mediate communal conflict, was in prison on trumped up charges of inciting unrest. I listened closely and felt the emotional pain experienced by our Oak Fellows, who spent much of their time in Maine listening to the news from home as it went from bad to worse for their persecuted community. And I came to resent ASSK for accepting if not facilitating what was clearly a gross violation of human rights.

I was not alone. Around the world, individuals and groups committed to social justice became louder and louder in their criticism of ASSK. A petition on Change.org pushed for revocation of her Nobel Peace Prize. The Oxford (UK) City Council withdrew an award it had bestowed upon her for leading the democracy movement in Myanmar. The U.S. Holocaust Museum revoked its Elie Wiesel award, claiming ASSK had failed "to condemn and stop the military's brutal campaign" against the Rohingya. Amnesty International pulled its "Ambassador of Conscience" award. And so on.

For the most part, the people of Myanmar, especially the majority Burmans, did not share this critique of ASSK and her party. (Racism is not unique to the U.S.) In the November 2020 election, NLD won 396 of 476 seats in

Parliament, crushing the military's party. This was too much for the Tatmadaw. It claimed fraud, demanded a new, military-supervised election, and filed complaints with the courts.

Then, on February 1, the military carried out a coup. It seized Parliament, and it arrested and detained ASSK. When Burmese citizens used the internet to organize resistance, the Tatmadaw shut off access. And when they nonetheless took to the streets in protests, it ordered soldiers to shoot – killing hundreds of non-violent demonstrators.

This, I now realize, was the outcome ASSK struggled to avoid from the very beginning. She had been dancing with the Tatmadaw, trying to expand democratic space when she could – but otherwise respecting the military's prerogatives (on the Rohingya, for example). She also understood that, for now at least, the Burmese public generally supported the generals in their bid to ethnically “cleanse” Rakhine state. She could work gradually to consolidate democracy, or she could call on the military to abandon a popular position. She could not do both and survive, politically. That's the lesson I see now in the rearview mirror.

One could certainly argue that the coup offers a different lesson: dancing with the devil never ends well. After all, even though she followed the military's lead on its effort to expel the Rohingya, ASSK was unable to hang onto power. One might conclude that pragmatism in the face of evil is always a failed approach.

For me, though, it's impossible to ignore this counterfactual: If ASSK and the NLD had opposed the military's brutal campaign against the Rohingya in 2017, they would have been immediately ousted by the Tatmadaw. The hammer would have dropped much sooner – before democratic experiences and expectations began to take root in Myanmar.

Because hypotheticals are always imagined, not played out in real time, we will never know for sure who's right. But I certainly feel less righteous, less judgmental toward ASSK today. While I should not have praised her so lavishly 30 years ago, perhaps I also should not have condemned her so bitterly four years ago. Yes, she was timid, maybe even complicit in criminal behavior. But she was not, politically, wrong. Because politics is about winning power and (if successful) wielding it. ASSK may have done her best to use the political process to advance democracy in Myanmar.

Interview with Professor Walter Hatch, 4/19/21
Walter Hatch, professor of government, is an expert on Asian politics as well as comparative political economy and global security. Academia is his second career; he spent years as a journalist – mostly as a political and investigative reporter for *The Seattle Times* but also as stringer for CBS News. Now he teaches, researches, and writes about government-business networks in Japan, civil society in China, international relations in East Asia, regional trade agreements, war memory and reconciliation, and U.S. military bases in Japan and Korea.

Keerthi: Would you say that your interest in Aung San Suu Kyi and Myanmar was inspired more by your scholarly work in East Asian politics or rather your personal interest in human rights activism?

Hatch: It was really both my scholarship and my activism that was touched, especially the latter. I have a strong interest in human rights, and as I learned more about the plight of the Rohingya, I became increasingly upset with the Burman majority in Myanmar and the government, including Aung San Suu Kyi's (ASSK) leadership. I was appalled that she defended the military's genocidal behavior in Rakhine State, which seemed inexcusable to me. That was the activist part of me that became agitated.

In this piece however, I'm trying to get more in touch with my inner political scientist and have the activist in me sit back and be quiet. The political scientist in me is watching this situation and beginning to realize that some of my Southeast Asia/Burma expert friends were right when I reached out to them 6 or so years ago, expressing disappointment with ASSK, and they told me I was being unreasonable. These were people from the University of Michigan and the University of Washington, who really know the politics of Myanmar much more intimately than I do, and they were telling me that she was boxed in, that she faced a Hobson's choice of either going back to being an outsider with no influence or trying to proceed with the democratization of Myanmar while “dancing with the military”, as I say in the piece.

The political scientist in me is saying, maybe they were right. Maybe these experts on Myanmar had a much more nuanced perspective on what somebody like ASSK could do as the State Counsellor.

Keerthi: Do you see a risk in looking at issues like Myanmar and ASSK through solely a human rights lens? How

can this cloud our political analysis of what is truly going on?

Hatch: This question is what motivated me to write the piece. I define politics as the contest for power and the wielding of power when one has it. Politics is one of the most important human processes that we can talk about in the world. We're constantly strategizing and making choices about what to prioritize and how far to go, and it ends up often resulting in compromise, which for an activist may be equivalent to capitulation, complicity, immorality, or maybe even evil, although I don't tend to use that term. People in the activist community will often frame issues in that kind of Manichean duality of good vs. evil. I think that there is a real problem with the human rights lens being entirely moralistic sometimes. Not that we should be complicit with immorality, but perhaps we should recognize that politicians, like the rest of us, generally are not always able to do what we think is the most righteous thing.

ASSK has revealed that she is a very pragmatic politician. I continue to be disappointed by her lack of action on the Rohingya situation, but what is different for me now is that I am more forgiving of her pragmatism and I have recognized that it probably was a necessary approach.

Keerthi: In evaluating politicians around the globe, do you think it is possible to separate a politician's strategic interests from their personal morality?

Hatch: I honestly don't think we can. Ethics is a major part of politics, i.e. doing the right thing. To use an example closer to home, I'm not suggesting for example that we should ignore all of Donald Trump's lying or sexual assault allegations, nor do I think we should ignore ASSK's failure to speak out on behalf of the Rohingya and take a more just position on their behalf, as I'm still disappointed with her. I just think if everything is viewed through a moralistic lens, the world becomes terribly simple. Our job as political scientists should be to maintain both a morality-based, normative view of the world, but also a more nuanced, political view of the world that recognizes that politics is about the contest for power.

Keerthi: In your piece you had a line that said: "This was more than a disappointment, it was a betrayal". Who did you see as being betrayed when you said this? Was it a personal betrayal, a betrayal of the persecuted Rohingya, or a betrayal of the champions of peace and democracy around the globe?

Hatch: I had hoped to be describing it as a betrayal of human rights advocates and the Rohingya more specifically, but I think that probably I was describing it also as a personal betrayal. Before I studied the Myanmar situation in any depth and before I got to know much about the Rohingya tragedy, I saw ASSK in an equally simplistic, romanticized way, as a kind of superhero, which I think a lot of people in Myanmar shared. She almost seemed like this divine individual who could bring Myanmar out of the terrible situation of being under the control of the military. The "betrayal" stems from the fact that I had put her on a pedestal, and she had betrayed my adulation.

I really do feel like I went from having, Pre-Oak, an incredibly rose-colored glasses view of her to having an almost opposite, ridiculously dark view of her. What I'm wishing is that I had been more balanced and had a more complex view of her from the very beginning. Finding that middle is not always right, and not always where we need to be, but certainly embracing complexity as opposed to just the stick-figure hero vs. anti-Christ characterization of politicians is, I think, very useful.

Keerthi: A recent piece in *East Asia Forum* wrote: "The Japanese government's approach to the coup in Myanmar is in some ways a middle road between the 'distant' Western states that prioritize human rights and democracy and the 'local' Asian states that prioritize stability and development." What are your thoughts on this statement and how does it relate to the geopolitics that are taking place in Asia right now?

Hatch: Probably the biggest issue is that Myanmar, like many Southeast Asian countries, has become a kind of proxy for conflict between China on the one hand and the U.S on the other over influence in the region. China has really got the upper hand in Myanmar and has for quite some time. China's economic influence is huge, with the Belt and Road initiative for example, which has provided funding for infrastructure projects there. The government in Yangon really appreciates Chinese support even though there have been some border issues that have plagued relations between the two countries.

Japan tends not to approach these issues from as hard-edged a human rights perspective as the U.S does. Japan has had some influence in Myanmar traditionally, and – though it belatedly suspended aid after the coup – it would like to renew that aid to maintain its influence. Unlike Western powers, Japan has not strongly criticized the military over its human rights record or even the recent coup. It is obvious that there is an ever-present competi-

tion taking place between China and Japan over influence in Myanmar.

That quote citing the different perspectives between an East Asian Perspective and a Western Perspective on human rights is generally correct. The U.S and the Europeans tend to elevate these issues, whereas Myanmar's neighbors, including Japan and China, tend to talk more about good governance and development with the belief that human rights are likely to be improved after a country becomes stable and developed.

Keerthi: What would you say to the critics of those countries like Japan and Myanmar's Asian neighbors for not having a hard-edged approach in dealing with the human rights situation in Myanmar?

Hatch: I think Japan is in a somewhat peculiar position, being a subordinate or junior partner to the United States in its foreign policy. It has tried to adopt a sort of omni-directional foreign policy that doesn't signal out particular countries except of course North Korea and China. I don't fault the Japanese as much as some human rights advocates would for trying to stake out a more independent position than the United States. Japan wants to have influence in the region and what that means politically is maintaining relations with the current military junta for example. If I were in charge of the world or Japan, I might do things differently, but one can certainly understand their desire to have influence in a place like Myanmar.

The big divide in the region has been for quite some time between China and the United States. On the economic front it used to be more clearly between China and Japan, but Japan's economic influence relative to China has waned rather dramatically, it really is more of a China vs. US and Japan game right now.

Keerthi: How do you see the situation in Myanmar playing out, based on your personal evaluation of ASSK and also your political analysis?

Hatch: I think the Junta is operating on borrowed time; I really don't think the status quo can hold. They've killed around 750 people so far and have detained around 3,000 Burmese citizens. You have almost all of society opposed to this coup; a parallel government has emerged in exile. I honestly believe the Junta can hang on for a while, but not for long. Everyone that has participated in these past two big elections understands the relative unpopularity of the military in Myanmar. There will be more brutality and violence to suppress unrest, and then a period of time

where people are just waiting to get rid of the military.

Neither of us has a crystal ball, and while I hate saying "we'll just have to wait and see," we really can't say how this situation will pan out. What we do know however is that based on other experiences with democratization, when people experience a little of it and it seems to go relatively well, they want more. If you create opportunity for people, you have rising expectations, and it makes it very difficult to go back. This was essentially the lesson from the Soviet Union in the mid 1980s under Gorbachev, when things changed thorough economic reforms as well as diplomatic opening and they just did not want to go back to the old ways of communist rule. I'm not saying that Myanmar's junta is the same as the Soviet military and bureaucracy, but I do think citizens tend to become more vigilant when they experience opportunity.

Keerthi: How does the Myanmar case show some of the pitfalls of the process of democratization?

Hatch: I think that is exactly what happened with the Rohingya response from ASSK and the National League for Democracy (NLD). I think the democratically elected leaders realized that the Rohingya were a small minority and that the military's policy of extermination and ethnic cleansing/genocide was relatively popular with the majority. This is a good example of everything that is wrong with a sort of "Tyranny of the majority" approach to democracy. A better approach is a robust equal rights democracy where minority groups – and there are many in Myanmar -- have the same rights as the Bamar majority. That would be a movement from a simplistic democracy where the majority simply dictates policy to a robust equal rights democracy where minority groups aren't oppressed on a regular basis.

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ou look at a case like India for example, which had one of the most robust democracies in the world, but it hasn't always worked out for them in terms of economic development. Democracy in the case of India was not so great during the Indira Gandhi years where her populism ended up hollowing out the civil service administration. The bottom line is that democracy can have a number of adverse consequences, you have to look at it through multiple lenses in order to understand its true meaning.

Limitations of the Haafu: Perceptions, Expectations, and Experiences of Mixed Japanese

Kanon Shambora '21

Japan is currently undergoing some cultural shifts due to its changing demographics. Over the past four decades, there has been an increase in the number of foreign nationals and migrants. The country has seen 12.5 times more interracial marriages since the 1980s, and around five percent of all foreign, permanent residences in Japan hold a “spouse to Japanese citizen” status (Osanami 2018). Not only that, but “a sharply declining birth rate and a rapidly aging population have also been generating a push from business sectors to accept more labor and skilled migrants to maintain Japan’s economic strength” (Iwabuchi 2016, 56). As a result, there is a growing multiracial and multiethnic population trying to situate themselves in a country that regards itself as homogenous.

This multiracial and multiethnic population is most popularly labeled as *haafu* (lit. half), and this term denotes that the individual has one Japanese parent. However, many mixed Japanese people find offense to this term as it reduces the individual to half an identity. While other terms such as *daburu* (lit. double) or *mikkusu* (lit. mix) have emerged to replace *haafu*, *haafu* is still the most commonly used. This paper argues that *haafu* can be a limiting phrase, for the multifaceted experiences of the *haafu* population are compacted into certain expectations. When people think of *haafu* they often picture a half white, half Japanese person, but the *haafu* experience is varied. Factors such as your racial and ethnic background, nationality, name, and language proficiency play a part in the way you are regarded in Japan, and social media has become a tool for marginalized *haafu* to share their experiences and connect with one another. I will be using the term marginalized *haafu* to indicate *haafu* who are not of European descent.

Most of my research is drawn from secondary sources and online media, but I was also able to conduct a total of eight interviews with half Japanese individuals. These individuals are almost all college students; two of them attend Japanese universities, five of them attend American schools, and one of them works as a professional model in Japan. Six of them identify as female, and the other two identify as male. While I had a set of interview questions that I asked each individual, most of these conversations

were very casual and diverted into different directions. My goal in this interview process was to obtain a more authentic point of view by creating an environment in which each individual could talk freely about their experiences.

This paper is organized into four sections. The first section analyzes the ways in which racial and cultural classifications in Japan are often made within a dichotomous context. People are confined to the labels of Japanese and *gaikokujin/gaijin* (foreigner), and there is a strong inclination to label non-Japanese people as the ‘other.’ This section will draw from texts that examine Japanese ideology in the late nineteenth and early twentieth centuries, *nihonjinron* (a genre of texts popularized after World War II that engage in theories and discussions about the Japanese), Japan’s fixation on pale skin, and kawaii culture. The next section then investigates the rise in half white, half Japanese figures in Japanese pop culture after World War II. This section relies heavily on Japanese media and advertisements, as well as interviews with half-Japanese models.

The third section investigates the diversity of the *haafu* experience, confronting the expectations of a *haafu* in Japanese culture. When people think of *haafu*, there is not only the assumption that they are half white, but it is supposed that they are both ‘Japanese’ while also being a symbol of cosmopolitanism. The reality is that there is no single representation of a *haafu*. Most of my research for this section comes from both my own interviews with mixed Japanese people as well as interviews conducted by other scholars. I will also be looking at public figures who challenge this definition of *haafu*. The last section of this paper considers the ways in which people use social media as a platform to speak out about their *haafu* identities. There are a plethora of Instagram and YouTube accounts that exist to inform Japanese people about the *haafu* experience and its complexities. Social media in many ways has become a vehicle for activism. Japanese people who have never encountered a mixed Japanese person can now easily learn about their experiences.

The Japanese/Foreigner Dichotomy

It is important for us to first recognize that Japan is not necessarily an ethnically homogeneous country. Japan has long been home to a diverse range of ethnic minorities such as resident Koreans and Chinese, the Ainu people “who were officially recognized as indigenous people in 2008,” and the Ryūkyūans/Okinawans (Iwabuchi 2016, 56). Prior to 1945, Japan was “a formally self-recognized multiethnic empire,” and the ways in which the Japanese define concepts of race inform the way they regard people who are not of ethnically Japanese descent (Iwabuchi 2016, 56).

As Japan’s surrounding countries were falling victim to Western imperialism in the late nineteenth century, Japanese elites attempted to build a new racialized order in the East. The Western concept of race is translated in Japanese as *jinshu*. This term consists of two Chinese characters, *jin* (human) and *shu* (species). Through this racialized order, the Japanese are grouped into the inferior “yellow race” along with the rest of Asia. In the late 1880s and early 1890s, Japan began to redefine racial categories by referring to a new concept of race called *minzoku*. This term consists of two Chinese characters, *min* (people) and *zoku* (group), and it emerged as “Japan’s counter-concept to the Western concept of race” (Kawai 2016, 106). The idea of a *minzoku* allowed Japan to distinguish themselves and therefore justify their colonization of much of Asia.

The Japanese viewed their *minzoku*’s culture and language as something to be passed down genetically. While contemporary sociologists treat these attributes as something learned through social immersion, the cultural aspects of what makes someone Japanese was and to some extent still is viewed as a biological trait. Ueda Kazutoshi, the scholar and bureaucrat responsible for establishing Japan’s national language (*kokugo*) has gone as far as to call the Japanese language “spiritual blood’ indispensable for the Japanese national character (*kokutai*)” (Kawai 2016, 106). The belief in an inherent Japaneseness is heavily tied to the prewar nationalist ideology of *kazoku kokka*, or family nation (*Kotobank*, s.v. “kazoku kokka” [family nation]). Because all Japanese people were presumed to be the emperor’s children, Japanese social and physical characteristics were believed to be transmitted from the emperor to the Japanese (Kawai 2016, 106).

Once Japan lost all of its colonies after World War II, the country redefined itself as “a single-racial/ethnic nation” or *tan’itsu minzoku kokka* (Kawai 2016, 103). *Nihonjinron* was then popularized primarily in the 1960s as a way to

define what it means to be ‘Japanese.’ This genre of literature “sought to place Japan and Japanese as hierarchically superior by essentializing what it means to be Japanese and proclaiming that Japan, Japanese people, Japanese language, the Japanese brain and so forth are exclusively unique in the world” (Kamada 2010, 33). This type of discourse clearly creates a binary, us vs. them narrative.

Race is therefore presented as Japanese vs. the ‘other,’ and the presentation of race as monorace is not unique to Japan. European Americans framed race in a similar way as a means to legitimize slavery and maintain a favorable racial hierarchy. The United States is founded on a Black-White binary which “seeks to preserve, distinguish, and privilege what is White from anybody and everything that is not” (Houston 2017, 24). We can currently place this ideology in the ways in which Japanese society refers to non-Japanese people.

The Japanese word for foreigner is *gaikokujin*, but it is often shortened as *gaijin*. *Gaikokujin* is written using three Chinese characters, *gai* (outside), *koku* (country), and *jin* (human). *Gaijin* is written as *gai* (outside) and *jin* (human), omitting *koku* (country). While *gaikokujin* implies that the person is from a country outside of Japan, *gaijin* insinuates that the person is simply an outsider. This mentality places anyone that is not Japanese “into one undifferentiated mass which serves as the ‘Other’” (Houston 2017, 24). Common use of the phrase *henna gaijin* (weird foreigner) illustrates this outlook. If one’s Japanese is slightly off, or they do not look like an East Asian, they may be labeled this term (Russell 2020). While some consider the term *gaijin* to be somewhat derogatory, the term *gaikokujin*, often used in official government documents, also “has an implication that foreigners living in Japan were a social problem” (Iwabuchi 2016, 59).

This dichotomy is also understood in terms of skin color, in which Japanese people are associated with “white” skin, while the ‘other’ is associated with “black” skin. While Japanese identity markers are very much constructed by language, behavior, and name, skin color is a major informant for who and what is considered Japanese. Lighter skin has always been considered desirable in Japanese society, but contact with the West has refined their definition of ‘whiteness.’ Europeans are now to some extent included in this narrative of ‘whiteness’ and are regarded as ideal. Later in its postwar years, “Japan gradually came to understand the concepts of race and whiteness from the western point of view and experienced what it means to be racially inferior, which led to an admiration for being white” (Osanami 2018).

However, it is still believed that there is something distinctive about Japanese skin color. Author Mikiko Ashikari observed in her interviews with Japanese women that “the expression, ‘Japanese skin’ (*nihon-jin no hada*)’ often cropped up when [her] informants talked about their skin in contrast with the skin of other people outside Japan” (Ashikari 2005, 83). While racial and ethnic divides have been largely debunked by sociologists, we get a sense that the Japanese view themselves as ethnically exceptional.

Some scholars have argued that ‘kawaii’ culture has played a part in this prejudiced narrative. Kawaii in Japanese directly translates to ‘cute,’ and what constitutes this cuteness is very clearly defined. Mixed race studies researcher Kaori Mori Want states:

The definition of kawaii comes from Japanese people’s feelings toward babies. Babies are soft, small, innocent, White, and vulnerable. Japanese women desire cosmetic products and clothing that can make them kawaii, meaning light, small, and vulnerable. They support models who can embody kawaii. Kawaii ideology excludes darkness from its scope because it favors lightness. The notion opposite to kawaii is ugliness and undesirability, which in many societies (including Japan) are associated with darkness. (2017, 169)

Kawaii beauty standards exclude marginalized people who do not embody its ideal features. We can observe Kawaii culture’s racialized nature in some of its most prominent characters. Hello Kitty, for example, plays into some Western tropes that personify kawaii qualities. Her real name is Kitty White, and she was born in London. Like many of Sanrio’s other products such as My Melody, Little Twin Sisters, and Cinnamon Role, Hello Kitty is tied to Western roots (Mori Want 2017, 172). Being petite, round, light, white, and almost transparent is the ideal, and we can see how these values are passed into the Japanese subconscious by observing the treatment of those with darker, less ‘fragile’ traits. Black people specifically are often portrayed as “spooky, scary, dirty, animal-like, and different” (Qtd. Mori Want 2017, 169).

One of my interviewees is a half Nigerian, half Japanese college student who grew up in Japan. She even discussed how these stereotypes permeated her own self-perception. When she was younger, she would often be asked about her racial background, and while she had no ties to the United States, she would describe herself as a black-American *haafu* rather than a Nigerian *haafu*. Her

reasoning being: “growing up in Japan, I had an image of Africa being less civilized... I thought that was something shameful so I didn’t want to connect myself with it.”

Darker skin is put in relation to lighter skin and therefore adopts all of its opposite attributes. Many people of color who are not of East Asian descent feel pressure to distance themselves from their heritage as a means to seem more approachable. While the United States is a rather multicultural nation including a hodgepodge of people with diverse ethnic backgrounds, its primary associations are with its white founders. For that reason, it seems it is more appealing to Japanese people if you identify with America rather than an African country.

Prior to the beginning of this century, much of Japan’s migrant population was made up of workers (primarily from other parts of Asia) who fulfilled Japan’s demand for “the so-called 3k (or 3d) jobs (*kiken, kitanai, kitsui* = dangerous, dirty, difficult)” (Iwabuchi 2016, 59). However, there has recently been an influx of more highly skilled foreign workers. In 2006, the Japanese government “entered Economic Partnership Agreements (EPA) with the Philippines, Indonesia, and Vietnam to bring in caregivers” and in 2014, the government created a new type of visa which allows foreign workers to permanently stay in Japan. In order for Japan to maintain its economic activities, it is necessary for the country to adopt a more lenient immigration policy (Iwabuchi 2016, 58).

So how does a country that has quite a bit of a xenophobic history deal with their growing multicultural population? According to some scholars, inadequately. In 2005 the Ministry of Internal Affairs and Communications of Japan formed the Committee for the Promotion of Multicultural Co-living. This committee later released a report “encouraging and supporting local governments to offer appropriate services for foreign-national residents such as interpreting, language education, housing, and health care” (Iwabuchi 2016, 59). While some may view the promotion of multicultural co-living (*tabunka kyosei*) as a step in the right direction, sociologist Koichi Iwabuchi condemns the government’s refusal to make multiculturalism a national issue.

This new government initiative leaves it up to local governments and NGOs/NPOs to handle foreign nationals, and it does not recognize these foreign nationals as members of the nation but instead lists them as *seikatsusha* or *chiiki jumin* (residents of local communities). By labeling foreigners residing in Japan as “local residents,” the national government “shrewdly evades the question

of who Japanese citizens are—‘proper’ members of the nation—whereby the rigid boundary between ‘Japanese’ and ‘foreigners’ is kept intact” (Iwabuchi 2016, 64). This superficial attempt at embracing diversity actually upholds the ways in which the Japanese have always viewed the ‘other’ through a Japanese/non-Japanese binary.

Haafu Boom: Commercialization and Fetishization of the White Haafu

The first major discussions about multiethnic and multiracial Japanese began in the early twentieth century due to Japan’s acquisition of a number of different Asian colonies. Japanese eugenics discourses that supported the concept of mixed-blood (*konketsu*) pushed for an assimilationist policy where “the colonized group would be eradicated through promoting mixed marriages” (Horiguchi and Imoto 2016, 169). On the other hand, those that wanted to preserve Japanese pure-blood (*junketsu*) “feared that the ‘superior’ Japanese ‘blood’ would be ‘contaminated’ and hence its purity degraded through mixing with the ‘inferior’ groups” (Horiguchi and Imoto 2016, 169). Attitudes toward mixed Japanese has been a contested issue since the early twentieth century.

The aftermath of World War II dramatically transformed almost every aspect of Japanese society. Intermingling between US occupation soldiers and Japanese women led to the creation of a new multiracial population on mainland Japan. Originally, *konketsu-ji* (mixed-blood children) were looked down upon due to strong anti-US sentiments (Horiguchi and Imoto 2016, 170). There were even rules that “banned intimacy between Japanese women and American servicemen,” and Japanese women who fraternized with US soldiers received harsh criticism (Mori Want 2017, 164). They were often referred to as *panpan* or *panpangaaru*, both derogatory terms used for people consorting with occupation soldiers (*Jisho*, s.v. [panpan girl]).

This attitude towards mixed Japanese transformed in the late 1960s, when *haafu* entertainers began to appear in the media. In the 1970s, *haafu* became a nationally recognizable term “due in part to the popularity of *Golden Hafu*, a female idol singing group whose members promoted themselves as Caucasian-Japanese” (Horiguchi and Imoto 2016, 166). By this point, Japan had experienced its first *haafu boom*. The half white, half Japanese identity had become highly marketable and “achieved hypervisibility in show business” (Mori Want 2017 164). The 2000s witnessed its second *haafu boom*, where not only do a disproportionate number of white *haafu* individuals

occupy space in media and advertisements, but white *haafu* became a beauty standard and are regarded as such to this day.

Makeup companies in particular are now oversaturated with white *haafu*-inspired products. The term *haafugao* (*haafu*, face) is an expression that is found in a number of different beauty product advertisements. *Haafugao* refers to a trend in Japan in which people try to transform their faces into that of a white *haafu* using makeup. In more extreme cases, plastic surgeons also take advantage of these Euro-centric beauty standards by advertising surgeries that will help their patient permanently achieve *haafugao* or *seiyoujingao* (Western people face). Takasu Clinic, for example, is one of the most renowned plastic surgery chains in Japan. Their website dedicates a page to defining how one is transformed into a *haafugao* or *seiyoujingao* through plastic surgery (such as by slimming the nose, creating double eyelids, angling the jaw, etc.). The ambiguously exotic look of a half white, half Japanese individual is now in heavy demand. As you flip through Japanese magazines and walk through various Japanese commercial sectors, you will find images of white *haafu* models virtually everywhere.

In my interview process I was able to connect with a few white *haafu* models. One of these individuals is a twenty-one-year-old female attending the International Christian University. She does a frequent number of wedding advertisement photoshoots, and upon doing these jobs, she has become more and more aware of their racial dynamics. The model who plays the role of the groom is almost consistently a white or half white, half Japanese male. The bridesmaids are also usually half white, half Japanese females, and the model who plays the role of the bride is either fully Japanese or half white, half Japanese. She recalled a time in which she asked her casting agent why they exclusively hired white models, to which this casting agent replied, “it is easier to sell the dream that way”. It is worth noting that this fashion company is not only relying on the popularity of white *haafu* to sell their products, but they are also promoting miscegenation between white and Japanese people by constantly depicting interracial marriages in their advertisements.

Upon examining these conversations and beauty trends, it is safe to say that Japanese advertisements reinforce Japanese individuals’ desires to look European. These models are also very conscious of these dynamics as this interviewee explained: “I very clearly would not be called to this job if I was not half... that’s a job where I was only qualified for it because I looked a little foreign.”

It is important to analyze why half white, half Japanese individuals have become the beauty standard. For one thing, Japan's historic fixation with light skin is an obvious factor. Even to this day, "Japanese women make enormous efforts to make their skin look lighter, staying in the shade when outside to avoid tanning, and using expensive face-whitening cosmetics" (Ashikari, 74). Half white, half Japanese individuals retain the pale *Nihonjin-no-hada*, or Japanese skin, so they cannot be fully excluded from the Japanese race.

White *haafus* also occupy a unique space in Japanese society because they have Caucasian features, a desired beauty standard, but Japanese women can relate to them because they are also Japanese. White *haafu's* "Asian heritage mitigates their difference" (Mori Want 2017, 168). Cosmetic and fashion companies commodify their "ambivalent position as being foreign (read as Western) but not 'too' Other to the extent that they become threatening and powerful" (Horiguchi and Imoto 2016, 167). Instead, half white, half Japanese individuals are seen as friendly and vulnerable.

This vulnerability is reminiscent of *kawaii* traits. Not only that, but many white *haafu* physically embody many of the features that *kawaii* culture considers attractive. They have light skin, big eyes, and are regarded as infantile and fragile. In another one of my interviews with a nineteen-year-old white *haafu*, professional model, this individual discussed how these expectations have distorted her self image.

As a trend in Japan I see many times that the term "ha-fu" meaning "mixed race" is usually understood as half Japanese and half white, being a fetish and trend in makeup or hair style, that must be conservative, pretty/cute/"*kawaii*," feminine and somewhat fairytale-like. So the time I spent growing up in Japan I felt the pressure of having to satisfy that role (2020).

While white *haafu* are labeled as cute, non-white *haafu* are assigned *kawaii's* opposite attributes. As a result, they are rendered invisible in Japan's beauty industries and left out of Japanese conceptions of beauty.

Because of the hypervisibility of white *haafu*, the term *haafu* is primarily associated with only half white, half Japanese. However, the reality is that most *haafu* are not half white. The number of mixed Japanese is not researched by any official institutions, so their numbers

have to be inferred by the number of internationally married couples reported by Japan's National Institute of Population and Social Security Research. According to mixed race scholar Kaori Mori Want, "many of these couples are non-Japanese Asians married to Japanese (e.g., 39.8 percent of Japanese women married Chinese or Korean men; 58.2 percent of Japanese men married Chinese or Korean women)" (2017, 175). It can be assumed that most *haafu* who reside in Japan are people with non-White heritages. Yet, these beauty companies and advertisements have created a culture in which *haafu* becomes a limited phrase. There are expectations and standards that come with the *haafu* label that are not applied to more marginalized, non-white *haafu*. Non-white *haafu* must therefore fight for their claim to be Japanese. This white *haafu*, professional model interviewee also states:

Regarding the fact that it took years for Naomi Osaka to be considered a Japanese tennis player, or Ariana Miyamoto sparking controversy over if she can represent herself as a "pure" Miss Universe Japan, Japan clearly has something against mixed Japanese people of color, meanwhile models and talents like Maggy, Reina Triendl, Tina Tamashiro, Karen Takizawa, Hikari Mori, Ayami Nakajo (list goes on) have never faced any confrontation about being "Japanese enough," and if anything they are seen as Japan's pride and joy (2020).

The Haafu Experience

While this increasing 'hybridity' of cultures seen by the *haafu* booms may be a signal of progress for many, it would be naive to look at these demographic changes in advertisements and the media as a true sign of social justice. White *haafu* in particular "have continued to be seen as embodying positive ideals of English language skills, cosmopolitan experience as well as physical attractiveness" (Horiguchi and Imoto 2016, 166). Many look to the popularization of white *haafus* as something that is transgressive, and in some cases multiracial/multiethnic identities can successfully redefine rigid social boundaries. However, it is important to consider the ways in which hybridity emerges out of colonisation and its oppressive conditions.

When white *haafus* are exclusively placed on a pedestal, they simply become a tool that reaffirm these oppressive conditions (Matthews 2007). The valorization of white *haafu* in Japanese society does not challenge the Japanese/foreigner dichotomy; white *haafu* are simply given their own category that satisfies both the Western racial order as well as the Japanese racial order. As a result, white

haafu may learn to uphold these hierarchies knowingly or unknowingly. For example, playwright Velina Hasu Houston (who is of African Native American/Japanese descent) describes her experience working with white *haafu* at several mixed-race organizations. She writes, “multiple-minority mixed race is different from mixed race that includes a White element,” for “White mixed race often practices the same discrimination against mixed race that includes Black ancestry that it experiences from the monoethnic majority” (Houston 2017, 29).

For these reasons it is important to recognize the diverse backgrounds and experiences of mixed Japanese people. No mixed experience is exactly alike, and the experiences of *haafu* vary according to the individual’s racial/ethnic background and their “social capital such as linguistic ability, level of education, social status of parents, and so on” (Mori Want 2017, 171). Because of these differences in circumstance there are often feelings of alienation that result from being mixed race. Many *haafu* struggle to align their identity with how others perceive them (their ascribed identities). Whether one is multiracial or multiethnic can also change one’s experience. According to a study conducted by scholar Sayaka Osanami Törngren:

Multiethnic interviewees could often pass as Japanese, while multiracial interviewees experienced more constraints in ethnic options and in claiming their Japanese identity. However, the opposite can be said as well: While multiracial interviewees could claim their mixed identity and foreign background, multiethnic interviewees experienced more constraints in claiming their ethnic background and have the claim validated by others. (2018)

The struggle to “claim” an identity seems to be a common theme. When mixed race individuals (who are not white) try to assert their Japanese identity, there is often backlash. Because there are expectations that come with being *haafu*, individuals who do not check certain boxes are met with resistance when they try to claim their Japanese identity. The hypervisibility of White *haafu* normalize them, but non-white *haafu*, especially those with darker skin, experience severe prejudices in Japan. In an interview with *Tokyo Sports*, Rui Okoe, a half black, half Japanese professional baseball player described his experience as a marginalized *haafu* growing up in Japan: “in Japan, if your skin is dark like mine, you are discriminated against. That is why people like me and Sani Brown need to excel in sports or whatever, and have the Japanese recognize us” (Qtd. in Mori Want 2016, 90). For Japanese society to

accept non-white *haafu*, they must be exceptional.

Ariana Miyamoto, who represented Japan in the 2015 Miss Universe pageant, has also struggled with claiming her Japanese identity. She received a lot of criticism for representing Japan when she is not fully Japanese, but much of this backlash was heavily tied to her African ancestry (Fackler 2015). In fact, there are online discourses that accuse her of not having any Japanese ancestry, contending that she is actually of Korean descent rather than Japanese descent. Miyamoto is therefore denied any membership to the Japanese race (Russell 2020). She has since decided to “use her pageant victory as a soapbox for raising awareness about the difficulties faced by mixed-race citizens in a country that still regards itself as mono-ethnic” (Fackler).

The term *zannenn na haafu* (disappointing *haafu*) is representative of these restrictions. Some of my interviewees discussed how this word is used: if a *haafu* is not “pretty” (according to Euro-centric standards) or cannot speak Japanese fluently, they will often be labeled a “disappointing *haafu*.” This implies that there are assumptions that come with being *haafu*, and many of these assumptions are rooted in the representations of white *haafu*.

Half white, half Japanese individuals are clearly the standard. White *haafu* are more easily accepted in Japanese society, and they experience similar privileges in the United States because they can to a certain extent pass as racially white. While “only 22 percent of the children of black fathers and white mothers are classified as white, the children of similar unions among Asians are twice as likely to be classified as white” (Bonilla-Silva). Velina Hasu Houston has had her Japanese identity questioned as well, which she found strange because “being culturally Japanese, [she] realized that [she] was more Japanese than ‘Japanese Americans’” (Houston 2017, 28).

Public figures like Miyamoto have faced retaliation because they contradict the Japanese definition of a *haafu* and challenge Japanese racial hierarchies. One’s physical appearance is not always indicative of their social backgrounds. In order for these individuals to be accepted into Japanese society, it is necessary for the Japanese to let go of their assumptions. Being mixed race is complex; some people grow up with more of a multicultural background than others depending upon their socioeconomic situations. The expectations that *haafu* are white, fragile, and cosmopolitan are just too unrealistic. One’s inability to satisfy these different characteristics should not take away from their identity.

Through my interviews with half Japanese young adults, it became clear that the name is an essential part of your acceptance in Japanese culture. Having a Japanese name rather than a foreign name comes with its advantages. In the Japanese language, there is a separate alphabet allotted for foreign words and names. This alphabet is called *katakana*, and having a name in *katakana* becomes a marker for difference. The us vs. them narrative is therefore also established through written language. Many of my interviewees would express gratitude for having a Japanese name because it makes their lives in Japan much easier. Their appearance may lead to Japanese people questioning their Japanese-ness, but their names become an affirmation that they are Japanese. There is clearly a lack of trust towards people with foreign names, and stereotypes of non-Japanese-ness are immediately attributed to those with foreign names.

The twenty-one-year-old ICU student spoke on the relevance of the name as well. She has both Japanese and English first and last names, but she feels pressure to use specific parts of her name for her different occupations. When she is working as an interpreter, she uses her Japanese first and last names. She has expressed that people tend to doubt her abilities if they can perceive that she is not fully Japanese. Skepticism of a foreign name can be understood as a form of banal nationalism. Banal nationalism, “observed in established nations, consists of a whole complex of beliefs, assumptions, habits, representations and practices, which is reproduced in a banal mundane way” (Kawai 2016, 108). However, when she is working as a model, her modeling agency requires that she use her English first name and Japanese last name. Her modeling name literally embodies biraciality and serves as an example for the ways in which modeling agencies commodify *haafu* individuals.

People of Asian descent in Japan are also often pressured into employing a Japanese name. Chinese and Korean students working in Japanese businesses (such as restaurants) are sometimes required to wear a Japanese name badge, as it makes the Japanese restaurant guests feel more comfortable. Because people of Korean and Chinese descent do not physically stand out within a Japanese crowd, “a Japanese-style name renders them invisible to the Japanese and thereby the racial homogeneity of Japanese society appears to be real” (Kawai 2016, 113). Japan is therefore reinforced as the home to only Japanese, and the “other” is forced to assimilate by erasing parts of their identities.

Social Media Activism: How Marginalized Haafu Claim Their Identity

Representations of non-white *haafu* in social media can be quite shocking. The internet is littered with unfiltered, racist statements, and there are a variety of comments on YouTube, Instagram, and Twitter that are filled with specifically anti-black and anti-Korean sentiments. Constructions of blackness online reaffirm and perpetuate stereotypes. Black people in particular are portrayed as aggressive/angry, infantile, primitive, criminal, emotional, muscular, hypersexual, natural athletes, intellectually inferior, and animal-like (Russell 2020).

For instance, the half Haitian, half Japanese tennis player Naomi Osaka is often referred to as a *gorira* (gorilla), and her credibility as an athlete is put into question. Black women in sports are stripped of their credibility in Japan. There are even comments that question their femininity, such as in the case of one internet commentator spectating that Serena Williams is actually male (Russell 2020). Naomi Osaka is also often accused of being a *gaikokujin* because she was not raised in Japan, and most of her interviews are conducted in English. Her Japanese identity is taken away from her because of her inability to speak perfectly fluent Japanese.

Rui Hachimura, a half Beninese, half Japanese basketball player has recently become a popular topic of discussion on the internet as well. Because of his African background, he is often assumed to be a foreigner. Although he was born and raised in Toyama Prefecture in Japan, there is often this assumption that he must not speak Japanese. To illustrate this, one individual tweets in Japanese “Mr. Hachimura [wwwwww](#) his Japanese is good [wwwwww](#)” (@otmkn, December 4, 2015). The “[wwwwww](#)” indicates laughter or that something is funny, so this individual is expressing that they find it amusing that Rui Hachimura’s Japanese is competent. But why is this funny at all? This tweet implies that Rui Hachimura should not be able to speak fluent Japanese because of his appearance. He does not physically fit the description of what Japanese people expect to be a *haafu*. In another tweet, an individual states in Japanese “Wait Mr. Hachimura is fluent at Japanese?” (@wannasleep8, March 13, 2019). These are just two of several tweets that illustrate how Japanese people assume Hachimura’s identity.

On a more positive note, the recent surge in the use of social media platforms has also allowed marginalized

haafu to talk about their experiences publicly. *Haafu* who are not white are now using their voice to elevate those that are like them. YouTube and Instagram accounts that chronicle the lives of these individuals are important because they can promote a collective identity with other marginalized *haafu*, and in doing so they are cultivating a new type of online community (La Rosa 2014, 38). The half black, half Japanese population in Japan may be slim, but they exist. Social media has become a way for marginalized *haafu* to find each other.

The YouTube and Instagram accounts COCOALIZZY, for example, trace the life of a young, half Nigerian, half Japanese individual named Lizzy. She uses her channel to talk about her identity, her experience with racism in Japan, and the Black Lives Matter movement in the United States and its relevance in Japan. All of her videos are in Japanese with English subtitles, and judging by the comments on these videos, her following includes both a Japanese and American audience. She is also a social media influencer. An influencer can be defined as someone who has “the power to affect the purchasing decisions of others because of his or her authority, knowledge, position, or relationship with his or her audience” (Influencer Marketing Club, n.d.). While many of her YouTube and Instagram posts are either vlogs or makeup tutorials, her videos with the most views deal with topics on racism in Japan and her identity. I first encountered her videos in June 2020 after the United States underwent a massive Black Lives Matter movement.

Lizzy’s most viral Instagram video titled in Japanese “#BLACKLIVESMATTER” (lit. “On Black Discrimination That I Want All Japanese People to Understand #BLACKLIVESMATTER”) received over two million views and over one thousand comments. In this video she tackles the claim that Black Lives Matter has no relevance in Japan because Japan is a racism-free country. Lizzy combats this claim by talking about her own experiences as a black *haafu* growing up in Japan, and she frames this movement in the context of Japan. If Japanese people consume black culture, how can they turn a blind eye to the murder of black people? Are Japanese people truly unaware of the colorism that structures Japanese society? At the end of this video she asks her audience to educate themselves on the topic and develop an awareness of racism in Japan. It seems she has to some extent gotten through to her audience, as most of the comments on this video are from Japanese people thanking her for creating such a video and pledging to educate themselves further.

Lizzy is not the only black *haafu* to talk about her ex-

periences on social media. Her hope in encouraging other struggling marginalized *haafu* is shared by another content creator, “Esther USA.” “Esther USA” also uses YouTube to talk about her experience as a half black, half Japanese person in Japan. She is a half Japanese, half Nigerian woman and her full name is Esther Chinwuko. While most of her childhood was spent in Japan, she moved to the USA at fifteen years old. Before moving, she experienced severe bullying from her classmates (similar to Lizzy). Because of this she learned to make friends by making herself the laughingstock. It wasn’t until she moved to the USA as a teenager that she started to understand her worth. Her childhood in Japan completely denigrated her self-confidence, but she was able to grow out of feeling constantly insecure once she had this revelation. Her YouTube account has become a means to tell other marginalized *haafu*, “I want you to have faith in yourself” and “You’re beautiful because of your differences”.

These marginalized *haafu* have taken to social media to reach individuals that are like them. The comments section has therefore become a place where other non-white *haafu* can talk about their experiences, almost like a blog. They discuss the ways in which they can relate to the content creators and talk about their own stories. For example, on Chinwuko’s video’s comments section, one individual talks about their own experience as a half Ugandan, half Japanese person growing up in Japan. Many of these marginalized *haafu* have very similar experiences, and so they swap stories. In this individual’s case, they talk about how the bullying has made them stronger, and they have reached a point in their life where they are at peace, surrounded by friends and family that they love. All of these individuals who speak out about their experiences are doing so specifically for those that are struggling right now. Their messages are consistently about how the pain will pass.

These comments sections are also filled with comments from fully ethnically Japanese people who sympathize with these content creator’s situations. Racial dynamics in Japan cannot change overnight, and there are still factors that work against dismantling these rigid social structures. However, it seems like these videos can have the potential to effectively communicate to ordinary Japanese citizens. Social media has become a platform for these content creators to talk about their own experiences. Perhaps attitudes towards people of non-Japanese descent will shift as Japanese people gain exposure to marginalized *haafu*.

Conclusion

The mixed Japanese experience is something that cannot be classified into one category, for it is contextual. They are not limited to cosmopolitan, half white, half Japanese individuals, but the *haafu* label has come to take on these associations. In order for marginalized *haafu* to comfortably exist in Japan, it is necessary for the country to reimagine themselves. An unlearning of the “Western racial (*jinsbu*) order that hierarchizes the whites and the nonwhites as well as the Japanese racial (*minzoku*) order that places Japanese and non-Japanese Asians within a hierarchy” is absolutely necessary (Kawai 2016, 116).

A multiculturalist Japan is also not possible if its own people do not understand that Japan is not homogeneous. Japan is a country in which “East Asian and other peoples and cultures have always coexisted and mingled,” and their imperial conquests in the early twentieth century has implications to this day (Kawai 2016, 116). If ordinary Japanese people cannot acknowledge their own colonial histories and the racial structures that construct their society, marginalized *haafu*, let alone non-white foreigners, will never be fully accepted.

It is inspiring to see marginalized populations in Japan speaking out about their experiences. Grassroots movements and online activism have been an important part of putting mixed Japanese discourses to the forefront, as *haafu* are starting to become more politicized. However, *haafu* associations are still limited to “TV, magazines, and online entertainment-related media” (Horiguchi and Imoto 2016, 177). The *haafu* experience is seldom talked about in newspapers or more ‘serious’ networks. It is not enough for us to simply listen to the hardships faced by marginalized *haafu* on social media platforms; while this work is extremely important in promoting empathy and engagement between people of diverse backgrounds, it is imperative that the Japanese government further develop the idea of a multicultural society “into a national aspiration by distinctly promoting a society-wide project over the redefinition of who is a Japanese citizen, what are the multicultural questions that Japanese society needs to tackle, and how to create and share a democratic vision of Japan as a multicultural society in its full spectrum” (Iwabuchi 2016, 65-66).

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Editor’s Note: Some citations include Japanese characters which did not translate into our typesetting software.

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The Politicization of Sri Lanka's War Crime Accountability at the UNHRC

Keerthi Martyn '22

Sri Lanka's case of war crime accountability (or lack thereof) is important to examine when studying the effectiveness of the transnational advocacy coalition and the UN Human Rights Council (UNHRC) in promoting justice and accountability for countries around the world. By examining the Sri Lankan situation and the subsequent response, we see that despite the tremendous role and lobbying influence of the transnational advocacy coalition, the politicization of the UNHRC by great power voting blocs and the contentious domestic politics of Sri Lanka ultimately inhibited the calls to action from these groups. When looking at the geopolitics and strategic interests of the powers on the UNHRC specifically, we begin to understand why there has been a lack of accountability on the international stage for the Sri Lankan government's actions at the end of the civil war, despite the awareness and lobbying campaign of advocacy networks.

The Sri Lankan Civil War was a prolonged conflict between the Sinhalese-majority government forces and the Liberation Tigers of Tamil Eelam (LTTE) insurgent group (also known as the Tamil Tigers), that lasted for 26 years from 1983-2009.¹ The conflict was marked by significant human rights abuses from both sides, particularly in the final stages of the war. After the Sri Lankan government launched a major offensive in the fall of 2008, the Tamil Tigers were forced to congregate in a densely populated 39-square-mile area in the northern Vanni region.² More than 200,000 civilians were said to have been trapped inside that zone, coming under threat from both LTTE as well as government forces. Civilians were told by the military forces to congregate into "safe-zones", where they would be protected from conflict; however, the LTTE occupied those zones, using civilians as "human shields" and going after anyone who tried to flee.³ Ordered by then defense minister now president Gotabaya Rajapaksa, government forces conducted indiscriminate attacks on LTTE forces as well as civilians using multi-barrel rocket launchers to (without adequate warning) target hospitals and civilian populated areas both inside and outside the no-fly zone.⁴ Violations of the safe-zone rights by the LTTE and Sri Lankan government forces resulted in the deaths of approximately 40,000 civilians in the war's last few weeks.⁵ On May

18th 2009, the Sri Lankan government declared victory over the LTTE, bringing an end to years of conflict that had crippled the nation since the 1980s. However, as the battle against the insurgent group ended, the battle for justice and accountability was just beginning.

Perhaps the biggest factor in promoting and lobbying for accountability came from the "Transnational Advocacy Coalition", an amalgamation of human rights NGOs, Sri Lankan civil society groups, international media outlets, and Tamil Diaspora groups and individuals from around the world. Many international NGOs around the world, including Human Rights Watch, Amnesty International, the Permanent People's Tribunal, the International Crisis Group, and the European Center for Constitutional Human Rights played a significant role in raising awareness of the situation in Sri Lanka and were among the biggest lobbying voices at the UNHRC in the aftermath of the war.⁶ Working together, these NGOs aimed to conduct various open-source reports, providing hard and concrete evidence on the war crimes committed at the end of the war, including collaboration with the American Association for the Advancement of Science to obtain satellite images of government shelling of civilian areas and hospitals.⁷ These groups also collaborated with various civil society groups within Sri Lanka, most notably the Center for Policy Alternatives, a civil watchdog organization, focused on monitoring human rights and promoting peace, reconciliation, and transitional justice initiatives in Sri Lanka in the aftermath of the civil war.⁸

In addition to NGOs and various Civil Society groups, the international Tamil as well as Sri Lankan diaspora played a tremendous role in lobbying various states around the world, particularly in the UK, Canada, the United States, Australia, New Zealand, and other Western states with significant Tamil populations. Using the tools of information exchange and networking, the Tamil and Sri Lankan diaspora communities were able to conduct public demonstrations and lobby national governments to push for accountability on the part of the Sri Lankan government on the international stage.⁹ For example, members of the Sri Lankan Democracy Forum, which included both Sinhalese and Tamil members, issued statements, published op-eds, and conducted media

interviews calling for the Tamil Tigers and the government to address the crisis. This group, like many other diaspora bodies, held regular meetings with UN, UK, and U.S officials.¹⁰

On the topic of the lobbying power of the Tamil diaspora, perhaps one of the most important voices speaking out against the Sri Lankan government's war crimes at the international level was Navanethem "Navi" Pillay, a South African of Indian Tamil origin, who was UN High Commissioner for Human Rights from 2008-2014. As High Commissioner for Human Rights, Pillay was somewhat removed from the bureaucracy of the UN, acting as an independent, but very powerful, voice for Tamils and NGOs around the globe pushing for accountability. At the war's end and during its aftermath, Pillay played an important role lobbying on the Sri Lankan issue and was especially critical of the 2009 UNHRC resolution that was passed, arguing that it didn't do nearly enough to hold the Sri Lankan government accountable.¹¹ Thus, it cannot be understated how instrumental Pillay and the collective "Transnational Advocacy Network" (TAN) was in bringing this issue to the debate table of the UN Human Rights Council. Bringing the issue to the table certainly represented the hard work of the TAN; however, the concrete accountability that these groups may have hoped for was soon dashed by the inherent political nature of the UNHRC.

When in the pursuit of justice for war crimes, the all-important question is raised of who bears responsibility for the situation. International Human Rights Law and Common Article 3 of the Geneva Conventions puts forth the idea that states are the primary duty-bearers in preventing and stopping war crimes from occurring and punishing those involved if they occur.¹² For the insurgent Tamil Tigers, the accountability for their war crimes was served alongside their defeat in May of 2009. For the Sri Lankan government however, the war crimes the military forces committed at the end of the civil war act contrary to their duty as a government to protect their citizens from such violence occurring. In the case of Sri Lanka, the prosecution of those involved with war crimes was even more difficult when those who were responsible for preventing and punishing those involved with such crimes, in this case the Rajapaksa brothers, were the ones that merited the investigation in the first place.

Pressured by NGOs like Amnesty International and Human Rights Watch, the UNHRC convened in May 2009 to create a resolution regarding the war crimes at the end of the civil war.¹³ However, instead of promoting unity

and widespread consensus among member states, the resolution was emblematic of the inherent politicization of the UNHRC, inhibited by bloc voting of its member states, and a division between a coalition led by the United States, UK, and other Western-supported states and the coalition led by states such as China and Russia, and other members of the "non-aligned" G-77 voting bloc.¹⁴ These divisions and bloc voting have their origins in both Cold War and post-Cold War politics, as well as in the Global North vs. Global South colonial and postcolonial dynamic. In the human rights realm, this North-South dynamic is highlighted by Southern fears of neocolonial interference and aggression by the North in their pursuit of "Universalist" human rights norms. All of these politics and dynamics are clearly present when looking at the voting records of UNHRC resolutions passed concerning Sri Lanka. The first UNHRC session at the end of the war pitted the two coalitions against each other, with each putting forth two different resolutions.¹⁵ The Western/Global North "Core Group" coalition, including countries such as Canada, the UK, France, and Germany (with the support of the United States, who did not have a council term at that time), put forth an unsuccessful resolution that called for full accountability of war crimes on both sides, urging the Sri Lankan government to cooperate with humanitarian organizations to protect displaced civilians and to conduct an independent investigation of the attacks against journalists and human rights defenders.¹⁶ On the other hand, the Eastern/Global South coalition, led by China, Russia, and India, were able to successfully pass a resolution with a vote of 29-12 (with 6 abstentions) that welcomed the government's conclusion of hostilities and their commitment to ensuring "safety and security" of all citizens, without reference to independent access to camps, conflict areas, or any mechanisms to address accountability or impunity.¹⁷ The six subsequent UNHRC resolutions on Sri Lanka, passed in 2012, 2013, 2015, 2017, 2019, and most recently, March of 2021, represent a similar pattern of voting. Countries like the United States, UK, Germany, France, and other Western democracies are the primary harbingers of the call for enhanced accountability through measures such as hybrid courts, the establishment of offices of missing persons and reparations, and truth, reconciliation, and peace commissions in the country. On the flipside, countries opposing strong measures of accountability in Sri Lanka on the UNHRC stage, including states such as China, Russia, Cuba, Saudi Arabia, and the Philippines, put forth resolutions that are weak in their accountability mechanisms. The recent Human Rights Council resolution HR 46/1 was passed on March 24th 2021 with a vote of 22 in favor, 11 against, and 14 abstentions. Notable votes in favor

include European allies of the United Kingdom, France, Germany, as well as South Korea. Abstentions include those of India, Japan, and Indonesia. Finally, the most notable of votes against the resolution came from the Republic of China and Pakistan. The politicization of this resolution certainly raises a number of concerns about the commitment to human rights accountability by the UNHRC and the lack of strong accountability measures by the Sri Lankan government for the war that ended nearly 12 years ago. The burning question that comes from looking at these votes is: What are the factors that cause countries to vote and pursue policies in this way?

Human rights accountability has been a subject of intense politicization since the establishment of the United Nations in 1946. The legacies of the Cold War have played out in the emergence of a “Core Group” of Western “like minded” democratic and former colonizer states led by the United States and European countries, and the Eastern/Global South states led by China, Russia, and a group of 77 developing “non-aligned” nations, known as the G-77 coalition.¹⁸ Founded in 1964 as a coalition designed to promote the economic interests of developing countries, the G-77 has since expanded to a coalition of 134 countries that has become a significant voting bloc in the United Nations and subsequent bodies such as the Human Rights Council.¹⁹ Listed as an official member, China very frequently politically supports and financially contributes to the G-77.²⁰ Alongside Russia, these nations form a coalition in the UNHRC that opposes much of the resolutions that come from the Western bloc democratic states. In addition to the Cold War history, the former colonial status of these nations is certainly a uniting factor amongst the coalition. Part of their unity comes from blocking continued Global North and Western democratic neocolonial influence that they perceive has created a cycle of dependency and hegemonic control over Global South countries.²¹ In the Sri Lanka case, former president Mahinda Rajapaksa has expressed hostility towards the Western coalition and has framed this opposition with almost victim mentality, attacking the Western nations using language of “bullying, aggression, interference, and persecution,” and expressing interest in allying with Asian and other powers with hostilities towards the United States, such as China, Libya, Iran, and Pakistan.²²

China’s role as the de facto leader of this coalition in the UNHRC and the balance of power with the United States and other Western nations cannot be understated. Many have argued that this has led the UNHRC to become a body of intense politicization intending to protect the members of this “club” from accountability for human

rights abuses.²³ China and Russia both view the Sri Lanka case as a sort of domino effect, the idea that if they let the Western states push for more accountability there, they might push for more accountability in their own countries, particularly in Tibet or Chechnya, respectively.²⁴ Additionally, Sri Lanka represents a strategic interest for many states in the bloc. As part of their “Global War on Terror”, the U.S initially aided the Sri Lankan government in their fight against the Tamil Tigers, however, they eventually ended direct military aid in 2007 over Sri Lanka’s “deteriorating human rights record.”²⁵ When the U.S ended this aid, it was none other than China that jumped in, becoming the island’s biggest donor by significantly increasing their aid to nearly \$1 billion, providing tens of millions of dollars’ worth of sophisticated weapons, including six F7 fighter jets to the Sri Lankan air force. China also pushed Pakistan to sell more arms and train pilots in Sri Lanka.²⁶ Throughout the years, Sri Lanka has become less reliant on US aid and support, and more dependent on aid from China, which has spent nearly \$15 billion in Sri Lanka from 2005-2017, leasing a strategic port in Hambantota for 99 years and more recently a hybrid tank site in Jaffna as part of its “String of Pearls” initiative in the Indian Ocean Region.²⁷ The economic interests of China, Sri Lanka’s increasing debt, as well as its positioning in the geopolitical battle between China and the United States and the “Core Group” Western coalition have significantly factored in China’s continuance of votes against any HRC resolution pushing for strong accountability in Sri Lanka.

The tensions between India and Pakistan also contribute to the significant politicization of the issue in the Human Rights Council. The abstention of India on this recent resolution is of particular note as it had undergone intense pressure from Tamil leaders and diaspora groups in Tamil Nadu and around the world, urging the government to support the resolution calling for increased accountability for war crimes against the Tamils in the aftermath of the civil war.²⁸ On the flipside, India has had to grapple with Sri Lanka’s tilt towards China, with the hybrid power plant in Jaffna and the container terminal deal that was recently cancelled, increasing India’s perceived threats to security and the increasing power of China in their own backyard. Thus, the Indian decision to abstain comes with an understanding of these complicated geopolitical factors taking place in the region. Pakistan’s vote against the resolution in support of the Rajapaksa government comes on the heels of Prime Minister Imran Khan’s end of February visit to the island, where he expressed concerns of Sri Lanka’s policies regarding COVID cremations of Muslims, the burqa ban, and the shutting down

of Islamic schools. It is thus no coincidence that Pakistan's decision to support the resolution comes alongside Sri Lanka's recent commitment to reversing that burqa decision as well as its cremation policy. These two nations of India and Pakistan have long been engaged in tensions since their independence in the 1940s, and such tensions between the countries are no different on this issue of Sri Lanka. Furthermore, the alliances of India with the United States and Pakistan with China are emblematic of the larger tensions between those nations that are manifesting in different forms across the globe.

As the premiere global advocate for human rights, the United States has played a critical role in pushing for war crime accountability in the Sri Lanka case. However, although the U.S State Department and Senate Foreign Relations Committee were involved in overseeing and commenting on various government-sanctioned reports on Sri Lanka, the increasing loss of influence between the U.S and Sri Lanka has limited concrete action being taken on the issue.²⁹ Furthering this division, Western-based institutions such as the IMF have tried to use financial leverage to promote human rights accountability in international organizations. The IMF loan controversy in 2009 is a perfect example of this. Facing default in early 2009, the Sri Lankan government filed for an emergency \$2.6 billion loan from the IMF.³⁰ The loan was strongly opposed by the United States, UK, and Germany, with U.S Secretary of State Hillary Clinton and British Foreign Secretary David Miliband expressing their deep concerns with the state of Sri Lanka's human rights crisis.³¹ Although the loan was eventually approved, the inherent politicization of the issue by the United States left a bad taste in the mouths of many in the Sri Lankan government, who issued an official "note of protest" to the US Embassy in Colombo in September of 2009.

The removal of the United States from the human rights council under the previous administration meant that it was unable to act as the primary leader on the March 2021 resolution, however, it did not prevent leaders from offering support to the UK-lead "Core Group" on this resolution. U.S Secretary of State Anthony Blinken declared that the Biden administration was "Placing democracy and human rights at the center" of its foreign policy, calling for the human rights council to support the resolution calling for accountability in Sri Lanka.³² As indicated by Blinken, human rights appear to have again become an important part of the U.S foreign policy agenda around the globe, and the verbal commendation of this resolution and commitment to rejoin the council act as important steps to achieving that goal. With regards to

strategic interests, U.S. support of the resolution is also key to addressing its concerns of Colombo's strengthening relationship with Beijing, due to its increased dependency on Chinese investments and loans. The United States interest in dealing with war crimes and human rights accountability in Sri Lanka is further indicative of the "Pivot to Asia" begun under the Obama administration that is likely to continue under the Biden administration. As expressed by then Secretary of State John Kerry in the May 2009 Senate Foreign Relations Committee report on the end of the Sri Lankan civil war, the decreased investments into the economy and security sector of Sri Lanka have contributed to its increased political and economic isolation from the United States and the West, and the ever-increasing influence of China in the country. As indicated in this report: "The challenge for the United States will be to encourage Sri Lanka to embrace political reform and respect for human rights without pushing the country towards Burma-like isolation, while still holding a multifaceted bilateral relationship that reflects geostrategic interests."³³ Twelve years later, in 2021, this policy outline remains true. The United States' commendation of this resolution is an important step towards both upholding its commitment to human rights accountability in countries across the world, and also towards drawing critical attention to the increasingly fractured strategic relationship with Sri Lanka, a critical part of its geopolitical battle with the republic of China and its influence in the region.³⁴

Another important factor to recognize is that the majority of the Tamil and Sri Lankan diaspora around the world is located in Western states like the US, Canada, UK, France, Germany, and Australia. Other than Sri Lanka and India's Tamil Nadu population, there isn't much lobbying to be done in the Eastern bloc G-77 coalition. As the transnational advocacy network, specifically the Sri Lankan Democracy and Global Forums, does a considerable job lobbying governments within their countries, the members of the G-77 bloc lack a significant population of Sri Lankans and Tamils to push for accountability on the international stage.³⁵ The lack of a Tamil lobbying voice from the ground-up in many non-Western countries thus makes it easier for states like China and Russia to rally a coalition defending the Sri Lankan government from its actions. By understanding the strategic interests and relative hegemony of states like China, Russia, India, Pakistan, and the United States, and the presence or lack thereof a Tamil lobbying power in G-77 nations, we can thus begin to recognize how these politics, tensions, and interests coalesce on the international stage of the UNHRC.

The domestic politics of Sri Lanka also play a tremendous role on the limited impact of the transnational coalition and the UNHRC to promote accountability in Sri Lanka. Mahinda Rajapaksa, president from 2005-2015, was lauded as a hero by many in Sri Lanka for his victory over the Tamil Tigers and the resolution of the conflict, leading to his reelection in 2010.³⁶ From 2009-2015, the Rajapaksa government was increasingly hostile to any international backlash against the Sri Lankan government, failing to implement any of the proposed recommendations by the UNHRC. Despite claiming he would create a “Lessons Learned Truth and Reconciliation Committee” and help the Office of Missing Persons, Rajapaksa failed to follow through on his commitments.³⁷ The ousting of Rajapaksa and the election of Maithripala Sirisena in 2015, offered a glimmer of hope for accountability, as Sirisena vowed to achieve “truth, reconciliation, and transitional justice” in the nation, however, the political pressure put on him by the Sri Lankan Freedom Party and other Sinhalese-majority opposition groups prevented this from coming to fruition.³⁸ Subsequently, Sirisena did not run again in the 2019 elections, leaving the door open for Gotabaya Rajapaksa, Mahinda’s brother and former defense secretary, to enter the race and win the presidency, eventually appointing Mahinda as Prime Minister.³⁹ Now, the two most powerful perpetrators of the war crimes at the end of the war are back in power. When it comes to holding states and actors accountable, the fact that the Rajapaksa brothers are in power again makes accountability increasingly difficult to push for and achieve. If the issue of war crime accountability hasn’t made much progress before, there is a limited expectation that progress will continue in the future, especially with the brothers being in power until 2025.⁴⁰

The domestic reception of the recent HRC resolution passed in March 2021 has been mixed. Tamil National Alliance leader R. Sampanthan and other hardcore members called for a firm HRC resolution to punish the war crimes at the end of the war and stated that the British resolution proposal was not as strong as it could be. There were shared concerns between the “Core Group nations”, moderate Tamil politicians, and local Tamil and Sinhalese civil society activists within Sri Lanka that pushing for harder recommendations would result in the resolution failing completely. These groups openly expressed support for the resolution and the desire for the issue to remain in the UNHRC. On the government side, officials expressed complete rejection of the proposed resolution. Foreign Minister Dinesh Gunawardena said that the whole resolution was politically motivated, particularly by the Unit-

ed Kingdom and other members of the “Core Group”.⁴¹ Points nine and ten in the resolution call upon the Sri Lankan government to ensure “prompt, thorough, and impartial investigation” of war crimes and human rights violations and effective function of the Human Rights Commission of Sri Lanka and Office of Missing Persons to follow through on their respective mandates. These two domestic institutions are critical mechanisms of human rights accountability in Sri Lanka in the aftermath of the civil war. However, as indicated by human rights High Commissioner Michelle Bachelet’s March 2021 report on Sri Lanka, the recommendations of past HRC resolutions to be taken up by these institutions as well as other accountability mechanisms within Sri Lanka have “Repeatedly failed to ensure justice for victims and promote reconciliation” and “genuine accountability processes” in the country. Since the end of the war, resolutions passed on Sri Lanka have been overseen by both Rajapaksa brothers and the Sirisena government, who have failed to properly implement the recommendations, even going as far as rejecting the accusations completely. This current resolution is no different. President Gotabaya Rajapaksa has continued the rhetoric of his brother in years past, pushing back against the pressures of the UNHRC and reiterating Sri Lanka’s freedom from threats to Sri Lanka’s sovereignty by “Core group” nations placing Sri Lanka in the midst of their power rivalry in the Indian Ocean.⁴²

Who plays the biggest role in promoting accountability for human rights? The Sri Lankan example allows us to understand a few different things as to how this process occurs. Looking at the NGOs, civil society groups, Tamil diaspora organizations, and the independent nature of the Navi Pillay’s position as UN High Commissioner of Human Rights, the Sri Lanka case first allows us to understand the critically important role and lobbying power of the Transnational Advocacy Network to bring the issue to the debating table at the UNHRC. Next, looking at the strategic financial, security, and geopolitical interests of the major powers involved in the Sri Lanka case helps us understand how bloc voting and the inherently politicized environment of resolutions passed at the UNHRC has severely inhibited the efforts for accountability in Sri Lanka on the part of the Transnational Advocacy Coalition. Furthermore, an examination of the domestic politics of Sri Lanka helps us further understand the relative ineffectiveness of domestic institutions and their futile efforts to achieve accountability. Thus, while the Transnational Advocacy Coalition has played a tremendous role in raising awareness and lobbying, its efforts have been unable to move the politicized nature of the UNHRC and the domestic politics of Sri Lanka. Looking at the

past UNHRC resolutions passed does not provide a promising sign for those wishing for concrete action to be taken. The war is now 12 years from its end, making it more difficult to hold people accountable as time goes on. Additionally, the advocacy networks, while still present, are not as vocal as they once were 12 years ago when the war ended, and it was still fresh in the minds of many. Furthermore, geopolitical tensions between the U.S and China are still the same, maybe even more enhanced now, and most importantly, those most guilty for war crimes are currently holding the Presidency and Prime Minister positions. What is to be done regarding accountability in the Sri Lanka case remains to be seen, however we can expect all of the factors discussed to each be an important factor of how it plays out.

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COVID-19 and Trump: Sovereignty as Autonomy vs. Sovereignty as Influence

Grace Franklin '21

Editor's Note: This article was written in December 2020, and some data may have since changed.

On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a global pandemic.¹ With 68,838,273 confirmed cases and 1,567,706 deaths across 218 countries and territories, COVID-19 transcends borders, race, and political affiliation.^{2,3} With no supranational institution to mandate a universal response, each country has responded differently, leading to a variety of outcomes across the globe. It is each country's sovereign right to address its specific needs and priorities for COVID-19. However, responding unilaterally is not enough. Multilateral cooperation is important and necessary for multinational issues, which COVID-19 is by definition. This is particularly salient when it comes to the sharing and pooling of resources to stop the pandemic. As an international issue that pays no respect to borders or sovereignty, multilateral cooperation is essential to responding effectively to a "problem without a passport."⁴

For this reason, the World Health Organization (WHO) as the "global guardian of health" worked since early January 2020 to respond to COVID-19.⁵ The WHO is a specialized, intergovernmental agency of the United Nations that has 194 member states.⁶ Its main objective is to ensure "all peoples attain the highest possible level of health," and it works to "promote health, keep the world safe and serve the vulnerable."⁷ For COVID-19, the WHO, with the European Commission, France, and the Bill & Melinda Gates Foundation, launched Access to COVID-19 Tools (ACT) Accelerator in April 2020.⁸ The ACT Accelerator was created to bring "together governments, global health organizations, manufacturers, scientists, private sector, civil society and philanthropy" to provide "innovative and equitable access to COVID-19 diagnostics, treatments and vaccines."⁹

One of ACT's pillars is COVAX, which focuses on "the development and manufactur[ing] of COVID-19 vaccines" to guarantee "fair and equitable access for every country in the world."¹⁰ COVAX's creators view an effective vaccine as a "global public good" to be distributed equitably, regardless of "where it was invented or of a

country's ability to pay."¹¹ COVAX has received support from 172 countries as a way to pool resources and find a vaccine. However, some of the most powerful countries do not support COVAX, notably Russia and the United States. China was included on this short list until recently.¹²

In the United States alone, confirmed cases have surpassed 15.2 million and over 286 thousand deaths, with no end in sight.^{13,14} However, the Trump administration decided to withdraw from the WHO and abstain from joining COVAX.¹⁵ Instead, President Trump adopted a "go-it-alone" approach, relying on bilateral agreements to respond to COVID-19 and produce a vaccine.¹⁶ This view is in part informed by Trump's unilateral rhetoric that places a premium on American freedom of action outside of the constraints of multilateral institutions.

As evident in his decisions regarding COVID-19, Trump has chosen "sovereignty as autonomy" in acting unilaterally. "Sovereignty as autonomy" refers to just one point of Stewart Patrick's "sovereignty triangle,"¹⁷ which consists of three competing dimensions: sovereignty as autonomy, sovereignty as authority, and sovereignty as influence. As Stewart Patrick articulates, "authority refers to the state's exclusive and legitimate right to make rules. Autonomy refers to its ability to make and implement decisions independently. Influence refers to the state's effective capacity to advance its interests."¹⁸ As applied to the United States, the sovereignty triangle means the US "possesses inherent rights that should not be surrendered, autonomy that should not be infringed upon, and a fate that it should be able to influence."¹⁹

The sovereignty triangle provides a relevant framework in assessing why the Trump administration decided to withdraw from the World Health Organization and refrain from COVAX during a global pandemic. Fundamentally, Trump chose autonomy over influence: independent decision making over enhanced "problem solving within collective frameworks."²⁰ This is not surprising considering, as Mauro Guillén²¹ puts it, "the pandemic came the moment when global cooperation on key issues, such as climate change, was at an all-time low."²² However, in

doing so, Trump sacrificed a key opportunity to expand American leadership and influence, and jeopardized American lives over an issue that is multilateral in nature. COVID-19 is a problem without a passport and requires a solution without a passport.

Although it may not appear so at first glance, health is a foreign policy concern that should be placed on the United States' agenda. In prioritizing health in foreign policy, the United States stands to gain "significant domestic and international advantages." It is within the United States' own self-interests and that of the world.²³ Challenges to global health – such as a global pandemic – offer a chance to spread US leadership, protect American lives, and promote worldwide economic and political stability. In many regions, US leadership is resented or resisted. Promoting public health in those regions creates a positive framework and good will to pursue other national interests in those countries.²⁴

In promoting global health abroad, the US further protects American prosperity and security domestically. As made clear in a declassified National Intelligence Council (NIC) risk assessment from 2000, "new and reemerging infectious diseases will pose a rising global health threat and will complicate US and global security over the next 20 years." These diseases have the risk of endangering "US citizens at home and abroad, threaten[ing] US armed forces deployed overseas, and exacerbat[ing] social and political instability in key countries and regions in which the United States has significant interests."²⁵ Disease elsewhere risks American lives because it can rapidly spread and "increases the likelihood of political instability, disenfranchises persons with inadequate social capital, limits economic growth, and exacerbates the human damage caused by social and economic dislocation."²⁶

As made evident exactly 20 years after the NIC report, infectious diseases do not respect borders, health, or economies. In fact, the United States alone suffered a loss of about \$16 trillion in lost productivity, premature deaths, and sickness. Internationally, estimates indicate that COVID-19 contracted worldwide productivity in 2020 by five percent, one billion children had their schooling interrupted, and the World Bank warns that an additional 150 million people will enter extreme poverty as a result of the pandemic.²⁷

Understanding health and infectious disease as a US foreign policy issue with connections to other US policy areas is essential to understanding and analyzing President Trump's decisions during the COVID-19 pandemic.

On April 14, 2020, Trump suspended funding to the WHO.²⁸ A month later, he sent a letter to the WHO Director General Dr. Tedros Adhanom with allegations about the organization's early efforts in the pandemic.²⁹ On June 8th, Trump announced the required one-year notice to withdraw from the World Health Organization.^{30,31}

Trump's decision to withdraw is rooted in both general critiques of the World Health Organization and more specific allegations on how it has handled the COVID-19 pandemic and China's role in it. Even conservative think tanks recognize that during a global pandemic, "an impartial, science-oriented, competently led, transnational health organization is vital" in order to "prevent or detect, and to coordinate a global response" to an infectious disease.³² However, according to the Trump administration, the WHO fills none of these criteria. Generally, this U.N. specialized agency carries an "aura of legitimacy in Washington because of assumptions about the importance of what they do, not how they decide."³³ This is a naïve acceptance of the organization without evaluating its actual efficacy and underlying mechanisms.

The WHO has a list of "core capacities" to respond to "public health emergencies of international concern" (PHEICs) but that does not include the tools to combat serious respiratory illnesses like COVID-19.³⁴ With SARS and COVID-19, the WHO failed to be the go-to source for information about pandemic spread. Instead, John Hopkins University in Baltimore, Maryland emerged as one of the first places to publish reliable and current COVID-19 statistics.³⁵ Although the United States already has payment commitments to the WHO for this fiscal year, it follows that Trump would choose to reallocate funds to bilateral agreements that could fill the resource and information gaps in the WHO, particularly if that organization is American.

Under the pressure of previous global pandemics – HIV/AIDS, SARS – member states granted the World Health Organization unprecedented powers in 2005 through the revision of the International Health Regulations (IHR). The IHR adopted a "broader, more flexible approach to infectious disease" to cover all PHEICs.³⁶ Article 3.4 of the IHR requires national governments to report potential PHEICs to the WHO in a "timely manner and to refrain from imposing unnecessary trade and travel restrictions." Article 10.4 of the IHR granted WHO "the right to name and shame countries that failed to comply with their reporting obligations."³⁷

The revision of the IHR seems effective on paper, but in practice it fails in three ways: (1) countries do not actually comply, (2) it provides the WHO with no real enforcement mechanism for non-compliance, and (3) the WHO itself does not execute some of its rights outlined in the articles. By 2012, less than a quarter of all members had reported full compliance, and delays in detection and reporting in Guinea allowed Ebola to spread to other West African nations, taking the lives of over 11,000 individuals.³⁸ Furthermore, the WHO lacked – and continues to lack – the teeth to do anything about this noncompliance: “it has no powers of sanction, and the information it collects and publishes is only as good as the data and expertise it gets from member states and its technical specialists.”³⁹ On this recent history alone, it follows that Trump would not want to sacrifice autonomy to an organization with such low efficacy and compliance.

These general critiques of the WHO were only further exacerbated by China’s non-compliance in reporting COVID-19 and the subsequent response from the WHO. According to the Trump administration, the WHO could have been the agency needed during this pandemic, but instead, the WHO has “costs the very lives it exists to save” by being “overly deferential to one nation and incapable of being an honest broker.”⁴⁰ As with the SARS outbreak, China failed to act in a transparent and cooperative manner with the WHO, as mandated by the IHR. Beijing failed to share critical information, suppressed efforts by doctors to share samples, and impeded WHO efforts to send infectious disease experts to Wuhan.⁴¹ When hearing of this, Trump demanded China be held accountable for its role in spreading COVID-19 by ignoring its legal obligations under IHR Article 3.4 to transparently report a potential PHEIC in a timely fashion.⁴² Had the Chinese Communist Party (CCP) valued human life over its own political preservation, there is “no question that the global toll from the COVID-19 pandemic would only be a fraction of what has been exacted to date.”⁴³

Taken alone, the Trump administration views these transgressions and noncompliance as a key cause of the extent to which COVID-19 has impacted the world. He also ascribes additional responsibility to the WHO for its response to COVID-19 and China. The disease started spreading in Wuhan, China in December 2019, but as of January 14th, the WHO tweeted “Preliminary investigations conducted by the Chinese authorities have found no clear evidence of human-to-human transmission of the novel #coronavirus.”⁴⁴ As of January 22, 2020, the WHO did not declare a PHEIC because there was insufficient

data from China.⁴⁵ However, a week later on January 30th, the WHO reversed this decision and declared COVID-19 a PHEIC.⁴⁶

In the case of an infectious disease with a high transmission rate, a week can mean the difference between containment and outbreak. The WHO’s tweet and its delay in labeling COVID-19 as a PHEIC demonstrated to the Trump administration that Beijing is politically influencing the WHO, an organization that is meant to be impartial, independent, and science-driven. The WHO’s failure to alert the international community of Beijing’s opacity and lack of cooperation undermined the trust that governments place in it to serve as an early warning system and provide unbiased scientific information. In doing so, “the international community lost valuable time for containing COVID-19 and limiting its damage.”⁴⁷ Further, Beijing blocked WHO technical experts from entering Wuhan and refused to share multigenerational samples. WHO Director-General Tedros Adhanom failed to raise public concern over this.⁴⁸ The WHO went a step further when the Director-General praised China out of fear that criticizing the CCP would further limit cooperation: Adhanom said that Beijing has set “a new standard for outbreak control” that “bought the world time, even though those steps have come at greater cost to China itself.”⁴⁹

Moreover, governments waited weeks to institute stay-at-home orders because of the WHO’s reluctance to upgrade COVID-19 from a PHEIC to a “pandemic.”^{50,51} Compared to “PHEIC,” the word “pandemic” carries no legal significance to the WHO and its IHR procedures. However, “pandemic” colloquially conveys an urgency and seriousness that is more accessible to the average person. It was only on March 11th, 2020 that the WHO first used this word. The WHO justified its hesitation by arguing “pandemic” would cause “unreasonable fear.” In failing to do so, however, governments did not understand the transmission potential and did not take preemptive action.⁵²

Chinese influence over the WHO is further demonstrated by the organization’s reluctance to acknowledge Taiwan. In early December, Taiwan warned the WHO of human-to-human transmission of COVID-19. However, the WHO ignored this warning because it does not recognize Taiwan sovereignty due to Chinese political objections.⁵³ Had the WHO taken this warning seriously instead of listening to China, who much later confirmed this fact, the spread of the disease may have been limited. Further, Taiwan’s response to COVID-19 should be

admired: Taiwan quickly took action to limit exposure by banning travel from parts of China, prohibiting cruise ship docking, and implementing home-quarantine. Then, it donated face masks and medical supplies to other nations.⁵⁴ The WHO has not acknowledged Taiwan's success.

The WHO has also ignored Taiwan outside of the pandemic. The WHO is supposed to offer an inclusive approach to international health cooperation with membership open to any country or territory that wants to be a member. However, the WHO has allowed China to block Taiwan's accession to member state status.⁵⁵ The United States Department of Health and Human Services expressed direct concern over this development: a May 19th press release said "the United States is deeply concerned" with the "systematic exclusion [of Taiwan] that should not occur, especially now with COVID-19. This is extremely concerning especially when this pandemic is partly aggravated by a lack of transparent information sharing and inclusion of all necessary stakeholders in global health."⁵⁶

In Trump's view, the WHO cannot promote US global influence because it lacks autonomy from China. Specifically, the WHO's response to China's deceitful behavior and ignoring of Taiwan demonstrates China's undue influence on this organization, an arena not suitable for the expression of American sovereignty. Trump believes "China has total control over the World Health Organization, despite only paying \$40 million per year compared to what the United States has been paying, which is approximately \$450 million a year."⁵⁷ With two superpowers – China and the United States – attempting to simultaneously project influence and protect their interests in the WHO, the United States' ability to do just that is limited.

Both the US Department of State and the US Department of Health and Human Services (HHS) have justified Trump's withdrawal from the World Health Organization. The State Department agreed with Trump's termination of the United States' relationship with the WHO, as the WHO's response to the pandemic "showed that it, too, is beholden to the CCP."⁵⁸ Nerissa Cook, the Deputy Assistant Secretary of the Bureau of International Organization Affairs, outlined the American view of the WHO in relation to China: "the WHO needs to be independent in its processes and procedures in dealing with pandemics. So we are advocating for greater transparency and greater accountability. And we want to see speedier and higher quality of communications in the face of pandemics. We want decision-making to be based on science and not on other considerations."⁵⁹ The United

States only took the step to withdraw after the WHO refused the reforms outlined in Trump's letter to Dr. Tedros Adhanom.⁶⁰ In the rationale of the State Department, the WHO declined this opportunity to reform and demonstrate independence from the CCP, resulting in Trump's decision to withdraw.⁶¹

Going forward, the United States wishes to continue its relationship with the WHO on a "case-by-case basis" by attending "particular meetings of the WHO's governing bodies and technical and advisory committees where we believe American interests need to be represented."⁶² However, both the State Department and the HHS argue that in withdrawing its funding and membership to the WHO, it is not shirking its humanitarian funding obligations. As the most generous funder of global health activities, the WHO activities that the HHS supports this year are "one-time exceptions for funding, up to \$40 million, in the program areas of immunization and influenza. These contributions would be to ensure continuity of activities important to the health security of Americans for which there was not an immediate alternative programmatic partner."⁶³

These statements reflect the United States' tendency to engage in multilateral agreements and action only when it is perceived to be of specific importance to the United States. The State Department statement exemplifies sovereignty as autonomy in that the US will only trade its autonomy when it is of particular importance to US interests that necessitates a multilateral response. In the words of Donald Trump, "this pandemic has underscored the crucial importance of building up America's economic independence, reshoring our critical supply chains and protecting America's scientific and technological advances."⁶⁴

Trump decided to withdraw from the WHO and limit its funding due to Chinese influence on the organization and its subsequent inadequate response to the pandemic. These same reasons are why Trump refuses to join COVAX, a WHO-led organization. As the President doesn't trust this "corrupt" organization, it logically follows that he would not join its international push to cooperatively develop a vaccine.⁶⁵ Instead, White House spokesman Judd Deere explained that the United States "will continue to engage our international partners to ensure we defeat this virus, but we will not be constrained by multilateral organizations influenced by the corrupt World Health Organization and China."⁶⁶ Notably, Judd Deere's statement about being "constrained by multilateral organizations" rings of sovereignty as autonomy. Here,

the rationale for not joining COVAX is that the United States wants the freedom to choose which organizations to support instead of being constrained by a multilateral organization that the United States cannot control. Secretary of State Michael Pompeo echoed this same point in a press conference: “There is no nation that has been or will be as deeply committed to delivering vaccines around the world as the United States of America, not just in terms of dollars....But it is also imperative that when we do that, we need to do so in a way that’s effective, that’s not politics, that is science-based.”⁶⁷

These remarks seem to contradict other statements from the administration. Trump agrees that the United States will continue to focus on bilateral efforts with international partners but that it would only “consider supplying vaccines to other countries after Americans are immunized.”⁶⁸ The US Health and Human Services reinforced this funding paradigm and Trump’s personal statements in addressing why the US chose to abstain from COVAX: “once the American people – their needs with respect to the vaccine—are met, hopefully, depending on how the vaccine trials turn out and the rest of it, there will be a good excess of vaccines and we certainly will be looking to do our fair share in terms of supporting the global need for vaccinations.”⁶⁹ These statements are in line with Trump’s “America first” rhetoric which values protectionist policies over international leadership and sovereignty as influence.

The Trump administration rationalizes this approach in comparing the global allocation of COVID-19 vaccines as oxygen masks dropping inside a plane. Peter Marks, a senior official at the US Food and Drug Administration, reasons, “You put on your own first, and then we want to help others as quickly as possible.”⁷⁰ Other governments are likely thinking the same way as the United States. With domestic pressures calling for a vaccine, it is difficult to argue that your own citizens should wait to be vaccinated while non-citizens reap the benefits of your nation’s funding and research. This is the basis of “vaccine nationalism” and why it is “almost certain to win out over vaccine multilateralism.”⁷¹ When considering vaccine nationalism, paired with the view that the WHO is corrupt, it is not surprising that the Trump administration would abstain from COVAX, a vaccine program focused on equitable access and international cooperation.

Whether COVAX is the best option for producing the best product can also be called into question. In fact, competition typically breeds innovation: “the vaccine rivalry is healthy, perhaps even ideal.”⁷² Additionally, some coun-

tries reckon they can join COVAX later if it succeeds while also pursuing bilateral vaccine agreements, as “co-operative, international efforts are not famous for finding speedy solutions.”⁷³ Instead, the United States decided to invest over \$10 billion in candidate vaccines.⁷⁴ It is within the US’s interest to retain autonomy over its vaccine research and development in order to secure vaccines for its citizens first.

In choosing to withdraw from the WHO and abstain from joining COVAX, the United States made a fundamental choice to support sovereignty as autonomy over sovereignty as influence. The Trump administration believes that it has freed the United States from the multilateral yoke of the World Health Organization and thus put American citizens first; Trump has chosen to put the oxygen mask on America first.

Trump’s reasoning for withdrawing from the WHO and abstaining from COVAX have some merit: the WHO needs fundamental reforms to increase its surveillance capacities and resources, and it needs to free itself from Chinese political influence. Moreover, COVAX is not necessarily the best option for international cooperation to create a vaccine. However, even if his reasoning to choose autonomy over influence makes sense, the action does not. This is because Trump’s somewhat valid critique of the WHO has led to two faulty assumptions: (1) the United States can fight COVID-19 alone and (2) it is better to remove the United States from the international table to pursue unilateral action.

Stewart Patrick puts it succinctly: “there are no such things as sovereignty with respect to epidemic diseases... because disease does not recognize political borders.”⁷⁵ The World Health Organization’s independent Ebola Assessment Panel knew this five years ago. It acknowledged that “the means to fulfill this responsibility are increasingly global, and require international collective action and effective and efficient government of the global health system.... This Panel suggests in the interest of protecting global health, countries must have a notion of “shared sovereignty.”⁷⁶ Patrick and the Ebola Assessment Panel both recognize the notion that in areas of international concern that do not respect or recognize political boundaries, the need for international cooperation is not just wise but necessary.

Although some of his claims regarding Chinese influence on the WHO are valid – particularly regarding Taiwan and China’s failure to transparently communicate the disease to the WHO – withdrawal from the WHO goes

against previous HHS statements and its global strategy. Previously, the HHS has been a strong advocate of multilateralism because “effective control of infectious diseases depends on a worldwide surveillance system, which can only be organized through an international institution.”⁷⁷ However, the WHO, both in 2012 with Ebola and with COVID-19 now, has failed in its international surveillance efforts because those viruses’ countries of origin did not easily cooperate or comply. Without the WHO, however, there would be little incentive to report an outbreak at all, as it would be up to national authorities to determine a virus as a potential PHEIC, a decision that would be more politically charged than one informed by an independent body.

More recently, the HHS reported in its Global Strategy for FY 2014-2018: “As individual nations confront challenges to their population’s health, safety, and well-being, we are seeing an important truth: No country can operate in isolation. Health concerns of the 21st century don’t stop at national borders, and as we strengthen the well-being of communities in our own countries, we must also seek global solutions.”⁷⁸ Moreover, global public health allows the United States to leverage international knowledge to better serve its citizens.⁷⁹ In collecting knowledge and resources from other sources, the United States can better help its own citizens and in sharing its knowledge, the United States can better project its sovereignty as influence abroad.

Trump decided to withdraw from the “corrupt” World Health Organization because he viewed it as a multilateral constraint influenced by China. However, Trump’s logic is flawed because the WHO is not a multilateral constraint: it does not threaten state sovereignty as autonomy. Although the IHR was strengthened to give the WHO “unprecedented powers”⁸⁰ to improve its infectious disease surveillance and response capacities, the United States *voluntarily* agreed to limit “its notional policy option in order to reap promised benefits of collective action:... preventing the rise and spread of pandemics.”⁸¹ In the same vein, the WHO’s delayed response for labeling the COVID-19 outbreak as a PHEIC did not prevent a US unilateral response. Under Article 3.4 of the IHR, “states have...the sovereign right to legislate and to implement legislation in pursuit of their health policies.”⁸² Further, the WHO’s delay in labeling the COVID-19 a “pandemic” carries no legal meaning to the organization or its member states, as PHEIC is the WHO’s highest level of alarm. By the end of January, the United States had enough information to respond, but it chose not to.

Instead of attempting to use the United States’ significant financial leverage in the WHO to reform the institution from the inside, it decided to withdraw.⁸³ This eliminated any leverage to affect any institutional policy. Although this withdrawal carries symbolic meaning, its functional long-term consequences are far reaching and outweigh the short-term benefit that Trump perceived. The United States’ financial leverage could have extended US sovereignty as influence and authority by reinforcing an international, rules-based order with the US as the leader, freezing its influence over this multilateral institution for the foreseeable future. This is particularly salient given the UN General Assembly’s final conclusions from September 29, 2020: “Member States continued to call for cooperative approaches to address the COVID-19 pandemic, stressing that respect for the international rules-based order is the cornerstone to overcoming current and future crises.”⁸⁴

In withdrawing from the WHO, the Trump administration incorrectly chose sovereignty as autonomy over sovereignty as influence. As Larry Gostin⁸⁵ puts it, the United States gave a “political gift to China” in leaving, because it created a “leadership vacuum that China will be more than happy to fill.”⁸⁶ This is antithetical to Trump’s reasoning for leaving the WHO in the first place. This decision sacrificed America’s ability to project influence through an international organization (without needing to trade much autonomy) and decreased its influence relative to China. In leaving the table and withdrawing its funds, the United States removed itself from a bargaining position within the organization. Jimmy Kolker⁸⁷ echoed this point in an interview with NPR: “The World Health Organization will not disappear. What will happen instead is that the US role will be diminished and that we won’t be able to bring our best experts into the room when discussions are taking place.”⁸⁸

Perhaps most importantly, Trump’s decision will cost lives. Senator Bob Menendez⁸⁹ of New Jersey (D) responded strongly after hearing the news: “To call Trump’s response to COVID chaotic & incoherent doesn’t do it justice. This won’t protect American lives or interests — it leaves Americans sick and America alone.”⁹⁰ Senator Menendez’s point is congruent with common academic and medical wisdom that epidemics and pandemics are unique situations where multilateral cooperation is necessary. In a signed letter to Congress on June 30, 2020, 750 experts in both global health and international law outlined the grave consequences of Trump’s withdrawal from the WHO:

It is not an overstatement to say that withdrawal will likely cost lives, American and foreign. Once outside the WHO, the US would lose access to the WHO's global system for sharing critical outbreak data and vaccines, slowing US ability to return to normalcy from COVID-19, and to prepare and react to future pandemics. The rest of the world would be at heightened risk, too. The US funds the largest portion of the WHO's Health Emergencies Program, meaning that funding for testing and contact tracing, building health workforces, and vaccine development would be lost.⁹¹

It is clear that Trump's choice was an incorrect assessment of the United States' capabilities and was short sighted. His choice, as outlined by these experts, has and will continue to critically harm Americans, whom he claims to protect.

The letter to Congress also highlights the vaccine nationalism issue as an unproductive byproduct of developing a vaccine. Trump grossly overestimated the United States' ability to physically manufacture a vaccine at such a scale to immunize every American, an overestimation which risks American access to vaccines.⁹² Even from the perspective of narrowly defined "America first" mentality, "the meager US response is shortsighted and insufficient."⁹³ With diseases becoming increasingly difficult to treat and vaccinate against,⁹⁴ multilateral cooperation is essential "not just for ethical and humanitarian [priorities], but also economic and strategic [reasons], as global recovery requires collective improvement."⁹⁵

Trump chose a path of vaccine nationalism that has fatal consequences not just for American and foreign lives but for global economic security as well. Domestically and internationally, disease increases the likelihood of political and social instability and limits economic growth.⁹⁶ A vaccine cannot be developed by one country alone, even the United States, because of international supply chains and manufacturing capabilities. Vaccine supply chains contain unconventional inputs that wealthy nations do not necessarily have easy access to. For example, depending on the vaccine and its development, it may need horseshoe crab blood or rely on novel manufacturing processes that haven't been implemented at scale.⁹⁷ Further, in the quest for less wealthy nations to obtain vaccines, these countries may find leverage in blocking critical vaccine components, sacrificing long-term interests for short-term deals for vaccines.⁹⁸

Further, the economic consequences of vaccine nationalism are far-reaching. Although it is usually true that competition breeds innovation, that is not true for vaccines. Instead, without global coordination, it will only drive up the price of vaccines and related materials.⁹⁹ While American capital enables this competition, the average American citizen will still bear the brunt of these increased costs. Moreover, vaccine nationalism will slow the global allocation of vaccines, leading to even deeper economic harm. Even if all or most Americans were vaccinated first, that still would leave a gap in the rest of the world where the United States has crucial strategic and economic links. Without other countries' economies able to revive, there will be a reduced demand and buying power for US goods and services.¹⁰⁰ This includes \$26 billion worth of exports to Africa, \$420 billion to Mexico and Latin America, and \$34 billion to India.¹⁰¹

Vaccine nationalism and the rejection of COVAX also undermine US national security.¹⁰² In working multilaterally in COVAX, the United States could have contributed important capital to accelerate vaccine development and prevent the additional spread of COVID-19. Although completely immunizing all Americans before any others is a laudable goal in theory, it does not completely protect Americans. A group of scholars from the O'Neill Institute for National and Global Health Law argued that "vaccine-preventable outbreaks in other countries would eventually make Americans less secure, risking a resurgence of COVID-19" in the United States.¹⁰³

Trump reasons that, like oxygen masks on a plane, America will only be able to help others after first helping ourselves. However, this analogy is fundamentally flawed. The critical difference is that "airplane oxygen masks do not drop only in first class—which is the equivalent of what will happen when vaccines eventually become available if governments delay providing access to them to people in other countries."¹⁰⁴ Without an international, enforceable commitment like COVAX to distribute vaccines globally in an "equitable and rational way, leaders will instead prioritize taking care of their own populations over slowing the spread of COVID-19 elsewhere or helping protect essential health-care workers and highly vulnerable populations in other countries."¹⁰⁵

Abandoning the WHO and abstaining from COVAX greatly sacrifices American sovereignty as influence. Countries will perceive the United States as working against the common good on a global issue and therefore be more hesitant to cooperate on other issues of high priority for the United States, such as national security.¹⁰⁶

Furthermore, as China increases its global influence, the United States missed a crucial opportunity with COVAX to project and comparatively increase its influence in global affairs. In not demonstrating its “generosity and leadership at a time of global crisis,” the United States gifted China an opportunity:¹⁰⁷ On October 9, 2020, China joined COVAX, filling the global-leadership gap.¹⁰⁸

Furthermore, Trump assumes that US-backed pharmaceutical companies will be the first to develop an effective vaccine and that the US will be the only country in a bilateral agreement with that company. For example, the American company Pfizer, in partnership with Germany’s BioNTech, has agreed to sell its vaccine to not only the United States but also the European Union.¹⁰⁹ At the very least, COVAX would have functioned as an “insurance policy,”¹¹⁰ since it does not prevent nations from making additional bilateral deals.¹¹¹ The Trump administration incorrectly equated COVAX with surrendering its sovereignty as autonomy. Instead, the President’s choice resulted in a decreased ability for the US to project sovereignty as influence in multilateral agreements, relatively decreased its influence as compared to China, and deprived Americans of an additional avenue to secure vaccines. On this final point, Trump’s actions caused an outcome that is antithetical to his “America first” protectionist rhetoric.

Withdrawing from the WHO and abstaining from COVAX brought about the opposite effect of Trump’s intention to undermine China’s increasing global influence. Trump rationalized his first decision regarding the WHO with valid critiques of its mishandling of the pandemic and China’s influencing of the organization. However, in leaving the WHO, the United States lost sovereignty as influence in exchange for regaining very little sovereignty as autonomy. Instead, this decision promoted the very threat that Trump feared: Chinese dominance and influence. Removing the United States from the table at the WHO does not get rid of the WHO, and instead gifted China one less major player with which to compete. Trump’s withdrawal from the WHO sacrificed the long-term advancement of global public health and the projection of US influence for the short-term goal of achieving an illusion of autonomy.

Although the goal of providing vaccines to Americans first is laudable, the United States’ vaccine nationalism has resulted in the same outcome as its withdrawal from the WHO: increased Chinese influence. Particularly regarding COVAX, outside of additional funding – which would have been miniscule compared to bilateral funding – the United States has nothing to lose in joining the ini-

tiative but much to lose in not joining. Because the United States could still pursue bilateral agreements in pursuit of a vaccine, COVAX did not infringe on its autonomy and instead provided just another avenue to acquire vaccines and protect American lives. However, in not joining, the United States sacrificed another opportunity to further its global leadership and endear itself to countries in which the United States has a strategic interest: “The US government should act in the global interest, recognizing that long-term diplomatic, economic, and security benefits for the United States will follow. Priorities should be established on the basis of achieving sustained health gains most effectively, rather than on short-term strategic or tactical US interests.”¹¹² Furthermore, the United States gave China another opportunity to fill a power, leadership, and influence vacuum that the United States left in the wake of its withdrawal.

In the words of Stewart Patrick, “international organizations and treaties will remain imperfect, but the benefits they provide, such as enforcing universal trade rules or arresting potential pandemics, will frequently outweigh the constraints and frustrations.”¹¹³ With COVID-19 being an issue of international concern that does not respect political borders, the potential constraints of multilateral cooperation outweigh the benefits of freedom of action. Therefore, according to Robert Keohane, Stephen Macedo, and Andrew Moravcsik, “the choice... is not between international cooperation and domestic autonomy, but between complementary activities of international and domestic institutions, on the one hand, and uncoordinated state action, on the other.”¹¹⁴ The COVID-19 pandemic is fundamentally a problem without a passport and therefore requires a multilateral solution without a passport.

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The International Criminal Court's Role in the Future of Multilateralism: an Interview with Professor Ken Rodman

Conducted by James Greer '21

Professor Ken Rodman is the William R. Cotter Distinguished Teaching Professor of Government at Colby College, where he has taught since 1989. Ken was the first Director of Colby's interdisciplinary International (now Global) Studies Program and the Oak Institute for the Study of International Human Rights. His current scholarship on international criminal justice and conflict resolution has appeared in *Ethics & International Affairs*, *Human Rights Quarterly*, the *Journal of International Criminal Justice*, the *Leiden Journal of International Law*, and *International Criminal Law Review*.

James Greer: What is the International Criminal Court, and how does your research pertain to it?

Professor Rodman: The International Criminal Court was the first permanent international tribunal designed to hold individuals criminally accountable for genocide, crimes against humanity and war crimes. It was negotiated in Rome in 1998 and became operational in 2002. The idea behind the ICC is that there are certain kinds of crimes that are universally recognized crimes that are violations of widely shared norms of international law, and that when individuals cross that line and engage in these kinds of behaviors, they're no longer operating in the political world - they ought to be treated as criminals. Leaders often use violence as a way of projecting their influence abroad or as a way of maintaining their internal security. The ICC doesn't say anything specifically about their right to do so, what it does say is that if you cross the line in terms of genocide, ethnic cleansing, torture, the use of child soldiers, sexual violence and war crimes, the leaders who are responsible for that ought to be held accountable in an international court of law.

There are two sets of theories that underlie the ICC. Firstly liberalism, liberals assume that states try to promote common interests and values through international laws and institutions, and constructivism. The idea here is that over time norms sometimes change standards of appropriateness and create obligations on the parts of states to create prohibitions that states are reluctant to cross otherwise they will be stigmatized. The idea here is that

changing international norms will contribute to changes in international behavior and make compliance with the court more likely, I'm generally supportive of the ideals that underlie the court, but I think certain factors associated with realism and power politics play a strong role in determining what international tribunals can do and their broader contribution to human rights, to democratization, to supporting the rule of law. I look at international tribunals as operating within a kind of political process, and it is that political process that makes them meaningful or influential, whereas a lot of the most idealistic supporters of the court believe that law should be separated from politics just as how ideally law supposed to be separated from politics and our domestic political system, although we know that that's an ideal that doesn't always match reality.

James: The Trump administration declared virtual war on the ICC and multilateral institutions in general. How did that impact America's relationship with the ICC?

Rodman: The Trump administration was a rejection of liberal internationalism going beyond the ICC. As I noted earlier, liberal internationalism assumes that building laws, institutions, informal forms of cooperation are needed to promote common interests and values. Trump's foreign policy was basically a rejection of that and a whole variety of areas from trade to nuclear proliferation to arms control. What prompted the Trump administration's hostility towards the ICC was the decision to initiate an investigation of alleged American war crimes in Afghanistan. The approach that the Trump administration took was to, in effect, declare war on the ICC, to denounce them, to impose sanctions on the chief prosecutor and another official of the ICC as if they were international terrorists or International criminals. The idea behind that is, here's a court doing something we don't like, so we're going to engage in this abrasive form of behavior, using the kinds of laws that you would normally use with international drug traffickers or terrorists to sanction the chief prosecutor of the ICC. The problem with that strategy is it tends to alienate other countries; the United States is sort of on its own in terms of trying to influence the court. As a result, the United States was somewhat

isolated within the international community and in its approach towards the court. In some sense, it's similar to the early Bush administration - it strongly opposed the court, it wanted to avoid doing everything in its power to legitimize the court. In fact, they even encouraged Congress to pass something called the American Service-Members' Protection Act, which would have empowered the president to use military force to invade the Hague to liberate any American who was unjustly imprisoned by the ICC. Critics of the law later coined it the Hague Invasion Act due to its absurdity. One of the State Department officials, a political appointee, who was supportive of this initiative stated that "we know, this is offensive. But we did it precisely because we believe that the ICC is offensive to our sovereignty, and therefore, the way to influence other countries influence international institutions is to use vinegar, rather than honey to adopt this abrasive in your face opposition to the countries and institutions that you find objectionable."

James: How do you think the Biden Administration will conduct its relations with the ICC going forward? Even though it has just lifted Trump's sanctions, it has also reiterated its opposition to the Court's investigations into Palestine and Afghanistan.

Rodman: I think the Biden administration does share the Trump administration's view that the court has no jurisdiction over the alleged U.S. war crimes in Afghanistan, or over Israeli activities in Gaza. From a legal point of view, the Biden and Trump Administration's take the same position, the United States and Israel are non-parties to the Rome Statute, and therefore the ICC has no jurisdiction, although the Rome Statute gives the court authority to investigate crimes over the territory of state parties and Afghanistan is a state party. The Palestinian Authority was deemed to be a state party, but that is going to be challenged in the court on and therefore the court has jurisdiction over crimes that take place on Afghan territory and Palestinian territory, even if the United States and Israel are non-parties. I think where Biden is different from Trump is that they are going to try to influence the court's behavior more through engagement with the court, rather than through this in-your-face complete opposition to the court.

In that sense, I think the Biden Administration's approach will be very similar to the Obama administration's approach. President Obama had a warmer relationship with the court than the Bush administration's moderated approach in its last few years as it worked with the court in areas of common interest. The Obama Administration

still opposed investigations in Gaza, it didn't want to see Bush administration officials investigated for Afghanistan, and most significantly, it didn't want the court to begin to investigate the crime of aggression, which might empower the court to investigate crimes for which the United States might be accused, like drone strikes. It engaged with the court in areas where there were common interests, but it also acted to try to limit the court's authority over the United States and its allies. It did that through engaging the court rather than declaring virtual war on it. The approach was - to use the analogies of honey and vinegar - the early Bush administration and the Trump administration believed that they could best protect American officials from the court by trying to isolate and marginalize the court, the Obama administration, and I would assume the Biden administration, will try to engage the court to influence its direction.

James: With the new chief prosecutor Karim Khan starting in June, taking up the mantle for Fatou Bensouda, do you think he will change the priorities of the court or take it in a new direction? Or do you think he will play into David Bosco's theory of the 'great-power comfort zone?'

Rodman: To provide a little bit of an overview of the court, we can speculate as to what Karim Khan is going to do. We actually don't know. But when the court was first created, there was excitement on the part of the human rights community and concern on the part of the Bush administration that this was a court that was going to prosecute regardless of politics and power. From the vantage point of the human rights community, the court was able to mete out justice without fear or favor. From the vantage point of the Bush administration, this was going to empower a rogue prosecutor to try to control and constrain hegemonic America. Neither of those emerged in the early years of the court. Luis Moreno Ocampo, who was the first chief prosecutor, recognized that his institutional interests required good relations with the United States and other major powers that were supporting the Court or whose acquiescence to the court was needed for it to survive. He didn't investigate alleged British war crimes in Iraq, he didn't take steps in Afghanistan, in Colombia, he initially declined an investigation of alleged Israeli war crimes in the first Gaza War, and he moved very cautiously with Russia in Ukraine and Georgia.

David Bosco, who studies these issues at the American University, argued that the court was acting within a kind of great power comfort zone. One of the consequences of this was that every single charge that was issued by the court, every single formal investigation until 2017, was in

Africa. That created a different kind of backlash against the court; from the vantage point of some NGOs, many within the human rights community, this was the court engaging in selective justice. The view of these NGOs was “we didn’t want a court that was controlled by the Security Council, that’s why we encourage countries to accept an independent prosecutor.” But now the court is acting like it’s controlled by the Security Council, and it also created a backlash within the African Union. Although, to be perfectly honest, that backlash only involved three cases, the Omar Bashir case in Sudan, Qaddafi in Libya, and Kenyatta and Ruto in Kenya. What distinguished those three cases from all the others was that they targeted African heads of state. But the broader argument was that this targeting of Africa was challenging the legitimacy of the court. Until the middle of the last decade, it appeared that the court was largely limiting itself to Africa and staying out of situations that might engender major power backlash that began to change under Fatou Bensouda, the 2nd chief prosecutor. She moved towards a formal investigation of Russia and Georgia. She applied for and was able to get the court, on appeal, to accept the formal investigation of all parties in Afghanistan, including the Taliban, the Afghan government, and the United States. It’s also when the Palestinian Authority was accepted as a state party to the Rome Statute, and there were steps towards initiating an investigation in Gaza and the West Bank, since that investigation might also involve the settlement project.

There is this idea that the court was moving out of its great power comfort zone. At least in terms of initiating formal investigations, I’m examining the behavior of powerful states. Now, the question is, will they be able to do so? After all, it is unlikely that you are going to see cooperation from any of these governments with ICC investigations. Another question is, will this continue? Will this generate backlash from the countries that the ICC depends upon for its own support? At one level, the ICC’s legitimacy is internationally recognized among human rights organizations and influenced by the perception that it’s involved in impartial justice, but its legitimacy with the states that provided the funding, the resources, and needs to be effective is based upon the ICC not engaging in prosecutions that work at cross purposes with international backing and not crossing in any significant way the interests of powerful states.

How Karim Khan is going to deal with that issue is unclear. Fatou Bensouda has made preliminary steps towards doing that, but whether the court is going to face backlash, whether a Biden administration who tries to

engage the court rather than isolate the court is more able to influence the court is an open question.

James: Is the ICC going through an existential crisis due to a lack of successful prosecutions outside of Africa?

Rodman: To clarify, there have been no charges brought against anyone outside of Africa. Even within Africa, they’ve been limited. There have been several high-profile acquittals, most significantly was the acquittal of Laurent Gbagbo, the former president of Côte d’Ivoire, and that raises some interesting issues relevant to some of the issues regarding the legacy of the command responsibility precedent. Laurent Gbagbo was indicted for inciting his followers to attack civilians associated with the opposition after the disputed election in Cote d’Ivoire in 2010. His side lost the political violence that ended the conflict, and after his opponent took office, he was arrested, and the ICC issued an arrest warrant. He, his wife, and youth minister, were all brought up on charges by the ICC. Two of them were sent to the ICC to stand trial, but they were acquitted. They were acquitted because the court determined that the evidence on which he was accused was based on inference, that is these were groups that were supported by Gbagbo; many of his statements might have seen somewhat inflammatory, encouraging those groups to engage in violence, but there was no direct incriminating evidence that was sufficient to hold him criminally liable in a court of law. This ties into an interesting controversy in terms of international law and questions of culpability. If you go back to the Pacific war crimes trials, one of the most famous cases was that of Tomoyuki Yamashita who was held accountable for this rampage of his troops in Manila. Even though he didn’t order it, his communications were cut off when the rampage took place, and he ordered those troops to withdraw from Manila as soon as communications were reestablished. The idea is that a commander is responsible for the behavior of his subordinates, and many of the early decisions of the ICC and the International Criminal tribunals were based upon the Yamashita precedent. But there was some backlash against that from some international human rights lawyers who focused on the rights of the accused, arguing that it was too easy to actually convict people if all you were relying upon was this kind of inference. For example, the arrest warrant against Omar Hassan al Bashir is based upon a similar kind of logic. You began to see in the Yugoslav tribunal a series of acquittals arguing there was insufficient evidence that those leaders who were in the dock had given specific direction to the militias who were engaged in the war crimes. This has been used in several cases such as with a militia leader in eastern Congo,

named Jermaine Katanga, and most recently with Laurent Gbagbo as a way of acquitting people who, most NGOs and most international observers believe were guilty of criminal violence. There have been some problems, all the charges have been in Africa and even in a lot of those African cases; Bashir still isn't in The Hague. The Kenyatta and Ruto cases, which were the highest profile individuals that the ICC brought charges against, fell apart in large measure because the Kenyan government that was led by the two people who were being put on trial, used the power of the state to intimidate witnesses. As a result, you did not have the kind of incriminating evidence you would need to be able to sustain the prosecutions. The court has even confronted a number of problems in terms of its African cases.

James: Moving onto wider issues of multilateralism, do you think that the actions of the Trump administration will make Biden's return to traditional multilateralism more difficult?

Rodman: I think it depends on what issues you're talking about. I would say that the Biden administration is going to return to multilateralism, but there are also political considerations that might set limits on the degree of that return. It wasn't until recently that Biden removed Trump's sanctions against Bensouda, perhaps in part because the Biden administration did not want to move too quickly because it did not want to see the ICC bring cases against Americans from Afghanistan that are 15 to 20 years old. It has not removed the tariffs against China yet, and it's likely to reverse the Trump administration's policy of basically paralyzing the appeals chamber in the WTO by vetoing the appointment of any new commissioners.

The Biden administration has been reluctant to move away from some aspects of Trump's economic nationalism, in part because of domestic political considerations. Returning to the World Health Organization is likely to be considerably easier, but relations with China are much testier now in comparison to five or six years ago and developing the kind of cooperative relationship with China, on global public health is likely to face some constraints. The JCPOA, the Iran nuclear deal, is also an area where the Biden administration would like to return to multilateralism. But Iran has exceeded what they could do in the treaty because the United States pulled out. But the Iranians insist upon compensation for the US pulling out, and that's a nonstarter. The hardliners within Iran are likely to be much more skeptical of cooperation with the United States because there's no guarantee that what's agreed to by one administration will be adhered to by

the next. Even though the Biden administration would probably like to go back to the status quo that existed before Trump pulled out of the JCPOA, that's going to be a pretty rough slog, and the secondary sanctions are still on Iran, even though the Biden administration was critical of the Trump administration's policy. I think going back to multilateralism is going to depend upon the issue area, rather than across the board.

James: Would you say that some of President Trump's policies against multilateral institutions were justified?

Rodman: Well, I would argue that what the Trump administration engaged in was a kind of vandalism of multilateral institutions. Nonetheless, some of the issues that were raised addressed legitimate questions, even though I think that the answers that were given by the Trump administration were based more on bluster and a visceral hostility towards international law and multilateral institutions.

Let me first address the issue generally. Why multilateralism? One of the arguments, or one of the debates that we should have when we talk about multilateral institutions is: are we better off by operating through rules and institutions than we would be if we simply acted on our own? The argument for multilateralism is there are certain common interests that require us and other countries to accept certain commitments to abide by the rules, and that if we can reliably get other countries to do that, we are better off than if we act unilaterally. On the other hand, there may be some circumstances where countries are better off promoting their interests unilaterally than they are through institutions. It's a pragmatic question.

The Trump administration had a legitimate point that some of the rules of the WTO did not address some of China's practices like the opaqueness of its political and economic system, and the degree to which it was subsidizing state-owned enterprises, or the sort of surreptitious way in which they required foreign investors to share technology and intellectual property rights with them. There were some legitimate questions one could ask as to whether or not the WTO addressed those issues. And in some circumstances, a case could be made that operating outside of the WTO, using unilateral economic pressure might be a more effective way of addressing these issues than relying upon a slower and more cumbersome process. On the other hand, a lot of other countries shared American concerns about China. Many of those countries invited the United States to join them in WTO suits against China, but the Trump administration's response

to that was not only to refuse, but to in effect, launch trade wars, not just against China, but against Canada, the European Union, and Japan - countries who had shared interests with the United States in terms of opposing certain Chinese economic practices. Even though there is a case to be made that multilateral economic institutions did not effectively address certain aspects of China-incorporated [referring to the CCP's control and subsidization of public and private Chinese corporations to make their products more competitive]; the ham-handed way in which the Trump administration approached that issue was counterproductive.

Take the issue of NATO. It wasn't just Donald Trump, but his predecessors and I am sure it will be Joe Biden, who believes that the Europeans are not pulling their weight within NATO. But the Trump administration's approach largely worked to antagonize allies and made cooperation more difficult. A lot of the steps that the Trump administration took seemed to be more motivated by personal disputes than they were by any kind of strategic rationale. When the United States redeployed troops out of Germany to Poland, this was justified by Germany only paying 1.4% of its GNP on its defense spending, and this way of demonstrating to them that they are not meeting their obligations. On the other hand, Poland spends a lower percentage of its GDP on defense spending, and the real reason why President Trump did this was because Angela Merkel was the first EU leader who said no to a G7 summit within the United States during the COVID pandemic, and this was a way of retaliating against her. If you look at Trump's actual policies, they seem to be motivated more by his personal animosity towards certain leaders rather than a coherent strategic approach towards more equitable burden sharing within Europe.

Now, take the case of the World Health Organization, the WHO was initially overtly deferential towards China, in large measure because they depend upon China for access to the kind of information that is necessary to address the virus. As a result, they belatedly recognize that COVID was going to create or had the potential to create a pandemic. They were also very reluctant to commend Taiwan as one of the most successful countries in dealing with COVID because of the fear of offending China, who they depend on not just for funding, but also access to Chinese territory. There are a number of things you could criticize the WHO for. On the other hand, it seems to me that the withdrawal from the WHO was unjustified given the WHO's contribution to COVAX and making vaccines generally available. In addition, the lesson

of COVID is not a kind of America First, "we should maintain our absolute sovereignty," approach towards global health. It should be that this excessive emphasis on sovereignty is counterproductive to a world in which we are likely to face more risks of global pandemics in the future. One of the problems with the WHO is that it does not have a strong ability to challenge sovereigns. In 2005, after SARS, the WHO passed something called the International Health Regulations, which created binding obligations on the part of member states to report any disease or virus that has the potential to cross borders and become a global pandemic. But then, WHO has limited authority to enforce that binding obligation as it is dependent upon access by sovereign states. When Ebola broke out in the early part of the last decade, some of the West African countries that had Ebola were reluctant to allow the WHO in because, to acknowledge that you have Ebola in your country might undermine the legitimacy of its leaders; it might scare away foreign investment and tourism. The outcome is very similar to what you saw with China, a much larger, more influential country than the West African countries, both of whom were able to delay WHO involvement. What's going to be the lesson of COVID is that we should empower international institutions to be more intrusive in national sovereignty because there is a need to make sovereignty more transparent to prevent the recurrence of what we have just experienced. I think that the lessons that the Trump administration drew from some of the failures of the WHO and dealing with COVID is that pulling out of the WHO, referring to it as a useless organization, is out of touch with what we need to do to prevent the next crisis. What we need are stronger institutions that can more effectively challenge sovereignty, rather than the demolition of those institutions we have now.

From Timbuktu to Ogossagou: the Banality of Violence in Mali

Eleanor Harlan '21

On August 18, Mali experienced its second coup d'état in less than a decade. In the early morning hours, mutinous soldiers marched on the capital city of Bamako and demanded the resignation of President Ibrahim Boubacar Keita, citing – among other things – his mismanagement of the country's multiple violent conflicts. Onlookers would note the similarity between the August putsch and the one carried out in 2012: both were prompted by insurgencies.

In January 2012, separatists from the Tuareg ethnic group launched a rebellion in northern Mali, setting in motion a chain of events that would drag the country into violent chaos from which it has yet to emerge. Today, Tuareg nationalist groups continue to clash with pro-state militias in the north, terrorizing local civilians. Fueling this conflict is the destabilizing presence of jihadist groups, which have grown and multiplied since their emergence in 2012. Since 2015, however, the epicenter of crisis has shifted to central Mali, which is witnessing communal violence on an unprecedented scale. In the regions of Mopti and Ségou, an increasingly bloody cycle of ethnically motivated attacks between the Fulani and Dogon communities has left thousands dead and tens of thousands displaced. Mali's ethnic and jihadist violence has grown so out of control that it now spills over into neighboring Burkina Faso and Niger. The country has become a security liability for its African neighbors and is witnessing a humanitarian disaster of extreme proportions. The security situation inherited by the military junta on August 18 is exponentially worse than the one eight years prior.

Since 2012, Mali has gone through two crises: one in the north, and one in the center. Attempting to distinguish between these two conflicts, however, masks their many similarities. While unique in its local dynamics, the current violence in central Mali is merely a new chapter in the country's long history of crisis. At the heart of both of today's conflicts lies a weak central state whose incapacity and unwillingness to deliver services and security to all its citizens has generated a decentralized governance model that disproportionately privileges certain segments of the population over others. The corruption and dysfunction at the center of this model have fueled communal ten-

sions, insecurity, and economic disparities among Mali's peripheral populations. It is these three conditions that precipitated both the conflict in the north and the conflict in the center, and it is these same conditions that sustain violence in both places today. In short, nothing is really new about central Mali's catastrophe.

This paper is structured in three parts. The first section briefly details the conflict in the north so as to give adequate background to the current violence in the center, which will be explored in the second section. The third section will examine the crisis of the Malian state and how it has engendered persistent conflict in the country. Finally, this report will conclude with the implications of Mali's multiple crises for the country's democratic prospects and for conflict mediation strategies broadly.

Part One: The Crisis in the North

Discord in the desert

In order to appreciate the similarities between Mali's regional conflicts, a brief analysis of the northern situation is required. While the circumstances in Mopti and Ségou differ from those in the north, it was the Tuareg uprising in 2012 that triggered the onset of violence in the country's center. Fueling the conflict in both regions are the same primary conditions: increased communal tensions between and within ethnic groups, competition over economic resources, and a persistent security and governance vacuum, all of which can be traced back to state weakness and corruption.

Legacy of Tuareg rebellion

While unique in its current iteration, Tuareg separatism is a familiar phenomenon in Mali. The Tuareg people, Berber in origin, have historically inhabited the arid lands of the Sahara, spanning the countries of Mali, Niger, Chad, Algeria, and Libya. Predominantly nomadic pastoralists, they claim a distinct language, culture, and system of social organization. During the colonial period, French administrators in the southern capital viewed the Tuareg with a mixture of suspicion and respect, but nonetheless granted them a great deal of autonomy. After Mali's independence in 1960, however, successive regimes

would attempt to curtail this autonomy, perceiving the Tuareg's nomadic lifestyle and feudal society as backward and counterproductive to Mali's development. A series of forced agricultural policies and social emancipation reforms disrupted Tuareg livelihoods and upended their traditional hierarchies, exposing the state's disdain for Tuareg lifestyle and culture.¹ The Tuareg viewed the government in Bamako with equal contempt, perceiving it as an illegitimate entity whose intrusive and domineering presence in their territory represented a kind of neo-colonialism.² Tuareg nobles, who saw their privileged political status depart with the French, were particularly offended by the government's social reforms. In 1962, Tuareg elites led the first Tuareg revolt, an uprising that lasted two years and was violently suppressed by the Malian state. Three more rebellions would follow in 1990, 2006, and 2012.

These repeated attempts at secession reflect the inability of the state to effectively and meaningfully integrate its northern populations into the Malian polity. The regions of Kidal, Gao, and Timbuktu have historically been excluded from state development initiatives, resulting in a profound economic and infrastructure disparity between the sparsely-populated north and the Malian heartland in the south.³ Timbuktu, once a flourishing capital of trade and scholarship during the 13th and 14th centuries, had the highest poverty rate in the country in 2011.⁴ The state's neglect for the north is also visible in the paucity of public services; schools are under-resourced and unequipped to serve the needs of a nomadic population.⁵ This governance gap merely underscores the cultural, linguistic, and geographical divides that have long alienated the Tuareg from Mali's southern population.

Changing social dynamics in the post-colonial context

Despite these regional disparities, it would be incorrect to regard Tuareg separatism as a manifestation of Tuareg solidarity in the face of a foreign and corrupt state. While the Tuareg have suffered from the state's neglect of their region, they are not universally in favor of secession. Tuareg rebellions have historically been an elite project in reaction to a changing status quo. Understanding the 2012 conflict thus means accounting for the increasing salience of tribal divisions in the region. Structurally, these divisions can be attributed to the hierarchical nature of Tuareg society, which closely resembles that of the Fulani in central Mali. Tuareg social organization is highly stratified between nobles (Ifoghas), "vassals" (Imghad), and castes of former slaves (Bella). Skin color plays a role in reinforcing these divides; the Ifoghas are typically lighter skinned while the lower castes tend to have darker skin.

Originally privileged under French colonial rule, the Ifoghas were systematically marginalized by the Malian state after the first Tuareg revolt in 1962. These efforts by the state to subordinate Tuareg nobles to its authority disturbed the traditional Tuareg social hierarchy; once-powerful Ifoghas gradually saw their social and political pre-eminence diminished in favor of the lower-caste Imghad. After the 1990 rebellion, in which many Imghad sided with the state, tensions between traditional nobles and assertive Imghad leaders became more pronounced. Additionally, the surge in trans-Saharan drug trafficking in the 2000s produced a class of powerful Imghad smugglers whose dominance of the criminal milieu allowed them to influence local politics.⁶ The state fed these tensions by pursuing a strategy of divide-and-rule towards the north, forging alliances with loyal Imghad politicians and drug traffickers.⁷ This preferential treatment reinforced tribal divides and exacerbated Ifoghas' anxiety over the changing status quo.

Tuareg separatism in Mali should therefore be viewed not as a collective ethno-nationalist project but rather as a noble-led effort at reversing decades of Imghad ascendancy. This dynamic is the inverse of the situation in central Mali: in Mopti and Ségou, it is the disenfranchised Fulani *peasants* who seek to overturn *elite* domination. While different in this respect, the case of the Fulani and the Tuareg illustrates the same basic dynamic: a hierarchical society in which one group seeks to subvert the supremacy of another. This shared objective reflects the increasing social divisions that defined Tuareg and Fulani societies prior to 2012.

Equally important, however, are the divisions *within* the Ifoghas elite. Power struggles between individuals from different noble clans largely account for the split of the 2012 Tuareg rebellion into competing nationalist and Islamist factions. The Malian state has also played on these intra-noble rifts as part of its broader strategy of indirect governance and co-optation. The 1990 Tuareg rebellion and the political concessions it generated for rebel leaders accelerated this competition among Tuareg elites, who have since used violence as a tool to gain access to state patronage.⁸ It is thus impossible to understand the legacy of Tuareg separatism in Mali without accounting for the distinct Tuareg social hierarchy and elite machinations within it.

Decentralization and increasing corruption

Decentralization and the corruption and misgovernance it induced is key to interpreting the current crises in

northern and central Mali. Negotiated in the midst of the 1990s Tuareg rebellion, the National Pact of 1992 granted special status to the territory of Azawad (the name for the Tuareg heartland) as part of a broader process of state decentralization. This decentralization, codified nationally in 1993, entailed the nominal devolution of state resources and authority away from the southern capital of Bamako and into local provinces. More local governance, however, did not translate into better governance: the state's already limited capacity to deliver services meant that peripheral areas received even fewer resources.⁹ Decentralization also provided local elites with new revenue streams from which they could skim funds, while the reduced government oversight meant such rent-seeking went unchecked.¹⁰ Thus, rather than facilitating more effective local governance, the decentralization process in northern Mali witnessed a rise in corruption and a reduction in public services.

While northern communities did not experience the fruits of decentralization, elites benefited greatly from their new administrative prerogatives. The "special status" granted to the north and the reallocation of funds to local authorities revived the game of tribal politics, empowering ambitious Imghad to challenge the subordinate position of their tribe. During the 2000s, these power struggles occurred against the backdrop of an increasingly profitable smuggling economy, which thrived in the security vacuum left by decentralization. The north thus became a playing field for Imghad-Ifoghas maneuvering and contestation over resources at the expense of development and communal solidarity.

From Azawad to Allah: Tuareg rebellion and Islamist hijacking

Chafing at what they perceived to be state-supported Imghad ascendancy, Tuareg Ifoghas began planning another attempt at secession in the hopes of reversing the decades of economic and political gains made by the Imghad. The window of opportunity came in late 2011, when the regime of Libyan dictator Muammar Gaddafi fell after months of civil war. In the wake of the regime's collapse, armed Tuareg mercenaries who had been fighting in Libya returned to Mali, providing the manpower and weapons for another rebellion. That same month, the National Movement for the Liberation of Azawad (MNLA) was formed.

In addition to the militants returning from Libya, the 2012 Tuareg rebellion was made possible by an alliance between the MNLA and jihadist groups that had gained prominence in the region and also sought to undermine

the state. Most significant of these was Ansar Dine, led by the former Tuareg rebel commander and Ifoghas noble Iyad ag-Ghali. The combined forces of the MNLA and the jihadists allowed them to inflict a series of humiliating defeats upon the Malian army in January 2012. In March, after several weeks of sustained losses to the rebels, a group of disgruntled junior officers launched a coup against President Amadou Toumani Touré. In the chaos that followed, military command networks were severed and the remaining soldiers in the north fled their posts.¹¹ This security vacuum paved the way for the rebels to capture the rest of the cities and towns in northern Mali, and on April 6th, an independent state of Azawad was proclaimed.

Once the goal of expelling the state from the north was achieved, the fragile alliance fell apart. Iyad ag-Ghali immediately declared his opposition to the MNLA and the notion of an Azawad state, and instead proclaimed his intent to impose sharia law in all of Mali. By the fall of 2012, Ansar Dine and two other jihadist groups would reverse the gains made by the MNLA and come to dominate nearly all of northern Mali. The success of the Islamists at hijacking the rebellion was a product of their ability to manipulate the structural conditions of northern Mali, namely, pervasive insecurity, social cleavages, and competition over drug smuggling.

By the fall of 2012, the jihadists had taken over all three regions of northern Mali and were advancing south. The state, still reeling from the March coup, appealed to its international allies for assistance. The French Operation Serval, launched in January 2013, would be the first of many coordinated efforts by international bodies to stamp out the extremist threat. Each of these efforts, however, would fail to achieve stability in Mali and only invite further violence. The MNLA was joined in its separatist fight by other Ifoghas- and Arab-led groups, which prompted the rise of self-defense militias that allied with the state. Currently, the north is divided between armed groups opposed to the state, loyalist militias, and jihadist groups. Low-level conflict is ongoing, punctuated by violent attacks by the jihadists against military and civilian targets.

This proliferation of armed groups with diverging interests and shifting alliances has exacerbated the insecurity experienced by northern communities. Al Qaeda and the Islamic State have added to the chaos by launching frequent assaults on domestic and international security forces. Just last month, simultaneous rocket attacks struck military bases in Kidal, Gao, and Ménaka, damaging

barracks housing UN and French forces.¹² Since 2013, successive peace agreements and ceasefires have been made and then violated. Driving the continued instability in the north are the same forces that caused it in the first place: the inability of the state to provide security, the persistence of communal tensions, and an illicit economy that incites competition and confrontation between armed actors.

Part Two: The Crisis in the Center

Boiling point: heightened communal tensions on the eve of 2012

While jihadists were sweeping through northern cities in the late spring of 2012, a Fulani community in central Mali witnessed a massacre. On May 22, in the town of Sari, a series of clashes between Fulani pastoralists and Dogon farmers over a land use dispute left twenty-five dead, most of them Fulani. While completely unrelated to the crisis unfolding in the north, this deadly altercation between communities displayed many of the same dynamics. The Sari massacre reflects three key features present in central Mali on the eve of the 2012 crisis: increasing competition over natural resources, the failure of the state to provide security and justice to the region, and the breakdown of traditional authority and customary norms guiding communal interactions. These three mutually-reinforcing dynamics have disproportionately affected the Fulani community and served as drivers of Fulani recruitment into jihadist groups after 2012.

Increased competition over land

In the past 30 years, access to land has become an increasingly contentious issue between Mali's sedentary and herding populations. Unlike the arid north, the land of the inner Delta region is fertile and highly desirable for farming and fishing. However, a series of droughts during the 1970s and 1980s devastated the country's crops and destroyed the livelihoods of millions of Malians. Global warming has also taken its toll; warmer temperatures across the Sahel have heightened insecurity over the availability of arable land. At the same time, Mali's population has doubled in the past 25 years from 9.5 million in 1995 to 19 million in 2019.¹³ This combination of population growth and warming temperatures has put increasing pressure on the land and on the communities that rely on it to survive.

The Fulani have suffered disproportionately from this resource insecurity and the government's attempts to mitigate it. The state has intervened to prevent desertification in the inner Delta, but these policies have had the adverse

effect of exacerbating tensions between pastoralists and farmers. After the droughts of the 1970s, the Malian state initiated a series of land development policies aimed at controlling seasonal flooding and expanding rice paddy cultivation in the region. These policies prioritized agricultural development at the expense of the pastoralists, who watched their grazing corridors and feeding pastures shrink. The government also revived the Forest Service, a paramilitary organization that originated during the colonial period to protect the region's natural resources. Newly empowered with an enhanced mandate to halt desertification, the Forest Service imposed severe restrictions on land use and enjoyed virtual impunity to police local communities. The organization quickly became a vehicle for predation and corruption; Forest agents were allowed to retain a portion of fees collected, and thus demanded exorbitant sums from local farmers and herders.¹⁴ Pastoralists, relying as they did on access to grazing corridors, were disproportionately targeted by the rent-seeking practices of the Forest Service. As an appendage of the central government, the Forest Service came to be viewed by the Fulani as proof of the state's disdain for their livelihoods.

State failure to deliver security

Where the Malian state is not overtly predatory, it is frustratingly absent. The government's intervention to protect farmable land in central Mali represented a unique departure from its traditionally hands-off approach to the region. The provinces of Mopti and Ségou have historically received little attention from the central state in Bamako, a reality reflected in the scarcity of public services. Mopti is one of the poorest regions in Mali, with a high index of extreme poverty, weak infrastructure and institutions, the highest HIV/AIDS rates, and the highest levels of food insecurity.¹⁵ Access to education is also limited, particularly for nomadic pastoralists such as the Fulani. Most acute, however, is the relative absence of justice and protection in central Mali. Even before the 2012 crisis, central Mali suffered from chronic insecurity and uneven application of the law. Petty banditry, livestock theft, and land use disputes were rarely met with swift and impartial justice by the state, let alone prevented beforehand by a competent and responsive police force. That the 2012 attack in Sari went uninvestigated and no perpetrators were arrested is proof of the Malian state's unwillingness to deliver security and justice to its central populations, both pastoral and sedentary.

Breakdown of communal norms and traditional authority

In the absence of an accountable, impartial, and accessible legal system, communities in central Mali have histori-

cally turned to traditional authorities to settle disputes. Yet these traditional institutions had also eroded in the decades preceding the current crisis, largely due to changing communal dynamics and pervasive corruption by local elites and the central state.

For centuries, land management in the Delta has relied on customary norms between sedentary and pastoral communities. Both groups enjoyed a mutually beneficial relationship for most of their coexistence; the Dogon relied on the Fulani for cattle trade, and Fulani herders could access land corridors to herd their animals.¹⁶ This economic interdependence, however, has declined significantly in recent decades, as Dogon farmers have benefited from the state's pro-agriculture policies and now enjoy a high degree of financial autonomy. This socioeconomic imbalance disrupts the fragile norms that have guided Delta land management for centuries; no longer economically reliant on the Fulani, the Dogon are now less incentivized to seek out peaceful resolutions to communal disputes.¹⁷ Increasingly common clashes like the 2012 Sari massacre reflect this deteriorating relationship. Dogon advancement also underscores the relative impoverishment of the Fulani, who have seen their communities gradually deprived of land access by a state that views pastoralism as an outdated relic that is incompatible with Mali's development goals.

While Fulani relative deprivation vis-à-vis sedentary communities contributes to today's conflict, the initial driver of Fulani recruitment into jihad was the failure of their own leaders. Similar to the Tuareg, Fulani society is highly hierarchical, with clear distinctions between the traditional landed nobility and 'peasant' classes. Fulani nobles, "*jowros*," have historically been responsible for land management among the Fulani community, granting access to pastures and determining grazing routes. While initially marginalized by the socialist and pro-agricultural programs of Mali's early leaders, these Fulani chiefs regained prominence after decentralization in the 1990s. As a result, the office of the chieftaincy has become increasingly defined by corruption. *Jowros* are frequently accused of collusion with the state; they work closely with federal administrators and are widely viewed as an extension of the government in Bamako.¹⁸ These perceptions are not unfounded; in their role as intermediaries between the central government and the local population, *jowros* have become implicated in the predation of Fulani peasants. Land management has become an opportunity for rent-seeking by Fulani chiefs, who use their traditional authority over land access to extract additional fees from herders passing through their pastures. They are joined

in this rent extraction by local government officials and politicians, whose entry into the feudal economy suggests to the peasant population that the state and the chiefs are in cahoots.¹⁹ Even the traditional justice system has been corrupted; Fulani judges have been known to take bribes from both parties of a dispute, demanding higher and higher sums from each side and thus prolonging the case indefinitely.²⁰ Taken together, the increasingly unscrupulous actions of elites have come to symbolize the illegitimacy and perversion of traditional authority in Fulani society, a perversion with its roots in state decentralization.

Here again, the massacre in Sari provides an illustration. When the Fulani herders were being attacked, the village chief of Sari called upon the neighboring chief of Boni (widely seen as the most influential chief in the area) for assistance. His appeal was denied, largely because the Boni chief was allied with the MNLA and preoccupied with the group's takeover of his village.²¹ To the Fulani community, this refusal of assistance at a critical moment confirmed the moral bankruptcy of the Fulani elite. Ostensibly the leaders and protectors of the Fulani community, the *jowros* had increasingly come to resemble the apathetic administration in Bamako. At their worst, they resembled the rapacious agents of the Forest Service. This realization generated a deep sense of disillusionment and despair among Fulani peasants. For a people already marginalized by the central state, the neglect and exploitation shown by their own kind amounted to betrayal. The northern jihadist insurgency in 2012 would offer many young Fulani a means to articulate that betrayal – and to avenge it.

"We know all Fulani are not jihadists – but some are."²²

As a result of these heightened communal tensions, community arming in central Mali began almost immediately after the rebellion in the north. As state administrators and security forces fled their posts in Mopti and Ségou, central Mali residents were left to their own devices in a virtually lawless environment. A surge in banditry and cattle theft, coupled with reports of MNLA abuses, prompted many Fulani communities to seek protection.²³ Some were provided arms by noble Fulani elites, while others joined the Islamists.

Reasons for Fulani recruitment into jihadist groups were initially based on self-defense and financial opportunism. Al-Qaeda in the Islamic Maghreb (AQIM) and the Movement for Unification and Jihad in West Africa (MUJAO) provided young Fulani men with training

and weapons to defend their communities. There were also economic incentives; these groups could afford to pay recruits handsomely, and the promise of a salary was more than enough for many impoverished Fulani youth to sign up.²⁴ While a disproportionate number of Fulani joined the ranks of jihadist groups in 2012, very few were motivated by ideological convictions.

The state, however, would not make the distinction between ideological affinity and pure opportunism. After Operation Serval drove the jihadists from their strongholds in early 2013, the military slowly returned to central Mali, where it immediately began targeting alleged Fulani “extremists.” On several occasions, the Malian armed forces carried out summary executions and torture against Fulani civilians suspected to be jihadists.²⁵ Arbitrary arrests and detentions were also commonplace. Similarly, 2013 saw the return of civil administrators to central Mali, who carried out their own abuses against Fulani citizens.²⁶ No one considered the fact that it was the *withdrawal* of these state actors that prompted Fulani recruitment into jihadist groups. It did not help that Fulani nobles denounced many of their vassal kin to the authorities after these individuals demanded greater rights and protection.²⁷

It was in this environment of heightened insecurity and elite-peasant tensions that Amadou Koufa would emerge. Born to a poor Fulani family, Koufa made a name for himself in central Mali as a firebrand Salafist cleric. In the 2000s, he developed a close relationship with Iyad ag-Ghali, the Tuareg rebel leader who would form Ansar Dine in 2011. During the 2000s, Koufa cultivated links with Al Qaeda in the Islamic Maghreb. After the 2013 French intervention in the north, Koufa was encouraged by AQIM to return quietly to central Mali and begin building up a local base of jihadist fighters.²⁸ Koufa obliged and spent the next two years recruiting among disillusioned Fulani youth, forming the core of what would become the Katiba Macina (“Macina Front”) in 2015.

A skilled orator, Koufa promoted a rhetoric of “pastoralist populism,” playing on the resentment and betrayal felt by the Fulani towards their elite leadership. His speeches, delivered in the local Fulbe language, decried the predatory fees exacted by the *jowros* and their collusion with the Malian state. Koufa also denounced the foreign military forces occupying central Mali, calling them “colonizers” who propped up the corrupt Malian government. Corruption was a recurring theme in Koufa’s speeches; he made frequent references to the crooked justice system and the rent-seeking practices of the Forest Service.²⁹

Nowhere in his early speeches were there references to the Dogon or other sedentary ethnic groups. His fight was against the Malian state and its conspirators, which he identified as foreign troops and the landowning Fulani elite.³⁰ Koufa argued that Islam’s egalitarian doctrine was the natural remedy to this heinous state of inequality.

By 2015, Koufa had gained hundreds of recruits. As it grew and expanded in central Mali, Katiba Macina also secured support in some communities through the security and services it provided. Katiba leaders recovered cattle that had been stolen from raids, and they harshly punished banditry and petty crime in areas under their control.³¹ The jihadists also abolished the dreaded taxes and land use fees previously extracted by the *jowros*.³² As the Malian military continued to target Fulani civilians, more and more young men joined the movement for reasons similar to 2012: protection, payment, and liberation from elite subjugation. Katiba Macina took on an increasingly Fulani character which was reinforced by Koufa’s rhetoric.

Koufa did not need to play up the Fulani identity of Katiba Macina, however; the state did that job for him. A 2015 attack on a hotel in Bamako was quickly attributed to the new jihadist group growing in central Mali.³³ From that point on, the state began blaming every attack in the region on Fulani extremists. While Katiba Macina was indeed behind many of these assaults, it was the state’s response that proved problematic. At the time, Koufa’s group only consisted of 200-300 militants, but the government’s repeated references to the “Fulani movement” in central Mali triggered the perception among local communities that the Fulani were collectively complicit in the violence that was spreading throughout the region.³⁴ The insecurity and mistrust that resulted from these perceptions prompted the self-arming of communities, which would have disastrous effects.

What is more, the state’s response merely incited more Fulani to join the jihadists. After decades of pursuing a hands-off strategy of governing central Mali, the government had enabled the gradual impoverishment, exploitation, and insecurity of Fulani communities, who then became vulnerable to radical ideology. Then, in rushing to paint the pastoralists as jihadist sympathizers, the state exposed its contempt and disregard for the Fulani community, thereby confirming Koufa’s thesis.

“All the Fulani are inside this thing – all of them.”³⁵

Insecurity and rise of ethnic militias, ca. 2016

While Katiba Macina declared itself officially at war with

the Malian state and foreign military forces, the group also preyed upon civilians. Jihadists on motorbikes regularly swept through villages and demanded payments in exchange for protection. Opportunistic young men nominally aligned with Katiba Macina used their weapons and authority to steal cattle and plunder villages.³⁶ In line with their anti-elite rhetoric, jihadists assassinated over 30 community leaders between 2015 and 2017. In a clear act of revenge for the Sari massacre, the jihadists came for the Fulani chief of Boni in 2016.³⁷ Because the military and the local police could not be counted on to respond to these instances of crime and violence, communities began establishing “self-defense” groups. The formation of these ethnic militias reflected increasing communal mistrust between sedentary communities and the Fulani, who were widely perceived as complicit in jihadist violence.

This mistrust peaked in October 2016, when jihadists assassinated the prominent Dogon leader Théodore Somboro. This act prompted the Dogon to mobilize a militia, the Dan Na Ambassagou. Ostensibly formed to protect the Dogon community from jihadist attacks, Dan Na Ambassagou soon began initiating violent raids on Fulani villages, claiming that their inhabitants were harboring terrorists. In response, the Fulani formed their own militia, the *Peuhl Alliance pour le Salut du Sahel*. Since its conception, the Alliance has vehemently denied any links to jihadist groups, but Dogon and other militias rarely distinguish between the two.³⁸ As a result, the Alliance has consistently been targeted by both the Dogon and the Malian state, even though all three claim to be fighting the jihadists. The Bambara, another sedentary ethnic group, also mobilized its traditional hunters’ society (the Dozo) under the banner of community self-defense. Thus, 2016 saw the emergence of two mutually reinforcing dynamics in central Mali: the ethnicization of security and the crystallization of ethnicity. These developments speak to the state’s inability to provide general security as well as the communal tensions that had been mounting well before the 2012 crisis.

The state takes sides: Bamako’s support of ethnic militias

On March 23, 2019, horrifying images of a Fulani village burned to the ground circulated among international media outlets. In the Mopti village of Ogossagou, 160 Fulani herders were killed and 70 wounded in an attack attributed to Da Na Ambassagou. In addition to the killings, livestock had been stolen or burned, reflecting a common practice of destroying Fulani livelihoods along with lives. The massacre prompted the UN Special Adviser on the Prevention of Genocide to issue a warning about the growing ethnicization of Mali’s conflict.³⁹ For

many outside Mali, this was their first exposure to ethnically motivated violence in the country. For those living in central Mali, however, the Ogossagou massacre and its aftermath came on the heels of a series of similar attacks and reprisals that had escalated considerably since 2018. Three days after the massacre, on March 26, six Dogon villagers were killed and 20 kidnapped by Fulani militants in a suspected revenge attack. Later, in June 2019, an overnight ambush of a Dogon village in Mopti left 95 civilians dead and nineteen missing. These events represent only a fraction of the attacks perpetrated against Fulani and Dogon communities in Mopti and Ségou: between January 1, 2018 and May 16, 2019, at least 488 Fulani civilians died in militia attacks. In the same period, armed Fulani were responsible for 63 civilian deaths.⁴⁰ 42 attacks took place in the region in 2018 alone, more than half of them against Fulani. In February 2020, Ogossagou was attacked a second time by Dogon militants, this time killing 21 civilians.

This vicious cycle of tit-for-tat violence potentially could have been avoided had the government pursued a different strategy to combat the jihadists in 2015. Instead, the state chose the path of least resistance, as was its custom. Rather than mobilize the armed forces to patrol communities in Mopti and Ségou, the government in Bamako made the fateful decision to outsource security to its preferred ethnic groups.

The Malian state has been accused on several occasions of supporting the Dogon by providing them with weapons and training. Officials in the capital have emphatically denied such claims, but leaders of both the Dozo and Da Na Ambassagou acknowledge that “friends in the security forces” have provided them with logistical and financial support.⁴¹ The Fulani claim that the Bambara and Dogon militias are displaying increasingly sophisticated weapons and tactics, suggesting that they are indeed receiving external assistance.⁴² The state’s selective backing of these militias has calcified the ethnic nature of the conflict and exacerbated the divisions that already existed between the Fulani and their sedentary neighbors. For the Fulani, the state’s support of the Dogon and Bambara is a painful reminder of Bamako’s contempt for their welfare. This has fueled resentment among both ordinary Fulani and jihadists, who continue to strike out against Dogon communities, perpetuating the cycle of violence.

While the state’s support of the Da Na Ambassagou may seem wildly ill-conceived, it was not a lapse of judgement. In backing the Dogon and Bambara militias, the state was referring to a well-worn page of its conflict management

playbook. In the north, the government was supporting GATIA, an Imghad self-defense group, in its confrontation with the Ifoghas and Arab rebels. Bamako's support of Imghad militias has exacerbated the tribal nature of the northern conflict and contributed to the breakdown of the 2015 peace agreement.

But that was not the first time, either. During the 1990s rebellion in the north, the government supported the Ganda Koy, an ethnic Songhay militia, as a counterweight to the Tuareg rebels. Throughout the uprising, the militia engaged in a brutal ethnic cleansing campaign against white Tuareg and Arabs, killing hundreds of civilians. The legacy of the Ganda Koy's violence and its racist propaganda still informs northerners' perceptions of the Black Songhay community today.⁴³ Thus, what transpired in central Mali in 2016 was not merely a poor policy decision that backfired; it represented a longstanding strategy of devolving security to local actors. In Mopti and Ségou, it just happened to produce particularly calamitous results.

The government's use of ethnic proxies highlights the incompetence of its own armed forces. The Malian army is not only ill-equipped to deal with the constant cycle of attacks, but it also appears uninterested in even attempting to do so. Most reports of violence go uninvestigated by authorities, and there have been several instances in which an attack was underway and security forces failed to respond to the call. This has been a complaint of all communities, not just the Fulani; Dogon and Bambara leaders frequently criticize state and coalition forces for not showing up in time to stop atrocities.⁴⁴ The state has addressed these gross lapses in response time by citing "difficult operational environments" caused by lack of resources and "challenging terrain."⁴⁵ This excuse epitomizes the state's refusal to accept responsibility for the crisis that it effectively invited upon itself. Had the armed forces promptly responded to reports of attacks, much of Mali's bloodshed could have been avoided. Had the state established a security presence in central Mali in the first place, then there would be no need for ethnic militias. These measures, however, would have required effort, resources, and interest, none of which Bamako was prepared to supply to its peripheral communities.

Mediation failures

Since 2017, the state has attempted to quell the violence through a series of negotiations and demobilization initiatives, but these efforts have all failed due to uneven enforcement by authorities, lack of buy-in from the parties involved, and a persistent security challenge on

the ground. A motorcycle ban launched in 2017 aimed to restrict the movement of jihadists, who frequently travel around Mopti on motorbikes. The ban was unevenly enforced, however, and many Fulani complained of Bambara and Dogon militants freely riding around in plain view of authorities.⁴⁶ The ban also had the adverse effect of prohibiting people from bringing goods to market and traveling to health clinics. This exacerbated the economic and humanitarian crises already underway in the region and further undermined popular support for the state.⁴⁷ Similarly, a universal disarmament order in July 2018 was met with resistance by Dozo militants, who defied the ban and flaunted their weapons in the street. Ceasefires have also failed to take hold: a 2019 ceasefire brokered by the Fulani Alliance and the Da Na Ambassagou ended only weeks after it was signed after a series of attacks that killed both Fulani and Dogon civilians.⁴⁸ Other ceasefires have never been implemented because of mutual distrust between parties. The state has shown itself to be incapable of providing impartial and effective protection to communities in Mopti and Ségou, and this reality compels the militias to remain armed. Ultimately, none of the parties have an incentive to lay down their weapons because all recognize that they are putting their communities at risk if they do so. The state's uneven approach to the conflict has eroded any remnants of communal trust and solidarity, and in this environment any ceasefire is bound to fail.

Absent from all of these negotiations, of course, are the jihadists. As in northern Mali, the state's exclusion of the Islamists merely incentivizes them to act as spoilers.⁴⁹ Since the emergence of the Islamic State in 2016, jihadist attacks in Mopti and Ségou have risen exponentially, compounding the region's insecurity and making militias even less willing to disarm.⁵⁰ Foreign troops from the UN Stabilization Mission in Mali (MINUSMA) and France's Operation Barkhane are consistently targeted by jihadists, making them a liability in civilian territories. On October 13, 12 civilians and 13 Malian soldiers were killed in a series of attacks on Malian military bases near the border with Burkina Faso.⁵¹ Paradoxically, the forces best equipped to protect local communities often end up attracting the most violence.

In January 2020, the government launched Operation Maliko to retake central Mali, but it is not clear whether this will have a meaningful effect on the violence. Since the launching of the operation, there continue to be reports of extrajudicial abuses by the military towards civilians (overwhelmingly Fulani).⁵² Additionally, a major part of this operation is the withdrawal of the military to larger bases outside the conflict zone.⁵³ Launching operations from these larger bases instead of scattering forces

throughout the center reflects a strategic attempt by the state to protect its troops from attacks by jihadists, but it is also likely to slow down the military's response time to violent acts.

The saddest aspect of central Mali's descent into communal violence is that it could have been avoided. While it is true that tensions had been mounting between the Fulani and the Dogon for years, violence of this scale was not inevitable. It only became so when the state crystallized ethnic divides by supporting Dogon and Bambara militias while continuing to demonize the Fulani. In depicting every Fulani with a gun as a jihadist, the state ensured that the greater community made the same equation, raising communal fears and undermining the effectiveness of Fulani self-defense groups. In its disregard for the pastoralists, the state also squandered a prime opportunity to use the Alliance as a counterweight to Katiba Macina. Doing so would emphasize that most Fulani were against the jihadists, thereby allaying Dogon and Bambara suspicions. Instead, the government sided with the militias that depicted the Alliance as an Islamist proxy.

This put the Fulani in an impossible bind: they faced attack by the Dogon and the Malian army if they picked up a gun in the name of self-defense, and they faced attack if they picked up a gun in the name of jihad. The state had made it clear that it would not protect them, so Fulani looking to defend themselves had no viable options. Many ultimately chose the jihadists, who were well-armed, well-financed, and well-trained. And with every Fulani recruit into jihad, the narrative of the state and the militias was confirmed.

Part Three: The Crisis of the State

It would be easy to look at Mali's persistent conflicts and conclude that the government is trying but failing to achieve peace in the face of multiple destabilizing forces. But this would be a misunderstanding of the Malian state. To make sense of why Mali remains mired in violence after eight years of sustained international intervention and successive attempts at negotiations, one must understand that conflict is an unavoidable consequence of Mali's governance model. In addition to the crises in the north and the center, Mali suffers from a crisis of the state, which inhibits it from reaching a sustainable peace. This third crisis can be conceptualized as *bankruptcy* in every sense of the word: Mali is a financially bankrupt state led by a morally bankrupt class of politicians. The result of these two dynamics is a bankrupt political system that has hollowed out institutions and stifled democracy.

Insufficient funds

To borrow the terminology of Robert Jackson and Carl Rosberg,⁵⁴ Mali is a juridical state, not an empirical one. It is a state only in the basic legal definition of the word: it has defined borders and enjoys sovereignty under international law. Beyond that, it does not meet the empirical conditions of statehood. It lacks a unified national identity, a monopoly on violence, and a functioning government. The separatist conflict in the north and the latest military coup are evidence to these deficiencies. For a brief time in early 2012, the state could not even claim control over its own territory. Mali also lacks the resources to be considered a truly viable state: its GDP is a paltry \$17 billion, most of which is derived from subsistence farming, remittances, gold, and cotton. As a result, it is highly dependent on foreign donors, with an aid-to-GDP ratio three times that of the Sub-Saharan average.⁵⁵ While the north and center regions are particularly marginalized, every region in Mali suffers from high poverty rates. Moreover, the economy's dependence on agriculture makes it vulnerable to external shocks like the droughts of the 1970s and 80s.⁵⁶ Materially, therefore, Mali's status as a state is precarious and contingent; it subsists almost exclusively on the largesse of external actors.

Lacking as it does the necessary funds, Mali is functionally incapable of providing the conditions that would sustain peace, such as economic opportunities, adequate public services, and professional security forces. Because its means are so limited, it must allocate them strategically, meaning that select groups are privileged over others. The failure of decentralization perfectly captures this reality: the devolution of state resources to the local level meant that there was even less to go around, and the groups and individuals who benefited most from those resources were those closest to the state. In order to avoid this kind of preferential treatment, there would need to be enough public resources for every citizen to have relatively equal access. Mali is not in the financial position to make this happen. So, inevitably, certain communities – and certain individuals within those communities – will continue to benefit at the expense of others, ensuring continued social disharmony.

Mali's financial bankruptcy also explains its practice of outsourcing governance. When strategically allocating limited resources is not enough to sustain social and political calm, the state has brought in external actors to fill in the gaps. This comes in the form of NGOs, religious charities, and other nonstate groups.⁵⁷ Many of the NGOs that emerged in northern Mali during the 2000s

had radical Islamic agendas, and their presence (as educators and service providers) primed northern communities for extremist ideologies.⁵⁸ Ironically, these alternative forms of governance have contributed to the destabilization of the country.

The state also makes a habit of outsourcing security, to little avail. In addition to the government's Imghad and Dogon proxies, there are currently 20,000 foreign troops in Mali engaged in various stabilization missions. As shown, however, these forces directly contribute to instability by attracting jihadist wrath. The very presence of a MINUSMA base jeopardizes the community around it, explaining why 40% of central Mali residents report not feeling safer with international forces around.⁵⁹ Even without the added jihadist threat, the deployment of foreign troops to Mali is like putting a band-aid over a gaping wound. France and the UN cannot heal the endemic communal disharmony that has festered over decades of misgovernance.

Bamako benefits

The literal bankruptcy of the state has fueled the moral bankruptcy of its political class, whose members have capitalized on weak institutions to enrich themselves. Corruption is a defining feature of Malian politics at both the national and local level, and it is one of the reasons why conflicts remain unresolved. The decentralization model adopted since the 1990s has encouraged rent-seeking behavior among both Tuareg and Fulani elites, exacerbating the communal divisions that led to today's conflicts. For the Tuareg Ifoghas in particular, the promise of state patronage has been an enticing incentive not only to instigate violence against the government, but to keep conflict ongoing. Financially speaking, these elites have a great deal to lose from peace.

In Bamako, elites benefit just as much from ongoing instability. Since the onset of the conflict in 2012, southern businessmen and politicians have gained lucrative foreign contracts for providing services to an influx of diplomats, development workers, contractors, and security specialists.⁶⁰ The European Union has noted that funds allocated to the Malian defense sector frequently seem to vanish.⁶¹ Throughout the 2000s, local authorities and state officials alike capitalized on the northern smuggling economy, tolerating Salafist groups and armed trafficking cartels who operated in the region in exchange for intermediary roles in kidnapping operations and drug sales.⁶² Today, these links are no less strong: the profitability of the drug trade for elites at all levels means that politicians are disinclined to crack down on smuggling. Thus, drug trafficking will

continue to serve as a destabilizing force in the region, fueling the militarization of the conflict and intensifying tribal rivalries within Tuareg and Arab societies.

The material benefit that politicians derive from conflict does not fully account for Mali's continued crisis, however. Sheer indifference on the part of elites also contributes to the impasse. The political class in Bamako is notoriously insular, self-interested, and alienated from affairs outside the capital.⁶³ For most senior politicians, retaining office – and its attendant financial benefits – remains the highest priority. Since 90% of the population (and the ruling party's base of support) lives in the south, Bamako officials have little incentive to devote precious resources and energies to peripheral regions like Mopti and Timbuktu. This calculation was plainly acknowledged by a Bamako politician, who admitted that it was “politically impractical to divert current development and education programs to more vulnerable populations.”⁶⁴ His statement confirms both the financial deficiencies of the state and the moral deficiencies of its southern elites. Politicians not only lack an ethical imperative to assist their Malian compatriots; they view doing so as politically risky.

When not indifferent to the crises in Mopti and Ségou, politicians actively seek to exploit them. During the 2020 legislative elections, prominent politicians affiliated with Dan Na Ambassagou campaigned for seats in the Koro district, playing up the narrative of “jihadist Fulani” to position themselves as protectors of the Dogon community.⁶⁵ This politicization of ethnic divides by individual politicians is reinforced by the state's active support of ethnic militias, fueling communal hostilities and feeding the cycle of violence.

A façade of freedom

Between limited institutional capacity and a self-interested political class, it is no wonder that democracy has stagnated in Mali. The lack of meaningful representation afforded to groups like the Tuareg and the Fulani attests to the inherent deficiency of the political process. Successive regimes have attempted to hide this deficiency, but the longer the country remains embroiled in violence, the harder it becomes to keep up the act.

In addition to accruing significant benefits to Tuareg elites, the 1990s rebellion gave the Malian state a much-needed boost in appearances. The 1991 coup that unseated longtime dictator Moussa Traoré paved the way for political liberalization in Mali. Under president Alpha Konaré, political parties were legalized, and constitutional

reforms implemented decentralization. After over two decades of authoritarianism, Mali finally got a democratic facelift.

Appearances, however, were deceiving. Throughout the 2000s, Mali presented itself to the international community as a free and flourishing democracy, and this impression earned it generous foreign aid. Under the surface, though, the country remained plagued by political exclusion and corruption.⁶⁶ The decentralization policies promoted by Konaré had little effect on local governance, revealing that it was not the method of resource distribution that was problematic, but rather the fact that such resources didn't exist in the first place.

The impression of political liberalization was also misleading. During the 2000s, President Amadou Toumani Touré cultivated a political culture of consensus, whereby political parties and civil society groups were pressured to arrive at decisions collectively. These “unity discourses,” while praised by external observers for their perceived inclusivity, functioned as a savvy way for Touré to limit political dissent. By forcing agreement, Touré's consensus politics undermined the opposition and blurred the distinctions between political platforms, making it harder for citizens to determine what parties stood for.⁶⁷ Truly competitive elections in such an environment are impossible.

Touré's successor, Ibrahim Boubacar Keita (IBK), employed the same strategy up until his ousting this summer. While partially an indictment of his handling of the country's crises, the August coup was largely in response to popular protests against IBK's increasing corruption and consolidation of power. April's legislative elections, which had been stalled for over a year, were suddenly pushed through during the Covid-19 pandemic, suggesting an attempt by the ruling party to discourage turnout. (It worked: between fear of the pandemic and fear of jihadist attacks, only 35% of citizens showed up to the polls.⁶⁸) Afterwards, Mali's Constitutional Court rejected 31 election results, handing a parliamentary majority to IBK's party and prompting widespread accusations of fraud.⁶⁹ When protests erupted in June, security services fired upon crowds, killing 14.⁷⁰ It thus appears that the only difference between Touré and IBK is that the latter was worse at hiding his authoritarian inclinations.

Corruption remains a constant fixture of Malian politics, further undermining the country's potential for democratic progress. Despite campaigning on the promise of “no tolerance” for corruption, IBK found himself at the center

of several corruption scandals after coming to office in 2013. Instances of public embezzlement and graft actually increased during his tenure.⁷¹ Citizens report that it is necessary to pay a bribe or side-payment to obtain virtually any government service.⁷² The pervasive rent-seeking displayed by Fulani and Tuareg leaders confirms that the moral bankruptcy of Bamako elites has trickled down to the lowest levels of the state, churning up tensions along the way.

Further stifling democracy in Mali is the role of clientelism in political participation. Freedom House notes that electoral choices remain influenced by promises of patronage.⁷³ Again, this reality attests to the state's inability to provide equal services to all of its populations; it must limit access to public resources so as to conserve them for strategic allocation. In the pursuit of these limited resources, constituents find themselves bound to certain politicians whose favor they cannot risk losing. This dynamic prohibits free and robust political competition, further eroding democratic institutions.

Thus, while it gives the impression of competitive elections, Malian politics remains constrained both by incumbent regimes and by an entrenched culture of clientelism. As such, Mali's “democratic” transition in the twenty-first century should really be considered a transition from one form of single-party rule to another. Gone, perhaps, are the overtly repressive days of Moussa Traoré, but the tactics employed by Touré and IBK represent a new means to the same end: containing the opposition and barring political outsiders.

All of the supposed political “reforms” undertaken by Mali since the 1990s suggest a state that is constantly evolving. Yet, upon closer inspection it becomes clear that the same game is being played, round after round. Malian politics, like everything else, is lots of continuity and little change.

Crisis of governance or logic of survival?

Attributing Mali's persistent conflict to a “crisis of the state” assumes that conflict is a problem. While this may be the perception of Mali's foreign partners, its African neighbors, and its own citizens, conflict is not necessarily a problem for the Malian state itself. Quite the opposite: conflict has been beneficial for the state on both a material and existential level.

Materially, perpetual conflict generates the external support that the Malian state desperately needs to survive. The influx of foreign troops and humanitarian aid resus-

citates the fragile government and keeps it from being fully consumed by its own dysfunction. On a broader level, successive bouts of violence allow Mali to reaffirm its legitimacy as a state. By mediating negotiations and instituting constitutional reforms, the government in Bamako gives the impression that it is flexible and competent in the face of internal challenges.⁷⁴ In essence, conflict gives Mali “a new lease on life.”⁷⁵ With each round of instability, Mali’s empirical statehood is contested, but the inevitable intervention by its foreign backers consistently reaffirms its *juridical* statehood. One can thus look at today’s compounding crises and see the logic to their longevity. Unfortunately, this logic is lost on most of Mali’s citizens, whose acute experience with conflict precludes them from perceiving its usefulness.

What’s next?

While there may be new leadership in Bamako, Mali does not appear to be on the road to democracy. Despite nominally ceding power to a civilian-led interim government, Mali’s military leaders are still very visible in the transition process. For one, the current vice-president is the officer that led the coup, Colonel Assimi Goïta. The president of the transition, Ba N’Daou, is a civilian only in name; he is a retired colonel himself and the former Minister of Defense.⁷⁶ Just a few weeks ago, Mali’s interim legislature elected as its head Colonel Malick Diaw, who ran for the position unopposed. The heavy representation of top brass in the legislature has prompted calls for a boycott by the opposition, known as the June 5 Movement – Rally of Patriotic Forces (M5-RFP).⁷⁷ While initially supportive of the coup, the M5-RFP has since August become increasingly critical of the military’s moves to manipulate the transition process. Since November, the M5-RFP has been joined by most major political parties in denouncing the interim leadership. Mali’s transitional government has less than 18 months to pull together new elections, but with so much resistance already building against it, it is unlikely to produce candidates that will be satisfactory to the political community. The country still has a long way to go until then, but the current trend towards military rule does not bode well for a democratic transition.

Unrest is also building among the southern population. Bamako witnessed a series of demonstrations in October following the government’s release of 200 jihadists in return for a prominent opposition leader and a handful of European hostages. The protestors, many of them civil servants, noted that the asymmetric exchange only benefited the jihadists, the Europeans, and one high-profile politician.⁷⁸ This outcry among Mali’s administrative

class points to deeper frustrations running through the southern population, which is becoming increasingly fed up with the mounting chaos that has destabilized their communities and cost many their jobs.⁷⁹ The likelihood of continued demonstrations in the capital is high, especially if the M5-RFP and its allies succeed in rallying the population against the transitional government. Under such close scrutiny from the opposition, the military will likely hesitate to use excessive force against demonstrators. However, if they do opt for violent suppression, the effects will be destabilizing for the country’s final frontier of relative peace.

Covid-19 adds another dimension to the crisis. The pandemic has accelerated discontent in the south, causing severe disruptions to agricultural production (the basis of the southern economy) and taxing the state’s already weak healthcare and social security infrastructure.⁸⁰ Bamako has historically been able to count on the support of its southern communities, but this support is waning in the face of seemingly infinite disasters: there is the conflict in the north, the ethnic violence in the center, the jihadist threat, and now a global pandemic. The current health emergency makes Mali’s conflict drivers – insecurity, economic deprivation, and poor services – all the more prominent. It is certain that jihadists will capitalize on the pandemic and attempt to provide some sort of rudimentary healthcare to civilians, as other terrorist groups have done globally. This will only embed Mali’s jihadists further.

What Mali needs now is leadership that prioritizes governance. The country is a case study on the pitfalls of a security-focused approach to conflict and terrorism. The northern jihadist insurgency in 2012 was able to gain ground so quickly because it provided the security and services (however crude) that both the state and the MNLA were unable to offer. Katiba Macina did the same, using Fulani social grievances as a means to infiltrate local communities. Since 2013, however, the state’s response has not addressed these fundamental drivers of conflict. Attempting to disarm militias without providing an alternative form of security is as useless as implementing a motorcycle ban in communities that lack alternative means of public transportation. These surface-level measures do nothing to resolve the tensions driving violence, and thus they are bound to fall flat. At their worst, they will be counterproductive, as the motorcycle ban turned out to be. On a related note, Mali’s misfortune also attests to the limits of international intervention. The best armed forces in the world cannot restore stability to a state if the host government is a passive participant. Or, in Mali’s

case, if the government derives a partial benefit from instability. Mali's experience illustrates that a state that welcomes international stabilization must be a hands-on player in its implementation. Because conflict management is not merely a security issue, the state needs to be willing to do its part on the governance side. France cannot patrol and govern at the same time. It can only attempt to secure high-risk communities and train Mali's armed forces while the government busies itself with the necessary policy. After eight years, Bamako has produced little policy of substance and Mali is significantly worse off than it was in 2012, reflecting the challenge of peace-keeping in a country that does not seem to want peace.

Mali's crisis, however, is not fixable by a change in leadership. The military may think they can get a handle on corruption and instability, but the reality is that those conditions are symptomatic of an illness that has plagued the country for decades. The politicians currently decrying the military's abuse of power are the same politicians who turned a blind eye to abuses by Fulani chiefs and agents of the Forest Service. The opposition leaders who denounced IBK's brutal response to demonstrators are the same opposition leaders who stood by as the Fulani were being hunted down by Dogon militants armed with military-supplied rifles. Human life and dignity are not sacred concepts to many of Mali's elite class. For those in the capital, life will remain the same as it was before August 18. It has remained the same for eight years. For Malians living elsewhere, this continuity is less appreciated.

In central Mali, the bloodshed continues unchecked. In the first six months of 2020, 589 civilians were killed in Mopti and Ségou. Half of these deaths were caused by ethnic militias. Nearly 40% were the result of extrajudicial, summary, or arbitrary executions by the Malian army and security forces. Jihadist attacks accounted for less than 12% of deaths.⁸¹ In Mali, terrorists don't need to target civilians in order to send a message; the state does this better than anyone. In their report, the UN Human Rights Commission noted the "overwhelming impunity" with which all these attacks were carried out. There were no investigations, no justice, and no interest taken by authorities. Like coups, violence in Mali has become cyclical and mundane.

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